

Non-Paradigmatic Conceptions of Citizenship: The Case of Palestinians

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Abstract

The limitations of the current state-centric citizenship paradigm are theorized by scholars such as Hannah Arendt, Yasemin Soysal, and Seyla Benhabib, and empirically shown by the violations of human rights for refugees, the stateless, minority nationals, and other groups of vulnerable people. Emerging conditions such as globalization and digitalization have given rise to citizenship conceptions different from the state citizenship: for example, transnational, stakeholder, denationalized, postnational. This paper critically examines the normative foundations for these non-paradigmatic citizenships based on the conceptions of citizenship and human rights. At the same time, it proposes a new non-paradigmatic conception: the constellation-processual approach based on performative citizenship, and argues that the new conception helps better protect the human rights of the citizens and the citizens-in-the-making. To illustrate the differences and advantages of the new conception, it uses the case of Palestinians with fragile citizenship status. This paper ultimately sees citizenship as a normative project whose theoretical foundations should be more aligned with the justifications for human rights, such as equality and autonomy agency. It seeks to expand new ways of thinking to create and transform institutions with the aim of better human rights provisions.

Key words: citizenship, human rights, nation-state, equality, democratic theory, Israel-Palestine, Palestinians, citizens, denizens, refugees, stateless, Arendt.

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Introduction

“(J)ustice must be made, by people, in the background vocabularies where life is lived, each time for the first time.”

*David Kennedy*¹

Citizenship is a socially and politically consequential concept: it can be a person's identity, can determine the welfare distribution, and can define those with rights and those without. As an ideal, citizenship has a claim from a long lineage of democratic governance. As a form of legal and political regime, it has taken on various shapes and forms to reconfigure into the (dis)continuities of political culture and institutional arrangements. However, if citizenship is as paramount as Hannah Arendt terms, “the right to have rights,”² what should we do with the rights of those without citizenship, either because they do not have a state to honor those rights or because the states they are born under do not grant them meaningful citizenship rights? This question is perhaps as old as the idea of citizenship.

In this paper, I will identify the gaps of rights-provisions between citizenship and human rights, embark on a critical examination of citizenship conceptions either according to or different from the nation-state paradigm, and use the case of Palestinians with fragile citizenship status as a thought experiment to demonstrate the theoretical applicability and advantages of the non-paradigmatic citizenship conceptions. What I mean by “paradigmatic citizenship conception” is the state citizenship prevalent under the international states system now, and what I mean by

¹ David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton, NJ: Princeton University Press, 2004), 350.

² Hannah Arendt, *The Origins of Totalitarianism* (New York, US: Schocken Books, 1951), 177.

“non-paradigmatic citizenships” include some existing conceptions — transnational, stakeholder, denationalized, and postnational — as well as my new conception, namely the “constellation-processual approach based on performative citizenship.” As I will elaborate below, this new conception places an emphasis on the civic republican sense of citizenship where activities and practices within a polity give rise to justifications of right-provisions; in the meantime, it falls within the theoretical parameters of liberal democratic politics drawing normative arguments from two important principles of equality and inclusion. “Constellation” posits the multi-leveled and multi-variegated location of citizenship, “processual” implies a partiality towards the active making of politics over stable and static status, and “performative” indicates the meaning of being and becoming citizens.

The research question that anchors all the explorations and analyses has two parts: one, why should there be non-paradigmatic citizenship conceptions, old and new, aside from or instead of the state citizenship? Two, how can non-paradigmatic citizenships, especially the new conception, better protect people’s human rights while political solutions such as state-building and peace negotiations take time and repeatedly fail to accomplish the objective of bettering people’s lives? I will argue that state-citizenship is morally and theoretically unsound and that the non-paradigmatic citizenships are better conceptualized to protect human rights. In particular, I will argue that the new citizenship, conceptualized in the principle of equality and with the purpose to improve rights provisions, should be adopted as a new framework of thinking because it mirrors closely the human rights ideal of equal, autonomous agency by rooting the politics of rights in the practices of rights-bearers. Additionally, in exploring the case of Palestinians, I will illustrate how non-paradigmatic citizenship conceptions work to better protect people’s rights,

especially those like the Palestinians living without a state or under limited statehood characterized by a internationally recognized status (however partially) and a severely circumscribed domestic sovereignty.³

The paper takes a normative approach to analyzing and theorizing and draws concepts from multiple disciplines such as philosophy, law, political science, and sociology. As a result of prioritizing normativity, the new citizenship conception may have contested effectiveness in practice. This paper maintains plausibility as a basis for theorization but does not concern itself with evaluating plans for execution. Nevertheless, alongside the theoretical analysis and (re)articulations, I will address the critique about, counter-arguments for, and limitations with the different non-paradigmatic citizenship conceptions whenever relevant.

The significance of this paper and the attempt to create a new citizenship conception is to transform the power relation and structure inherent in the current practice of citizenship by the nation-states into one where citizenship can function more as an enabling condition for members in different political communities to engage in political claims-making, rather than a crippling condition to exclude people from claiming, bearing and practicing rights. The findings and conclusions encourage critical-(re)thinking over many prevailing notions in political theory, such as the notions of “civic” society, “domestic” politics, and “public” sphere. In time, I hope the nation-state can be decoupled from the concept of citizenship and, therefore, removed from the absolute center of modern political life. As a result, citizenship can be more closely connected with people as political and social agents in an intentional community and with their claiming rights by performing citizenship.

³ Thomas Risse-Kappen, *Governance without a State? Policies and Politics in Areas of Limited Statehood* (Oxford, UK: Oxford University Press, 2013), 4.

The Limits of State Citizenship and New Conceptions

There are several intertwining concepts and systems that constitute the existing paradigm of the international states system, and the state-centric, statist, or state citizenship as mentioned in this essay is the paradigmatic conception of citizenship because it permeates the political life as we know today. For example, Gertrude Himmelfarb writes, the term citizenship has “little meaning except in the context of a state.”⁴ Some others similarly proclaim that the state citizenships “best serve the common interest.”⁵ Even the liberal scholars arguing from normative principles such as equality and inclusion, like the democratic pluralist Iris Marion Young and cultural pluralist Will Kymlicka, continue to posit the nation-state as the normative frame for executing those universalist principles: when they propose the democratization of and equal access to the public sphere, their idea of the public sphere is a national community.⁶ However, considering that citizenship is grounded in rights that are strong enough to constitute “enforceable claims on the state,”⁷ it should also lead to enforceable claims on institutions and systems of governance other than a state. So how might citizenship and rights-provisions look like if its theoretical location is not in the nation-state?

In this chapter, I will first explain the conceptions of citizenship ideal in the most theoretical sense, untied to the nation-state paradigm. What follows is a critical investigation of

⁴ Gertrude Himmelfarb, *One Nation, Two Cultures* (New York: Knopf, 1999), 448.

⁵ David Owen, “The Prior Question: What Do We Need State Citizenship For?,” in *Debating Transformations of National Citizenship*, ed. Rainer Bauböck (Cham, Switzerland: Springer International Publishing, 2018), 117.

⁶ Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Oxford Political Theory (Oxford: Oxford University Press, 1996), 131–51. See also Iris M. Young, “Polity and Group Difference: A Critique of the Ideal of Universal Citizenship,” *Ethics* 99, no. 2 (1989): 250–74; Linda Bosniak, “Citizenship Denationalized,” *Indiana Journal of Global Legal Studies* 7, no. 2 (2000): 481.

⁷ Charles Tilly, “Where Do Rights Come From?,” in *Democracy, Revolution, and History*, ed. George Ross et al. (Ithaca, NY: Cornell University Press, 1998), 56–57,

the problems of the paradigmatic state citizenship, especially its limitations on human rights provisions. Then I will lay out certain non-paradigmatic conceptions of citizenship articulated by existing scholarship for the past few decades and examine their advantages compared to state citizenship. Lastly, I will argue for a new conception of citizenship, namely, the constellation-processual approach based on performative citizenship, by defining it and justifying its advantages in materializing equal human rights, in particular for people with fragile citizenship status or crippled citizenship rights.

I. The Typologies of Citizenship Conceptions

The meanings of “citizen” have changed since its philosophical conception in classical Athenian times, but roughly, the ideal of “citizenship” is the equal and full membership status in a polity.⁸ To narrow it down or make it more specific, qualifiers and boundaries can be added to “membership” and “polity” (e.g., *legal* membership, *ethnically-bounded* polity, *self-governing* polity). A polity in contemporary politics is exemplified by but not limited to nation-states.⁹ Within the definition, however, citizenship manifests in different conceptually interconnected dimensions: as membership, as rights, and as practices (see the table below). All three dimensions connect a person’s legal, political and social life. For example, as membership, citizenship can

⁸ John G. A. Pocock, “The Ideal of Citizenship since Classical Times,” in *Theorizing Citizenship*, ed. Ronald Beiner (Albany, NY: State University of New York Press, 1995).

⁹ See Rainer Bauböck, “The Crossing and Blurring of Boundaries in International Migration. Challenges for Social and Political Theory,” in *Blurred Boundaries: Migration, Ethnicity, Citizenship*, ed. Rainer Bauböck and John Rundell, Public Policy and Social Welfare 23 (Farnham, UK: Ashgate Publishing, 1998), 17–52, <https://doi.org/10.4324/9780429459641-1>. Polity, compared to the notion of civil society, includes political legitimization and a formal structure of membership, and is an intergenerational community living under a common political authority that acts (or at least claims to) in the common interests of those in the community. See also, Rainer Bauböck, *Transnational Citizenship: Membership and Rights in International Migration* (Aldershot, UK: Edward Elgar Publishing, 1994), viii, polity is defined as “an inclusive community or association of equal members that extends basic rights to everybody subject to its collective decisions.”

both indicate a legal status or a feeling of belonging (i.e. an identity). In the sense of political and cultural identity, citizenship and nationality can be used interchangeably if and only if the political unit of analysis is a nation-state — if citizenship is pushed towards the thickest conception, expressions such as “university/academic citizenship,” “global citizenship” are also valid with its own defined community boundaries.

DIMENSIONS	CONCEPTIONS		
	thin ←————→ thick		
	legal positivism	civic	nationalism
	libertarianism	republicanism	communitarianism
membership	legal status	political identity	cultural identity
rights	negative liberties	rights as obligations	moral duties
practices	passive citizenship	civic virtues	heroic virtues

Table: Conceptions and dimensions of citizenship¹⁰

¹⁰ Rainer Bauböck, *Recombinant Citizenship*, Policital Science Series 67 (Vienna, Austria: Institut für Höhere Studien (IHS), 1999), <https://books.google.hu/books?id=h7IWAQAIAAJ>, 4.

Citizenship can be acquired, lost or revoked, and passed down. The current legal regimes prescribe three main types of citizenship acquisition: by descent (*jus sanguinis*), by birthright (*jus soli*), and by residence (*jus domicili*, often involving legal residence for a period of time as the prerequisite in the path for citizenship).¹¹ Another underlying philosophy especially powerful in a state's decision to either grant or revoke citizenship is the notion of “genuine link” (*jus nexi*).¹² The genuine link criterion appraises individuals' connection to a particular political community, which is considered the basis for membership. However, the genuine link evaluation is not as automatic as *jus sanguinis* or *jus soli* is, as many maintain dual citizenships without a strong bond to one of the two states. In the case analysis of the Palestinians, this paper will consider these processes through which citizenship is acquired and even adopt some of these rules. It is imperative to note that the analytic approach to these processes does not aim to reify notions such as “blood,” “birthplace,” “territory,” or “residence,” but seeks to reframe the relationship an individual can have with a political community by referring some of these processes.

The conceptions of citizenship and the processes of obtaining citizenship status lead to many problems, gaps, and gray areas in practice. Considering a sovereign state as the primary political instrument to grant, protect, and revoke citizenship status, the national community has different groups of political agents, including differentiated citizens. There can be *super-citizens* who have the privilege and capability to not be tied to a specific state by citizenship (e.g., the digital nomads and multinational corporation representatives), *marginal citizens* who are marginalized from or disadvantaged in domestic politics and economy either through

¹¹ Rainer Bauböck, “Political Membership and Democratic Boundaries,” in *Oxford Handbook of Citizenship*, ed. Ayelet Shachar et al. (Oxford, UK: Oxford University Press, 2017), 60–82.

¹² Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Cambridge, MA: Harvard University Press, 2009), <http://catdir.loc.gov/catdir/toc/ecip0827/2008038983.html>, 16.

socio-economic deprivation or racial and ethnic identities (e.g., the Dalits in India), *national-majority citizens* with no added privileg like super-citizens or experiences of margianlization, *quasi-citizens* (also termed “denizens,” such as long term legal residents in a country with access to labor market and cultural life but no voting rights in national elections), *sub-citizens* who have legal residency status but restricted access to labor market or welfare benefits (e.g., asylum seekers with pending application, short-term immigrants, adult dependents of quasi-citizens), and *non-citizens* (e.g., undocumented immigrants).¹³ Many of these groups of people have different access to rights-provisions due to their status, and the law’s remedial effects — the equalizing force of the constitution, for one — can be lost. For example, noncitizens have few ways to participate in political processes, and undocumented immigrants often do not seek legal reprisal of human rights violations due to the fear of retribution and deportation.¹⁴

The main normative problematizations of the paradigmatic citizenship include: firstly, because of the dominance of *jus sanguinis* and *jus soli* as citizenship acquisition norms and because of the moral arbitrariness of birth, it perpetuates global inequality or inequality among different groups of people, thus exacerbating both vertical inequality among individuals and horizontal inequality among groups. Secondly, perhaps particular to democracies, it risks either over-including or under-including certain populations in a demo. Thirdly, because of increasing migration, political legitimacy may be undermined when a large denizen population work but cannot vote, and the citizens vote but do not work or do not regularly reside in their place of citizenship. These problems may be prevalent in the non- paradigmatic citizenships too, but their

¹³ Kate Nash, “Between Citizenship and Human Rights,” *Sociology* 43, no. 6 (December 1, 2009): 1067–83, <https://doi.org/10.1177/0038038509345702>, 1073.

¹⁴ David Weissbrodt, “Human Rights of Noncitizens,” in *The Human Right to Citizenship*, ed. Rhoda E. Howard-Hassmann and Margaret Walton-Roberts, A Slippery Concept (Philadelphia, PA: University of Pennsylvania Press, 2015), 21–30, www.jstor.org/stable/j.ctt15hvv7q.4.

conceptions have different elements to act as mitigations to create a more morally and theoretically sound foundation for citizenship status, rights and practices.

II. Human Rights vs. Citizenship Rights

Typologies aside, in this section, I will discuss the relationship between human rights and citizenship rights, especially how citizenship falls short of realizing the universalist ideal of equal rights. Hannah Arendt phrases citizenship as “the right to have rights,”¹⁵ and by using the stateless population and their rights violations as example, she argues that human rights are still predicated on citizenship status. Millions of refugees and the stateless face human rights infringements and violations that are unaccounted for, so the current configuration of domestic citizenship regime combined with international human rights regime still leaves gaps for discontent. Therefore, this paper aims to take a (human) rights-based approach to analyze and (re)conceptualize non-paradigmatic citizenships, making human rights not an addition, but a starting point.

Some scholars argue that the human rights regime grew out of the intellectual and practical traditions of citizenship rights.¹⁶ The main similarity, as I contend, is that both human rights and citizenship rights are equalizing forces but in different regards and on different scales. Human rights are cosmopolitan, as its premise is based on the common and essential humanity of all people.¹⁷ Citizenship rights are conceptualized as an equal status within a political community with its own membership requirements (i.e., the principle self-determination). While a citizenry may have socioeconomic inequalities and differentiated experiences, they are of equal standing as

¹⁵ Arendt, *The Origins of Totalitarianism*, 177.

¹⁶ Gershon Shafir, “Citizenship and Human Rights in an Era of Globalization,” in *People Out of Place: Globalization, Human Rights and the Citizenship Gap*, ed. Alison Brysk and Gershon Shafir (New York, US: Routledge, 2004), 11–28.

¹⁷ Seyla Benhabib, “Twilight of Sovereignty or the Emergence of Cosmopolitan Norms? Rethinking Citizenship in Volatile Times,” *Citizenship Studies* 11, no. 1 (February 1, 2007): 19–36, <https://doi.org/10.1080/13621020601099807>, 32. See also, *The Declaration of Human Rights*, GA Res. 217A (III) at 71, (1948) UN Doc. A/810, recognizes this principle in art. 2(1).

citizens. Having expanded from political to civil and to social rights, citizenship rights aim to minimize the differences between class and social stratifications in the population.¹⁸

Some others consider the notion of human rights to be self-legitimizing through the exercise of pure reason, as in it is not based on public opinion or popular consent, and therefore does not need democratic deliberation or decision-making.¹⁹ The crux here is a difference between moral right and positive right: positive rights are real and particular in the obligations imposed on the enforcement institutions and rights-bearers, but rights are more than legal entitlement. From a sociological perspective, for example, the enjoyment of rights depends on “social structures through which power, material resources and meanings are created and circulated,”²⁰ which means the conception of human rights is not only about instating it in or as a legal regime, but positioning its meanings in all the political-philosophical problems of culture, social norms, and so on. It is a political question necessitating philosophical approaches, as political approaches to human rights concern putting them into practice (i.e., how can a moral right become positive rights), while philosophical approaches inquire what the rights are and are based on, why humans have them, and how they can be justified.²¹

To be clear, human rights are also no longer an abstract moral “ought” as there are many international and domestic institutions dedicated to its legislation and interpretation. But the political limitations persist: there is no international court of human rights (the European Court of Human Rights, albeit supranational, is regional), and the onus of enforcement is on the

¹⁸ Thomas H. Marshall, *Citizenship and Social Class, and Other Essays*. (Cambridge, UK: Cambridge University Press, 1950).

¹⁹ Ulrich Beck, *Power in the Global Age: A New Global Political Economy* (Cambridge, MA: Polity, 2005), 297

²⁰ Kate Nash, “Between Citizenship and Human Rights,” *Sociology* 43, no. 6 (December 1, 2009): 1067–83, <https://doi.org/10.1177/0038038509345702>, 1069.

²¹ James D. Ingram, “What Is a ‘Right to Have Rights’? Three Images of the Politics of Human Rights,” *The American Political Science Review* 102, no. 4 (2008): 401–16, 402.

nation-states to either incorporate human rights into domestic law (e.g., the United Kingdom's Human Rights Act 1998) or to sanctions human rights violating states. If states are perpetrator themselves, or complacent, or are not willing to sanction other states, then the human rights regime cannot be properly enforced. However, dwelling on the statist conception of international politics makes it hard to deliberate ends and means together instead of treating human rights as ends and politics as means, thus undermining the purpose of human rights to be above politics. To move forward, a sense of indifference is warranted towards the ample enforcement of citizenship rights in domestic courts and the lack of materialization of the human rights regime. Therefore, this paper deals with justification, rather than genesis or implementation.

The justifications for human rights from the point of equality come from four aspects. First, the universal nature of the idea of human rights stipulates equal respect to all.²² Second, Human rights guarantee the basic needs for a minimally decent life according to a universal standard.²³ Many people live above that standard, but human rights provide an equalizing framework for basic conditions for humanity. Additionally, human rights delineate the necessary conditions such as autonomy and freedom for a person to achieve moral agency, which makes this person satisfy the "personhood" definition in moral and legal philosophy.²⁴ Lastly, a political conception as a justification provides that human rights entail the basic capabilities integral to one's participation in politics through the exercise of civic freedom.²⁵ Compared to the conceptions of citizenship as a derivative from the justifications for political legitimacy of an

²² Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977). It is important to note here that equal respect is not the same as equal treatment which means that the interpretation of equality here is not equal as *sameness* among all groups of people, such as men, women, children, minorities, etc..

²³ David Owen, "Citizenship and Human Rights," in *The Oxford Handbook of Citizenship*, ed. Ayelet Shachar et al. (Oxford, UK: Oxford University Press, 2017), 250.

²⁴ James Griffin, *On Human Rights* (Oxford, UK: Oxford University Press, 2008).

²⁵ Charles R. Beitz, *The Idea of Human Rights* (Oxford, UK: Oxford University Press, 2009).

authority and community and for the tie between individuals and a community, these justifications for human rights treat individuals as free-standing autonomous moral agents. They consider the basic conditions for an individual to realize his or her role as a person (*zoè*) with a qualified life (*polis*) and to not be reduced to bare life (*bio*), in which life's biological function overtakes how it is lived and its circumstances.²⁶

Therefore, a rights-based approach seeks to bridge morality and law, challenge citizenship politics with the normative arguments for equality behind the idea of human rights to make sure that the new citizenship conceptions can produce citizens that are defined by their autonomous agency and civic practices *a priori*, rather than primarily by their belonging to a sovereign state or under which political authority they live their lives.

²⁶ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Palo Alto, CA: Stanford University Press, 1995).

III. Non-Paradigmatic Citizenship Conceptions: Old and New

As mentioned in the chapter intro, there is a conventional school of thought that predicates claims of citizenship rights — or rights in general — on the functions of nation-states. Even philosophers whose intellectual legacy has become intertwined with contemporary debates on global justice, John Rawls and Hannah Arendt, assumed the sovereign state to be the basis of politics.²⁷ However, some theorists, such as Yasemin Soysal,²⁸ Jürgen Habermas,²⁹ and Seyla Benhabib³⁰ have responded with criticism toward the state-based conception of politics; Soysal and Seyla also posit that the creation of the human rights regime in the postwar era has led to a new discourse in which “the logic of personhood supersedes the logic of national citizenship,”³¹ and that it gave rise to an emergent legal norm where states honor human rights by way of extending to resident aliens certain rights that had been previously exclusively afforded to citizens.³² Some theorists argue that the extension of rights for permanent residents did not come from a conceptual and empirical breakdown of the link between the national community and rights,³³ but came as an incidental benefit from states’ expansion of the formal inclusionary aspects of citizenship (e.g., to citizens’ families and offsprings, to citizens of different immigrant

²⁷ Seyla Benhabib, “Another Universalism: On the Unity and Diversity of Human Rights,” *Proceedings and Addresses of the American Philosophical Association* 81, no. 2 (2007): 7–32.

²⁸ Yasemin N. Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago, IL: University of Chicago Press, 1994).

²⁹ Jürgen Habermas, *The Postnational Constellation: Political Essays*, trans. Max Pensky, 1st MIT Press ed., Studies in Contemporary German Social Thought (Cambridge, MA: MIT Press, 2001).

³⁰ Seyla Benhabib, *The Rights of Others: Aliens, Residents and Citizens* (Cambridge, UK: Cambridge University Press, 2004), <http://www.dawsonera.com/depp/reader/protected/external/AbstractView/S9780511317637>.

³¹ Soysal, *Limits of Citizenship*, 164.

³² *Ibid.*

³³ Yasemin N. Soysal, “Changing Parameters of Citizenship and Claims-Making: Organized Islam in European Public Spheres,” *Theory and Society* 26, no. 4 (1997): 512.

and ethnic backgrounds).³⁴ Nevertheless, in their opinions, human rights are best protected through regional and international legal regimes limiting state sovereignty, and even if the states might not have intentionally acted under the reasoning of human rights, human rights influenced the progress of politics and states might have inadvertently contributed to the postnational and transnational dimension of rights.

Critics harshly pointed out “the poverty of post-nationalism” with normative and empirical arguments.³⁵ Accordingly, there is no material evidence that rights, even those stipulated in international human rights law, are not legitimized by the state and instead by a concept of personhood. In another word, states are still the “the single most important generator of rights.”³⁶ The examples of postnational rights regimes, European Union and international law, still operate with the states as the primary actors and units of politics, and political movements advocating for minority rights and equal rights are still carried out on the stage of national or domestic politics within a state. However, these articulations are mostly in a descriptive frame, arguing whether citizenship *is* or *is not* taking upon a postnational form. The criticisms, therefore, show the poverty of status-quo thinking: this paper takes the position that citizenship is a social construction that can be deconstructed and reconstructed and, therefore, seeks to investigate theoretical foundations for new citizenship conceptions. Nation-states are still here today — none of the conceptions in this paper is based on the negation or denial of that, but they all explore the

³⁴ Saskia Sassen, “Incompleteness and the Possibility of Making: Towards Denationalized Citizenship?,” *Cultural Dynamics* 21, no. 3 (November 1, 2009): 237.

³⁵ Randall Hansen, “The Poverty of Postnationalism: Citizenship, Immigration, and the New Europe,” *Theory and Society* 38, no. 1 (2009): 1–24.

³⁶ *Ibid*, 5.

complex transformations to the nation-state as the “container of social process”³⁷ and advocate for attention to be paid to emergent non-national sites of legitimate claims-making.

The conceptions analyzed and developed in this paper are (1) transnational citizenship, extensively studied by political theorists such as Rainer Bauböck and Jonathan Fox, together with the principle of stakeholder citizenship that Bauböck argues within transnational citizenship; (2) the pair of denationalized and postnational citizenship, greatly examined by the sociologist of globalization Saskia Sassen and legal scholar Linda Bosniak; (3) my own elaboration of a constellation-processual approach based on performative citizenship, with the notion of “performative citizenship” developed by political scientist Engin Isin. It is difficult to disentangle the legal, political, psychological and sociological elements and consequences of citizenship conception. For example, the legal status of citizenship may influence people’s feelings of solidarity, connection, and identity, and therefore people may seek to claim their citizenship rights in a civil society through political action. So the legal aspect relates to the emotive and political dimensions.³⁸

This paper will not limit the analysis to one discipline but will firmly ground it in normative conceptions, in particular, the political-philosophical concepts of equality in Rawlsian social justice. “Equality” in the First Principle of justice (also the “liberty principle”) stipulates that “(e)ach person has the same and infeasible [permanent] claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all.”³⁹

³⁷ Saskia Sassen, “Towards Post-National and Denationalized Citizenship,” in *Handbook of Citizenship Studies*, ed. Engin F. Isin and Bryan S. Turner (London, UK: Sage Publications Ltd, 2002), 277–92.

³⁸ Linda Bosniak, “Denationalizing Citizenship,” in *Citizenship Today*, ed. T. Alexander Aleinikoff and Douglas Klusmeyer, Global Perspectives and Practices (Washington, D.C.: U.S.: Carnegie Endowment for International Peace, 2001), 237–52, <https://doi.org/10.2307/j.ctt6wpkc2.14>.

³⁹ John Rawls, *A Theory of Justice* (Cambridge: The Belknap Press of Harvard University Press, 1971), 42–43.

Autonomy and equality constitute the principal idea on which human rights rest,⁴⁰ and by centralizing the idea of equality in the new citizenship conceptions, liberties by way of rights and more will be logically connected to those conceptions.

Considering the large varieties of ways to understand the concept of “citizenship,” the new conceptions and theorizations will avoid becoming analytically broad and meaningless by engaging with two desiderata. The first desideratum is the liberty principle, which I will call the “equality desideratum.” For example, state-based citizenship creates and perpetuates inequality because people are not born into equal circumstances and many states are better at conferring rights-protections than others; besides, not all people were born into a state, such as the statelessness, and not all people live under the protection of a state, such as refugees and undocumented migrants. By analyzing the statist approach to citizenship and citizenship rights against the first desideratum, it is shown that state-based citizenship produces people without “the right to have rights,” because not every person exists in the demarcations of the world into nation-states (let alone whether the demarcations are even logical), and therefore it constitutes an argument for the state-based citizenship’s violation of the equality desideratum.

The second desideratum is what I will call the “gap desideratum,” meaning that the goal of new citizenship conceptions is to bridge the gap between citizenship rights and human rights so that law-making and claims-making should increasingly be predicated upon “personhood” as the basis of citizenship rather than belonging to a state. Bringing together citizenship rights and human rights can be achieved in various ways: by conflating or merging the concepts of “citizen” and “person” (which has been the basis of constitutional rights in the United States⁴¹), or by

⁴⁰ Ingram, “What Is a ‘Right to Have Rights’?”, 405.

⁴¹ Linda Bosniak, “The Difference That Alienage Makes,” in *The Citizen and the Alien*, Dilemmas of Contemporary Membership (Princeton, NJ: Princeton University Press, 2006), 37–76, <https://doi.org/10.2307/j.ctt7s254.6>.

circumventing the constraints of nation-states as the sole site of citizenship politics. The two ways are not necessarily what the new citizenship conceptions will advocate, but they will help fulfill the gap desideratum in creating more opportunities for human-rights protection than the current statist framework. The second desideratum may seem like an empirical evaluation on whether the new conceptions “exist” or “work” better, but the arguments will still be grounded in critical analyses of the theoretical soundness.

A. Transnational Citizenship and Stakeholder Citizenship

Like the concept “citizenship,” “transnationalism” has also animated scholars in discussing its meaning, forms, and scope. For example, it is still debatable what levels of engagement and entanglement with multiple political, socio-economic, and cultural spheres can make a person truly a “trans-”national instead of a “cross-” or “multi-”national.⁴² To focus the discussion in this paper, “transnational” takes upon its common sense usage meaning cross-border (i.e., trans-state).⁴³

Transnational citizenship, therefore, can have a range of meanings within its conceptualization: Rainer Bauböck uses the term to describe the relation between individuals and two or more states in which they simultaneously have membership status or membership-based rights or obligations.⁴⁴ This term can be used to describe migrants who have created and sustained dual or multiple national identities,⁴⁵ though multiple national identities are not

⁴² Alejandro Portes, Luis E. Guarnizo, and Patricia Landolt, “The Study of Transnationalism: Pitfalls and Promise of an Emergent Research Field,” *Ethnic and Racial Studies* 22, no. 2 (January 1, 1999): 217–37, <https://doi.org/10.1080/014198799329468>.

⁴³ Jonathan Fox, “Unpacking ‘Transnational Citizenship’,” *Annual Review of Political Science* 8, no. 1 (2005), 172.

⁴⁴ Rainer Bauböck, *Transnational Citizenship: Membership and Rights in International Migration* (Aldershot, UK: Edward Elgar Publishing, 1994).

⁴⁵ Fox, “Unpacking ‘Transnational Citizenship,’” 175.

synonymous with multiple citizenships. In this way, transnational citizens can include denizens, who are foreign nationals enjoying external formal citizenship status and quasi-citizenship rights *qua* permanent residents in another country. It can include the reverse of denizens, who are neither citizens nor residents of the country granting them quasi-citizenship status. An example is certain Central Eastern European states (e.g., Hungary, Slovenia, Romania) offer citizenship to minorities of co-ethnic descent living abroad.⁴⁶ In the broad sense, transnational citizenship can also refer to the multi-level processes in which social, civic, and political actors and their engagement and claims-making are embedded. Transnational activities help create a transnational public sphere and an additive layer — the transnational citizenship — to the multi-layered construct of modern citizenship.⁴⁷

There are many forms of transnational migrant politics, ranging from cross-border voting rights (see Bauböck's 2005 table below on electoral rights for non-citizen residents), legislative representation of expatriates, elected transnational authorities (e.g., the European Parliament), indirect engagement (e.g., remittances), activism, as well as “translocal” participation, which means local communities are composed of some foreign residents and local issues involve certain transnational concerns because of foreign residents' local membership.⁴⁸ However, the questions stand, do transnational politics give rise to a distinct conception of citizenship? Does this conception hold up under scrutiny and offer analytical value? Are the people participating in transnational politics all transnational citizens?

⁴⁶ Constantin Iordachi, “Dual Citizenship and Policies toward Kin-Minorities in East-Central Europe: A Comparison between Hungary, Romania and the Republic of Moldova,” in *The Hungarian Status Law : Nation Building and/or Minority Protection*, ed. Zoltán Kántor et al. (Sapporo, Japan: Slavic Research Center, Hokkaido University, 2004).

⁴⁷ Nira Yuval-Davis, “The ‘Multi-Layered Citizen,’” *International Feminist Journal of Politics* 1, no. 1 (January 1, 1999): 119.

⁴⁸ Fox, “Unpacking ‘Transnational Citizenship.’”

national		Australia Barbados Belize Guyana Ireland St. Lucia St. Vincent & Grenadines Trinidad & Tobago UK	New Zealand Malawi
		Portugal	Chile Uruguay
local or regional	Switzerland	European Union (25 Member States)	Ireland
			Denmark Finland Iceland Norway Sweden
			Belgium Luxembourg Netherlands
			Estonia Hungary Lithuania Slovakia Slovenia
	U.S.		Belize Venezuela (Bolivia) (Colombia)
	Canada Israel		

in part of country for particular nationalities universal

Table: Electoral Rights for Non-Citizen Residents⁴⁹

Fox argues that, when considering what kinds of rights and membership are involved, only dual and multiple citizenships as the content of transnational citizenship have analytical precision.⁵⁰ However, if citizenship can be equated to rights *per* membership, then the substance of citizenship is reduced from its conceptualized dimensions, which also include activities and

⁴⁹ Rainer Bauböck, "Expansive Citizenship—Voting beyond Territory and Membership," *PS: Political Science & Politics* 38, no. 4 (2005): 684.

⁵⁰ *Ibid.*

identities. And “transnational” does not necessarily restrict the substance of citizenship because it indicates its location (i.e., a transnational public sphere). As Fox himself points out, transnationalism allows for parallel participation arose from individuals’ activities in independent political communities; it produces simultaneous participation for individuals living in borderlands where state boundaries are not borders but a space of transition; it also produces integrated participation for individuals involved in multi-level nested membership in local, regional, national, and transnational polities, most notably in Europe.⁵¹ Dual or multiple citizenships do not encapsulate the full logic of the varieties of rights conferred — not by way of national legislation but sometimes through local (e.g., the Swiss cantons) or supranational institutions — to mono-national citizens involved in parallel, simultaneous and integrated participation in their course of life. Given that rights, including quasi-citizenship rights, do not constitute a person’s personhood or his or her legal status, then it is reasonable to consider that this person’s personhood and legal status as a non-citizen have given rise to these (quasi-)citizenship rights.⁵²

Following similar logic, Bauböck has theorized a principle of stakeholder citizenship that explains and legitimizes many of the rights, including electoral rights, that transnational individuals, including but not limited to dual- and multi-nationals, hold in two or more political communities.⁵³ Accordingly, since many transnational individuals have full membership status in a local or regional community (e.g., by residence) that is self-governing to a large extent, then they hold a form of citizenship by definition, and therefore this form of citizenship, albeit

⁵¹ Ibid. For a fuller overview, see Fox’s 2005 table on the domains and intensities of transnational rights and membership in Appendix VI. See also Joe Painter, “Multi-Level Citizenship, Identity and Regions in Contemporary Europe,” in *Transnational Democracy: Political Spaces and Border Crossings*, ed. James Anderson, Transnationalism (London: Routledge, 2002).

⁵² (Quasi-)citizenship rights here mean the rights normally equally afforded to full national citizens.

⁵³ Rainer Bauböck, “Stakeholder Citizenship and Transnational Political Participation: A Normative Evaluation of External Voting,” *Fordham Law Review* 75, no. 5 (2007): 2393–2447.

unrecognized, authorizes a range of membership rights, such as voting rights.⁵⁴ Secondly, in liberal democratic societies, the principle of inclusion asserts that these transnational individuals, due to them being stakeholders in their respective communities, should be granted the moral right to claim membership and rights.⁵⁵ While the first argument points out definitional congruence, the second one gives justification for citizenship rights regardless of whether transnational individuals can be considered citizens in the eye of the nation-states and their law.

Transnational activities and identities impose or create different boundaries to national citizenship. And this is where the two desiderata come in. Based on the equality desideratum, transnational citizenship should exist based on individuals full membership in different cross-border or translocal communities. The membership should be judged based on *jus domicili* and *jus nexi* rules as they involve residency and genuine connection, which means undocumented immigrants with no legal residence status, when proven residency in and genuine link to the transnational communities in which they are imbedded, should have a claim to transnational citizenship rights. There are two arguments for this proposition. Irrespective of the forms of transnational participations or types of transnational individuals, the first claim based on the equality desideratum is transnational individuals' contribution to two or more independent political communities. Some people belonging to two or more political communities, one of which may even be a nation-state where they have citizenship status, but may be only contributing to one community. This would cast doubt on how *transnational* these people are if they are engaged with and embedded in one community at a time. Just like full citizens in a country will lose certain rights and privileges such as access to local services when moving from

⁵⁴ Bauböck, "Stakeholder Citizenship," 686.

⁵⁵ To differentiate from formal legal positive rights.

one city or province to another, many people moving across borders may experience the same transition or shift in the location of rights. However, many individuals do maintain membership status and engagement with multiple communities, such as through remittances, involvement in translocal politics, and investment in translocal or transnational businesses. They lead almost identical lives alongside their neighbors who may be full national citizens. The only disparity is in status and it makes unequal rights despite the same standing in a local or regional community as well as similar contributions transnational individuals make. Indeed, people's contribution may be unequal, but the act of contribution itself is equal in principle even if the contribution is different in content, magnitude, and effects.

The second argument based on the equality desideratum for transnational citizenship being a legitimate form of claiming rights is from the democratic theory. More specifically, the argument asserts that because these transnational individuals submit to the same central authority (local, regional, or national) that oversee them and enact policies that affect them, then the legitimacy of the power of the authority over these individuals can only be justified if it affords equal rights, especially the political rights that foreign residents often lack compared to national citizens. This argument derives both from the liberal principle of "*quod omnes tangit ab omnibus tractari et approbari debet*," meaning that all affected interests need to be accounted in the demo, and from the social contract tradition where governing body derives legitimacy from people's consent in a self-constituted political community, in which the transnational individuals are.⁵⁶

Here, several contentions may arise, and I will address them one by one. The first one is the democratic boundary problem. With increasing trends of migration, the people within the political community may not be able to constitute a stable populace for democratic decision-

⁵⁶ John Locke, *The Second Treatise of Government* (London, UK: Awnsham Churchill, 1689).

making if, for example, the all-affected-interests will change constantly and be applied to people who are not yet part of the community when the voting takes place.⁵⁷ However, boundaries in a community can be set either by geographic borders defining territorial jurisdiction and/or membership boundaries defining who is inside and outside.⁵⁸ In this case, the territorial jurisdiction can still serve as a reliable boundary-defining element. And the change to a more *jus domicili*-based or *jus nexi*-based principle in recognizing transnational citizenship will not threaten the democratic processes, as most local and regional governments' now already allow people with resident status to participate in elections and they have not collapsed in inapt decision-making.⁵⁹

The second contention is that it may lead to a disconnect between political rights (especially national electoral rights) and citizenship status.⁶⁰ By erasing the citizenship-only qualifier for some rights, then citizenship status may become devalued or meaningless. However, the argument is not to decouple rights from citizenship or to grant everyone citizenship rights. As mentioned before with the contribution-based claim as well as *jus domicili* and *jus nexi* principles, not every foreign person has a genuine link with or residency in two or more political communities or contributes to those communities. Therefore, citizenship rights will not be afforded to them by way of them not being *transnational*. But those with all these attributes should be treated as citizens in the principles of equal liberties and inclusion.

⁵⁷ Goodin, "Enfranchising All Affected Interests, and Its Alternatives."

⁵⁸ Bauböck, "Political Membership and Democratic Boundaries," 61.

⁵⁹ *Ibid.*

⁶⁰ Ruth Rubio-Marín, *Immigration as a Democratic Challenge: Citizenship and Inclusion in Germany and the United States*, Immigration as a Democratic Challenge: Citizenship and Inclusion in Germany and the United States (Cambridge, UK: Cambridge University Press, 2000), <https://books.google.hu/books?id=j-boaTJLWKkC>.

The third concern is that the “all affected interests” principle in democratic theory may be a problematic justification considering the citizenship rights that transnational individuals can gain from a “transnational citizenship” will give them power to participate in the decision-making about who will enjoy the general legislative power, rather than specific policies that will affect their interests.⁶¹ However, this argument can be refuted by referring to the citizens who also hold the political power not over what laws and policies but over who to make laws and policies. So transnational citizens’ rights and privileges in shaping politics should be equally regarded. Besides, democratic representation itself can affect the laws and policies made, so the “who” in legislation and “what” are connected.

Before evaluating whether transnational citizenship fulfills the the gap desideratum, it is important to acknowledge that the source of transnational citizenship is contested, which means that the nation-state may still act as it does now as the locus of citizenship, even if the location of such citizenship is in a transnational sphere. For example, local and regional governments’ current policies of extending rights to transnational (or more precisely, translocal) individuals are in line with national laws, so they are not superseding the national government but acting under its authority. However, in some cases, such as a confederal arrangement, local and regional governments are largely self-governing and therefore make policies relatively autonomously. In these cases, they are expanding the scope of citizenship within constitutional limits. Indeed, transnational citizenship may not challenge the connection between nation-states and citizenship, but through the arguments so far, it is evident that it transforms what can be considered as “domestic” or “local” politics and therefore may lead to some more inclusive and new institutions operating in transnational capacity with the interests of these transnational citizens in mind.

⁶¹ Bauböck, “Expansive Citizenship,” 686.

While migrant transnationalism may be seen as an old phenomenon aged as far back as the Industrial Revolution, a fundamental new development is the “institutional responses to transnationalism that enable migrants to claim rights and membership in several polities.”⁶²

The first argument based on the gap desideratum is also contribution-based claims. Very often the contribution by transnational individuals to their multiple political communities may be completely voluntary,⁶³ rather than for citizens bound by law or by a loose sense of civic national duty. But this voluntariness is significant: It is to be valued because it is a sign of autonomy, one of the predicators in the idea of human rights. The causal link here may be perceived as reversal: the justification for human rights is that they can ensure individual autonomy, but here, autonomy is an evidence of individual moral agency, thus confirming the basis personhood criterion for rights. In this way, through the equality desideratum, transnational citizenship makes citizenship rights and human rights logically coherent and closer in relationship than they are currently as separate legal regimes.

The second argument is related to the possible historical and present global injustices. Transnational citizens are not always produced by choice as a history of forced migration might be involved. Forced displacement may be short term but some refugees can end up in protracted situations where returning home is not possible, and the host societies are not willing to either integrate or resettle the people in refugee camps, with camps like Dadaab in Kenya and Za’atari in Jordan becoming large camp cities.⁶⁴ Given that forced migrants are uprooted and their many

⁶² Bauböck, “Stakeholder Citizenship,” 2394.

⁶³ *Ibid*, 2413.

⁶⁴ Office of the United Nations High Commissioner for Refugees., “Protracted Refugee Situations: The Search for Practical Solutions,” in *The State of the World’s Refugees* (Oxford, UK: Oxford University Press, 2006). See also Adam Ramadan, “Spatialising the Refugee Camp,” *Transactions of the Institute of British Geographers* 38, no. 1 (2013): 65–77.

rights are violated during displacement, transnational citizenship can allow them to maintain a connection with their home countries so that displacement does not mean forcibly severing ties with a community that they may still want to be part of if given the choice. When returning is possible, some forced migrants may have led a meaningful life in the host societies for a significant amount of time. If they so choose to leave the host societies but still maintain a genuine tie with the community there, their personal, social, and economic connections formed over time as well as their continued responsible and contributing role accumulate to a moral right to membership.⁶⁵ Besides, due to circumstances out of their control but choices they make as autonomous moral agents, forced migrants' genuine connections with multiple political communities should be regarded as legitimate claims for membership rights in all these communities and they should not be forced to choose only one. While this acts as a justification for transnational citizenship, it is not a conclusion that refugees should be granted dual or multiple citizenships. Dual or multiple citizenships can be a concrete way of realizing multiple citizenship, but transnational citizenship as a conception leads to membership rights in lieu of formal citizenship in multiple nation-states. Transnational citizenship by conception will be helpful in preventing refugees from getting into protracted situations and will ensure that people forcibly displaced will not be deprived of basic autonomous agency, as they often do in displacement and even long after the event causing the displacement. It helps prevent or resolve injustices perpetrated, not by general global inequality but by various rights-violations or failures of nation-states to protect citizens' rights. The focus of providing forced migrants conditions of meaningful existence is at the heart of the second argument justifying transnational citizenship,

⁶⁵ Joseph H. Carens, "The Case for Amnesty," in *Immigrants and the Right to Stay* (The MIT Press, 2010), 1–52, <https://doi.org/10.2307/j.ctt5hhhmz.3>.

and providing conditions for a meaningful life is also the significance of human rights, making the normative foundations of the citizenship and human rights coherent together. Therefore, it helps fill a gap in global politics where no nation-state feels obligated to guarantee the rights of certain groups of people (e.g., forced migrants and their children) and a gap between citizenship and human rights conceptions, thus fulfilling the gap desideratum.

Transnational citizenship conception acknowledges nation-states in its present form and its importance, and does not transform the existing sites of claiming rights for people. In this following section, I will look into a pair of citizenship conceptions, denationalized citizenship and postnational citizenship, that either transform the national as the site of politics and citizenship or challenge the centrality of the nation-state in rights-protection.

B. Denationalized Citizenship and Postnational Citizenship

Like with transnational citizenship, scholars debate over the meanings and existence of denationalized citizenship and postnational citizenship. “Denationalized” is defined as the transformation of the national as the container for socio-political processes including transforming the national as the basic condition or foundation for politics, citizenship, etc., while “postnational” focuses on locating citizenship “partly outside the confines of the national.”⁶⁶ The sources for denationalized or postnational citizenships may come from the same or different local, regional, transnational or global forces.⁶⁷ For example, conditions engendered by globalization, such as a shared economic structure, commercial culture, and mass media system,

⁶⁶ Saskia Sassen, “The Repositioning of Citizenship and Alienage: Emergent Subjects and Spaces for Politics,” *Globalizations* 2, no. 1 (May 1, 2005), 92.

⁶⁷ Saskia Sassen, “De-Nationalization: Some Conceptual and Empirical Elements,” *Political and Legal Anthropology Review* 22, no. 2 (1999): 1–16, <https://doi.org/10.1525/pol.1999.22.2.1>.

⁶⁸ along with ecological interdependence, have transformed the power structure in certain contexts such as global cities where political power is increasingly globalized, privatized and elusive while counter-structure follows such as anarchism and squatting.⁶⁹ Accordingly, denationalized and postnational citizenships are imbued and imbricated with “new terms of engagement,”⁷⁰ with denationalized citizenship still connected to but not replacing the national (citizenship) and postnational citizenship making certain aspects of the national (citizenship) less relevant.

Some nuanced clarifications are warranted here to distinguish these two conceptions. Some conceptualizations in the transnational citizenship section above have denationalized elements, such as the “translocal” type of membership, rights, and activities. On the local level, people with or without national citizenship are entitled to the same kinds of rights through their connections with and involvement in the community and the *jus domicili* principle, and their municipal rights come from their equal standing in the local community irrespective of national citizenship status.⁷¹ Denationalized citizenship can be within the confines of the national, but it transforms civic life by a different reasoning of granting rights and privileges and of empowerment. Local citizenship, for example, deals with a potentially smaller community than the national citizenship, and the transformation can come from the ease and possibility of accounting for all individuals’ membership and involvement.

⁶⁸ Dirk Hoerder, “Metropolitan Migration in the Past: Labour Markets, Commerce, and Cultural Interaction in Europe, 1600–1914,” *Journal of International Migration and Integration / Revue de l’integration et de La Migration Internationale* 1, no. 1 (March 1, 2000): 39–58, <https://doi.org/10.1007/s12134-000-1007-3>.

⁶⁹ Sassen, “Incompleteness and the Possibility of Making: Towards Denationalized Citizenship?”

⁷⁰ *Ibid*, 229.

⁷¹ Warren Magnusson, “The Reification of Political Community,” in *Contending Sovereignties: Redefining Political Community*, ed. Rob B. J. Walker and Saul H. Mendlovitz, Political Economy and Development 5 (Boulder, CO: Lynne Rienner Publishers, 1990), 46.

Postnational citizenship is not to be confused with transnational citizenship: what is transnational does not necessarily rest outside the confines of the national. Transnational can be seen as the recombinant form of two or more national political spheres. Besides, as Soysal posits that the influence of human rights regime as a constricting force on the nation-state created distinct sites for political claims-making and thus contributed to the development of the postnational,⁷² transnational citizenship does not signal any sources of or trends towards membership-based rights substitutions or redefinition of membership basis. An example of postnationalism is the First Nation people addressing the United Nations⁷³ and claiming direct representation on the international stage, and the UN passing resolution to recognize the participation of indigenous people's representatives and institutions.⁷⁴

There are some political institutional developments that may have interlinked elements from denationalized, postnational and transnational citizenship. For example, the European Union is often cited as the product of postnationalism,⁷⁵ but the transformations it has brought are not necessarily predicated on creating non-national sites of claims-making. As mentioned in the section on transnational citizenship, many people living and working in the borderlands are in a translocal space, so their membership is both based on denationalized and transnational conceptions. It is not postnational because the borderlands create intersections from the national but not above and beyond. The EU citizenship and passport, while some say that it is a derivative

⁷² Soysal, "Changing Parameters of Citizenship and Claims-Making."

⁷³ Sassen, "The Repositioning of Citizenship and Alienage," 84; Sassen, "Incompleteness and the Possibility of Making," 239.

⁷⁴ General Assembly, "Resolution Adopted by the General Assembly on 8 September 2017" (United Nations, September 21, 2017), https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/321.

⁷⁵ Hansen, "The Poverty of Postnationalism," 7.

status out of national citizenship that creates no new rights,⁷⁶ this is not true for all rights that EU citizens now enjoy.⁷⁷ For example, the free movement rights are enforceable and may result in the EU law overriding national citizenship law, such as in the 2010 case *Janko Rottmann v. Freistaat Bayern*⁷⁸ regarding denationalization or the loss of citizenship. In *Rottmann v. Bayern*, the defendant naturalized as a German citizen and automatically lost his birthright citizenship in Austria. However, Germany denaturalized him because he did not reveal in his naturalization application that he was under criminal investigation in Austria. The defense team argued that because Rottmann had exercised his EU free movement right, the loss of his German naturalized citizenship would lead to Rottman becoming a non-EU person. Thus, the issue was not only an internal one of losing national citizenship but also a supranational one of losing EU citizenship. The European Court of Justice (ECJ) considered it legally permissible for Germany to denaturalize Rottman based on German citizenship law, but the significance of this case to the discussion on postnational citizenship is two-fold: First, the ECJ affirmed the precedent set by the 1992 case *Micheletti and Others v. Delegación del Gobierno en Cantabria* that EU member states' nationality laws are subject to the supervision of EU law,⁷⁹ which stipulates that EU law has higher authority in some cases over member states' domestic law, such as in judging proportionality.⁸⁰ The second significance is that the ruling comes partially from a postnational basis when it invoked international law: the ECJ confirmed the applicability of the 1961

⁷⁶ Hansen, "The Poverty of Postnationalism: Citizenship, Immigration, and the New Europe," 6. See also Bauböck, "Political Membership and Democratic Boundaries."

⁷⁷ Christian Joppke, "Citizenship Light," in *Citizenship and Immigration*, Immigration and Society (Cambridge, UK: Polity, 2010), 164.

⁷⁸ European Court of Justice Grand Chamber, *Janko Rottman v Freistaat Bayern* (Case C-135/08), 2010 European Court Reports 01449 (European Court of Justice 2010).

⁷⁹ European Court of Justice Grand Chamber, *Micheletti and Others v. Delegación del Gobierno en Cantabria* (Cases C-369/90), 1992 European Court Reports 04239 (European Court of Justice 1992).

⁸⁰ Dimitry Kochenov, "Case C-135/08, Janko Rottmann v. Freistaat Bayern, Judgment of the Court (Grand Chamber) of 2 March 2010," *Common Market Law Review* 47, no. 6 (2010): 1831–46.

Convention on the Reduction of Statelessness, of the 1997 European Convention on Nationality (ECN), and of the “general principle of international law that no one is arbitrarily to be deprived of his nationality.”⁸¹ The EU as a supranational authority, and the EU law not as a composite of member states’ domestic laws but as its own institution and product of transnational and/or supranational politics, exist partly outside the confines of the national, therefore providing basis for postnational forms of citizenship and of rights-provisions for people within the EU.

It is also important to point out that denationalization and post-nationalism are arguably ongoing processes so the citizenship conceptions produced by these processes are not “complete” in their current form or all the imaginable forms. Equally important, as Bosniak posits, denationalized and postnational citizenship claims cannot only be read in descriptive terms but also be regarded as “a normative claim about citizenship’s future shape and direction.”⁸² Treating denationalized and postnational citizenship conceptions as normative claims, the analysis has to now engage with the two desiderata, one of equality, and another of the gap between citizenship rights and human rights.

Denationalized and postnational citizenships stand out more with regards to the gap desideratum than with the equality desideratum. They also bear some similarities to transnational citizenship, especially between denationalized and translocal conceptions. The equality desideratum is satisfied by denationalized citizenship mostly because of localized rights based on *jus domicili*, or resident rights. Within a denationalized community, it is also easier for members to enjoy equal rights through practices because of the shared experiences and closedness: if a nation-state is an “imagined community,”⁸³ the smaller local communities may have less

⁸¹ *Ibid*, 378, citing from Rottman (2010), 25 ¶ 53.

⁸² Bosniak, “Citizenship Denationalized,” 452

⁸³ Benedict Anderson, *Imagined Communities* (New York, US: Verso Books, 1983).

“imaginedness” and more real opportunities for members to connect with each other. And as the analysis in translocal citizenship demonstrates, many residents — even thought without permanent residency or the undocumented immigrants (“*sans papier*”)⁸⁴ — have the same access to local resources.

Additionally, such a local provision of resources is not built on the presence of national citizenship but based on the idea of social contract: For example, some public healthcare plans are available for residents of California regardless of citizenship status while the State of California imposes taxes on all residents. Some public services are even available for the undocumented through tax fund.⁸⁵ The directness of consent to authority and the protection of rights through services show a groundedness in seeing members as persons rather than subjects of nation-states. Besides, many local and regional governments operate to decentralized power from the state government. These reasons lead to denationalized citizenship also satisfying the gap desideratum as it offers more channels for rights provisions when state citizenship fails to procure those rights for non-citizens. By doing so, denationalized citizenship sometimes transforms the state as the central authority and some other times circumvents its constraints on localized powers.

Postnational citizenship, on the other hand, satisfies both desiderata through one process: the expanding of the public space for rights- and claims-making above and beyond the nation-state. From a democratic theory standpoint, postnational citizenship creates emerging boundaries for a demo larger than a nation-state’s citizenry and encourages a disassociation

⁸⁴ Monika Krause, “Undocumented Migrants: An Arendtian Perspective,” *European Journal of Political Theory* 7, no. 3 (July 1, 2008): 331–48, <https://doi.org/10.1177/1474885108089175>.

⁸⁵ This example is based on my undergraduate research project on sanctuary cities in the United States with the focus on those in California. It is also partially based on my own experience navigating through health insurance enrollment at MediCal and Planned Parenthood.

between democratic participation (i.e., the active practices of rights) and the citizenry (i.e., the conceptually static rights-bearers). This disassociation, together with the expansion of the public space, leads to the creation of a demo beyond the reach of the nation-state where the rules of governance transcend the bounds of the nation-state and into those of different supranational institutions. As a result, the kinds of rights traditionally associated only with citizenship status are being guaranteed at the international level or through (human-)rights-based international law, leading to more people being able to enjoy more protection of their human rights more of the time.⁸⁶ Therefore, the appeal of the supranational institutions or legal regimes, even in the absence of a world government, comes from the “symptom of the hollowing out of the nation-states” rather than a solution based on “abstract cosmopolitanism.”⁸⁷

Both denationalized citizenship and postnational citizenship in conception seek not to replace the nation-states but to transform the site(s) of politics. Denationalized citizenship might have more connection to the sovereign-state as denationalized polities are only autonomous to the extent allowed by the state authority, but postnational citizenship might contribute more to bridging the gap in the state’s protections of human rights rather than solely citizenship rights because postnational institutions might be configured precisely to monitor the states and constrain their harmful actions towards non-citizens. The discourses of human rights, albeit still bound up with the statist framework for political feasibility,⁸⁸ have constituted a “pervasive feature of global public culture”⁸⁹ that leads to more possibilities for more political claims-making based on personhood rather than national citizenship.

⁸⁶ Soysal, *Limits of Citizenship*. See also Bosniak, “Citizenship Denationalized.”

⁸⁷ Krause, “Undocumented Migrants,” 344.

⁸⁸ Owen, “Citizenship and Human Rights.”

⁸⁹ Cohen, “Rights, Citizenship and the Modern Form of the Social,” 183.

C. A Constellation-Processual Approach Based on Performative Citizenship

In this section, I will attempt to develop a new conception of citizenship that draws strengths from different conceptions. The approach is different from the previous two sections of analysis: I will develop the new conceptions using the two desiderata as the starting point rather than the evaluation framework. And I will start by going back to the basics: Hannah Arendt.

As Arendt lays bare the flaws of the international states system and the limits of the conception of citizenship as the right to have rights, she also produces incompatible views in different works: she originally champions the imperative of nationality and that the right to citizenship is the only right to be guaranteed by the community of nation-states.⁹⁰ However, she later develops the idea of “humanity” to “replace nature and history as the guarantor of the right to have rights.”⁹¹ This change might come from the disillusionment with the nation-states, but it shows two distinct and useful reasonings that I will use in my conception: The first is the notion of the civic, and the second is the justification for the (moral) right to inclusion.

The notion of the civic is tied to the republican conception of citizenship, which emphasizes the activity dimension of citizenship and social contract (consent) between the governed and the governing as the basis of political legitimacy.⁹² Arendt underscores the importance of people (*demos*) rather than a physical space (territory) in constituting a political community (*polis*) by referring back to Greek thoughts on politics: “Wherever you go, you will

⁹⁰ Hannah Arendt, “The Rights of Man: What Are They?,” *Modern Review*, Modern Review, 3, no. 1 (1949): 24–36.

⁹¹ Arendt, *The Origins of Totalitarianism*. See also, Cohen, “Rights, Citizenship and the Modern Form of the Social,” 172.

⁹² Richard Bellamy, “Citizenship, Historical Development Of,” in *International Encyclopedia of the Social & Behavioral Sciences*, ed. James Wright, 2nd ed. (Amsterdam, The Netherlands: Elsevier Ltd, 2015), 643–49, <https://doi.org/10.1016/B978-0-08-097086-8.62078-0>.

be a polis.”⁹³ She theorizes a political society based on active participatory citizenship and the importance of political agents’ actions in creating spaces of public freedom. While she nevertheless considers citizenship right as the prerequisite for the *political*, many theorists extend her argument into the *civic*, where legal personhood enables everyone with the right to have rights because it is civil actors — regardless citizenship status — rather than political ones that advance the rights protection for the underclasses and the excluded.⁹⁴

While Arendt is a republican theorist that understands the primacy of rights, her main focus was on the public spaces for the exercise of political freedom and action, rather than the liberal sense of inclusion for rights protections. The liberal principle of inclusion and the focus on status and rights make up the liberal conception of citizenship,⁹⁵ and Arendt fails to establish a secure link between civic practices of citizenship and the inclusion for rights protection. Indeed, because the two citizenship dimensions as rights and activities are interconnected, the right to inclusion must belong to a “different conceptual class” from the legal rights that citizenship gives people access to.⁹⁶ To explain it further, inclusion enables people to contribute their actions meaningfully, but if you are not included as the citizenry, as the political subjects under a state, then you likely have difficulty engaging in meaningful political activities while the precondition of inclusion is absent. It poses a paradox or chicken-and-egg causality dilemma.

⁹³ Hannah Arendt, *The Human Condition*, Charles R. Walgreen Foundation Lectures (Chicago, IL: University of Chicago Press, 1958), 198.

⁹⁴ Richard A. Falk and United Nations University, *Explorations at the Edge of Time : The Prospects for World Order* (Philadelphia: Temple University Press, 1992). See also, David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Palo Alto, CA: Stanford University Press, 1995), and Karen Alter, *The European Court’s Political Power: Selected Essays* (Oxford, England: Oxford University Press, 2009).

⁹⁵ Iseult Honohan, “Liberal and Republican Conceptions of Citizenship,” in *Oxford Handbook of Citizenship*, ed. Ayelet Shachar et al. (Oxford, UK: Oxford University Press, 2017), 83–106.

⁹⁶ Frank I. Michelman, “Parsing ‘a Right to Have Rights’,” *Constellations* 3, no. 2 (October 1, 1996): 206.

While I am a proponent of democratic civic-republicanism like Arendt's theorization, I disagree with her that the guarantee of human rights has to come through the guarantee of citizenship rights. Arendt's perceived imperative of the right to nationality is coupled with her discontent with a possible international human rights regime because institutions on the global level mean more dominance through supranational and international structures.⁹⁷ She is, in the first place, a strong advocate for republican freedom from domination, and a world government to secure human rights for all means everyone is subjected to a public authority of enormous scope. However, her own proposal ends up being somewhat conservative: her ideal of a civil council in a constitutional republic does not differ much from the operational logic of a nation-state as the sovereignty: complete control and full power over internal affairs, territory, access to citizenship, distribution of rights, etc. Without developments on the transnational, denationalized and postnational or supranational level(s), internal or domestic reforms do not improve the rights conditions for people falling through the cracks of the international states system.⁹⁸ What Arendt has missed in her fear of postnationalism is that the supranational institutions do not operate in the same way or based on the same premises as the nation-states: in the human rights regime, supranational institutions help individuals (persons of humanity) bargain with the nation-states for rights-provisions. They can be fundamentally different institutions because their purpose of human rights protections does not come from its power to coerce individuals but their power to hold nation-state governments accountable.

There have been several conceptions of non-paradigmatic citizenships, but they are not removed enough from the statist framework to be transformative, in my opinion. For example,

⁹⁷ Arendt, *The Origins of Totalitarianism*. See also Ingram, "What Is a 'Right to Have Rights'?", and Cohen, "Rights, Citizenship and the Modern Form of the Social."

⁹⁸ Cohen, "Rights, Citizenship and the Modern Form of the Social."

Angus Stewart divides citizenship into state citizenship (the paradigm) and democratic citizenship, and argues for the democratic citizenship to be the new paradigm where the basis for citizenship is the acknowledgement of “other members as beings of equal social worth.”⁹⁹ In this way, Stewart echoes Anne Phillips’ conception that citizenship is an explicitly political activity, in which people who are equals address collective and general concerns and that it is based on the “absolute primacy of politics.”¹⁰⁰ Likewise, Étienne Tassin argues for an institutionalized community not based on the statist logic that leads to monopolized and legitimized violence: he conceptualizes a community of citizens bond together by interests, feelings and wills instead of the precondition of a public space; rather, the public space is the result of those interests, feelings, and wills being respected and turned into political initiatives.¹⁰¹

While I acknowledge the similarity between my attempt of new conceptualizations and democratic citizenship, I do not want them to be predicated on the political structures of democracy. Democracy as a set of normative principles is useful for my conception, and I recognize the connection between democratic ideals and the many principles I have invoked such as equality and inclusion. However, My conception does not rely on the institutions of democracy but aims to draw from democratic principles in the absence of perfect institutions of democracy. In this way, I can steer away from a Eurocentric or Western-centric framework and allow the new conception to help entitle people to rights regardless where they are, including those with formal citizenship status but without a range of *de facto* rights (e.g., people living under authoritarian regimes). The limitations the aforementioned democratic conceptions also

⁹⁹ Angus Stewart, “Two Conceptions of Citizenship,” *The British Journal of Sociology* 46, no. 1 (1995): 70.

¹⁰⁰ Anne Phillips, *Engendering Democracy* (University Park, PA: Penn State University Press, 1991), 82.

¹⁰¹ Etienne Tassin, “Europe: A Political Community?,” in *Dimensions of Radical Democracy* (London, UK: Verso Books, 1992).

rest on where they are applicable: democratic societies are still state-oriented and democratic principles such as those of democratic boundaries are still used to justify closed-bordered nation-states. The principles themselves can sometimes be derived from the facts and logics of the nation-state, and therefore, it is hard to imagine beyond a democratic state.

In order to resolve the tensions within citizenship, two questions in particular have become pertinent thus far in my analysis: One, does citizenship come from membership or is citizenship itself membership? This question engages not with the genesis of citizenship but with the genealogy of citizenship rights. Second, do the nature and requirement of membership and the type of political community affect entitlements and responsibilities of its members or is it the reverse, that the entitlements and responsibilities of the members define the nature and requirement of membership and the type of political community? Both questions may sound again like a paradox or the chicken-egg causal dilemma, and I am not raising them in order to find answers. The starting point is perhaps to deconstruct the relationships between all the variables presented in the questions that have been largely defined and justified by the nation-state paradigm and to see if the deconstruction and reconstruction lead to new ways of thinking. Through the following process of conceptualization, I will propose a new constellation-processual approach based on performative citizenship. I will based the understanding of “constellation” on Rainer Bauböck’s and Lean Cohen’s theorizations, “processual” on Jürgen Habermas’s theories of the public space and deliberative ethics and politics, and “performative” citizenship on Engin Isin’s theorization.

What I mean by “constellation” is, on one level, a combination and configuration of the already existing new conceptions such as transnational, stakeholder, denationalized and

postnational citizenships so that they can create different spheres of rights-protection based on the multiple identities and memberships of people. On another level, it means a “disaggregation and reinstitutionalization on independent levels of independent governance”¹⁰² to apply a new logic to all conceptions of citizenship, including national citizenship. For Bauböck, a constellation perspective helps both justify “the relations between individuals and the polities” and clarify “responsibilities of states in providing special rights and enforcing special duties.”¹⁰³ For example, given the “one person one vote principle,” transnational citizens should be allowed to vote in two independent national elections but not on policy questions about the relations between those states (e.g., foreign policy) because in the former scenario, their votes are counted exactly once in each election, whereas in the latter, their votes are counted twice while mono-citizens from both nation-states have one vote.¹⁰⁴ The problem is that his emphasis is still on the states: that the sovereign states are the primary entity for rights--provisions. By his arguments, the constellation will create different classes of citizens in a polity and therefore perpetuate the inequality between birthright citizens and denizens, between emigrant citizens and residential citizens, and between diplomatic personnels and citizens of their original country and those of their residence. I am not stating that a constellation perspective will suddenly eliminate all differences among members of different polities, but this is where the second level of the constellation comes in: as Cohen proposes, instead of federations replacing territorial nation-states, one must imagine a combination of elements of supranational federal mega-states, liberal national states, a world government, a decentralized local power-sharing system of

¹⁰² Cohen, “Changing Paradigms of Citizenship and the Exclusiveness of the Demos,” 265.

¹⁰³ Bauböck, *Transnational Citizenship*, 9.

¹⁰⁴ Peter Kivisto and Thomas Faist, *Beyond a Border: The Causes and Consequences of Contemporary Immigration*, Sociology for a New Century Series (New York, US: SAGE Publications, 2010), <https://books.google.hu/books?id=P6xjBggWm74C>.

governance so that they can “function productively as mutual counter-powers.”¹⁰⁵ The new logic, therefore, is more pluralist and fluid, embodying power as multiple modes of institutionalization and forms of representation. It may eventually result in intersecting jurisdictions, but such intersections already exist on a national level and, for the EU, on a supranational level. The new logic does not forsake prioritization but call for new ways to construct hierarchies of power.

However, what my constellation perspective differs further from Cohen’s is her insistence that the internal disaggregation of the locus of sovereignty (i.e., currently the nation-state) is needed in order to achieve the goal of dissociation legal personhood from citizenship status.¹⁰⁶ In this sense, her conception is not transformative enough in terms of what citizenship is and should be, but what the state offers through citizenship. For her, legal persona or personality is the key, and “citizenship will be equal and secure only if the state is not a *nation*-state — only if it bases membership on civic, legal principles.”¹⁰⁷ The discussion on the notion of legality is beyond the scope of this paper, but I want to reemphasize the previous discussions on human rights not as merely a set of positive legal rights but also a class of moral right and a form of politics. Even Cohen herself acknowledges that the universalism of human rights means that, by principle, governments should recognize the legitimacy of and constrained by basic liberties.¹⁰⁸ Therefore, the discourses of human rights were never meant to take the form of legal positivism alone. The end goal of my new conception is not to arrive at a legal persona, but to base it on principles of justice (i.e., equality) and those of democracy (e.g., deliberation and participation).

¹⁰⁵ Cohen, “Changing Paradigms of Citizenship and the Exclusiveness of the Demos,” 266.

¹⁰⁶ Cohen, “Rights, Citizenship and the Modern Form of the Social.”

¹⁰⁷ *Ibid*, 170, emphasis mine.

¹⁰⁸ *Ibid*.

By “processual,” I mean to highlight the nature of citizenship not as a static model (or static models)¹⁰⁹ but as a process of establishing and reaffirming relations between individuals and their polities. There are two reasons that this processual aspect needs to be highlighted: one related to the nature of popular sovereignty, and one related to human rights. As Jürgen Habermas argues, popular sovereignty is not to be understood in substantive terms with stable features such as ethnic homogeneity or a defined population; rather, it is procedural and communicative that depends on the will of the demos.¹¹⁰ In this case, the qualifying conditions for membership of a political community also change.¹¹¹ Also, the processual perspective brings closer the conception of citizenship and that of human rights. Human right as an idea is not only the ends of politics: its ontological value lies in its superposition over politics both as the beginning, the means, and the ends of politics. As James Ingram posits, promoting human rights means understanding rights as “an active, critical democratic politics that rests first and foremost on the activity of rights bearers themselves,” and therefore, as the “practice of supporting and enabling such a politics.”¹¹² The processual aspect of citizenship emphasizes citizenship’s enabling nature of creating and transforming the public space and re-emphasizes the centrality of the people and their politics in the concept of the “public” with the state in an administrative rather than dominant position. On the one hand, then, citizenship as a concept remains universalistic because of the inherent principle of equality imbued in its conception. On the other

¹⁰⁹ Bellamy, “Citizenship, Historical Development Of.”

¹¹⁰ Jürgen Habermas, *Between Facts and Norms : Contributions to a Discourse Theory of Law and Democracy*, Studies in Contemporary German Social Thought (Cambridge, MA: MIT Press, 1996), 463-490.

¹¹¹ Richard Bellamy, Dario Castiglione, and Jo Shaw, “Introduction: From National to Transnational Citizenship,” in *Making European Citizens: Civic Inclusion in a Transnational Context, One Europe or Several?* (London, UK: Palgrave Macmillan, 2006), 1-28.

¹¹² Ingram, “What Is a ‘Right to Have Rights’?,” 414.

hand, the dimensions of citizenship — as rights, membership status and identity, and activity — all undergo iterative processes along with historical, sociological, and political changes.

The idea of performativity animates scholars across knowledge disciplines from theories of enactment in philosophy¹¹³ to theories of enaction in cognitive sciences.¹¹⁴ With a multidisciplinary approach, understanding performativity means understanding how social and political conducts occur through the idea of enactment and understanding the kinds of actors produced through these conducts, as well as understanding how these conducts transform the human from a subject into an agent.¹¹⁵ Performative citizenship, therefore, brings forth the element of “doing rights with things” as opposed to solely “doing things with rights.”¹¹⁶ The performative mode has two aspects: exercising a right (e.g., a human right to non-discrimination) and claiming a right (different from the right exercised, such as voting rights). Considering the motive of claims-making, performative citizenship necessarily involves a struggle, even if it is not a transformative or revolutionary struggle.¹¹⁷ It “signifies both a struggle (making rights claims) and what that struggle performatively brings into being (the right to claim rights).”¹¹⁸ The

¹¹³ James M. Edie, “The Problem of Enactment,” *The Journal of Aesthetics and Art Criticism* 29, no. 3 (1971): 303–18, <https://doi.org/10.2307/428974>. See also, Robert Ware, “Acts and Action,” *Journal of Philosophy* 70, no. 13 (1973): 403–18; Max Deutscher, “Simulacra, Enactment and Feeling,” *Philosophy* 63, no. 246 (1988): 515–28; Mikhail M. Bakhtin, “Toward a Philosophy of the Act,” in *Toward a Philosophy of the Act*, ed. Vadim Liapunov and Michael Holquist (Austin, TX: University of Texas Press, 1993), 1–76, www.jstor.org/stable/10.7560/765344.6.

¹¹⁴ Hanne De Jaegher and M. Rohde, *Enaction: Toward a New Paradigm for Cognitive Science*, ed. John R. Stewart, Olivier Gapenne, and Ezequiel A. Di Paolo, Bradford Books (Cambridge, MA: MIT Press, 2010).

¹¹⁵ Robert S. Perinbanayagam, *Signifying Acts: Structure and Meaning in Everyday Life*, Perspectives in Sociology (Carbondale, IL: Southern Illinois University Press, 1985). See also Ed Pluth, *Signifiers and Acts: Freedom in Lacan's Theory of the Subject*, SUNY Series, Insinuations: Philosophy, Psychoanalysis, Literature (New York, NY: SUNY Press, 2008); John Law and John Urry, “Enacting the Social,” *Economy and Society* 33, no. 3 (August 1, 2004): 390–410, <https://doi.org/10.1080/0308514042000225716>.

¹¹⁶ Engin Isin, “Doing Rights with Things: The Art of Becoming Citizens,” in *Performing Citizenship*, ed. Paula Hildebrandt et al., Performance Philosophy (Cham, Switzerland: Palgrave Macmillan, 2019), 45–56.

¹¹⁷ Engin F. Isin, “Theorizing Acts of Citizenship,” in *Acts of Citizenship*, ed. Greg M. Nielsen and Engin F. Isin (London, UK: Palgrave Macmillan, 2013), 15–43, <https://books.google.hu/books?id=0vpiDgAAQBAJ>.

¹¹⁸ Engin Isin, “Performative Citizenship,” in *The Oxford Handbook of Citizenship*, ed. Ayelet Shachar et al. (Oxford, UK: Oxford University Press, 2017), 503.

acts of citizenship do not need to be spectacular; everyday actions count, such as community service.¹¹⁹ It is through such a struggle and claim-making, people are self-constituted as citizens.

One may refute such a conception of citizenship as meaningful. After all, if citizenship is brought into being by performing it, then non-(formal-)citizens can also perform citizenship. Then what is the need for formal citizenship when everyone can be performed citizenship and become performative citizens. As Brubaker argues, the ideal of citizenship presumes citizenship is socially consequential and significantly distinguishes citizens from non-citizens.¹²⁰ There are two rebuttals. The first is to restate the insufficiencies of paper citizenship in order to demonstrate a need for a citizenship conception centered on practices: citizenship that exists on paper, albeit significantly distinguishes citizens from non-citizens in terms of legal status, does not distinguish them enough when citizenship is treated as a bundle of rights. As the case of denizen shows, paper citizenship does not delineate a clear difference between citizens and denizens in all levels of governance. Secondly, what is fundamentally lacking is in the expressive value of paper citizenship: it is an expression of inert or passive rights, but rights and responsibilities are brought into being when acted upon.¹²¹ Such an expression also often reinforces a narrative where citizens are those with rights and subjects are those who necessarily (must) lack these rights.¹²² But what is ignored from this conventional narrative is, as mentioned with promoting human rights as politics, that citizenship as a normative construct that seeks to establish equality and justice in any given community with inherent differences means that it is a

¹¹⁹ Isin, "Doing Rights with Things: The Art of Becoming Citizens."

¹²⁰ William R. Brubaker, *Immigration and the Politics of Citizenship in Europe and North America* (Lanham, MD: German Marshall Fund of the United States and University Press of America, 1989), 3-4.

¹²¹ Mary McThomas, *Performing Citizenship : Undocumented Migrants in the United States*, 1 online resource vols., Routledge Focus (New York, NY: Routledge, 2016), <http://site.ebrary.com/id/11213521>.

¹²² Isin, "Performative Citizenship."

process rather than a given reality. As such, the state citizenship conception does not hold up against critical interrogation because it almost always takes a presentist view on *this is what citizenship is, these are citizens and these are the outsiders*.

The socially consequential and meaningful aspect of this new citizenship conception lies in its enabling condition for agents to create space of public freedom, to transform human rights politics into an active site of claims-making. Agents take actions not always because they are told to or given permission to; many do so out of various not easily obtainable principles like social justice, and their actions force upon the power that be to react, constituting the process of politics or political struggle. Additionally, as Mary McThomas argues, performative citizenship reverses the direction of rights-protection so that political and social agents do not owe duties to the state because it protects us but demand the state's protections or pressure for it through their "performance of citizen(-like) duties."¹²³ The meaning of the new conception illustrates the power of civic practices rather than nation-state authorization, and "more accurately reflects our current situation and recognizes obligations we have to those living among us."¹²⁴

In my new conception, "constellation" indicates the citizenship *locations*, "processual," the citizenship *method* and *scope*, and "performative," the *content*. Citizenship, in this case, enables political actions and claims-making and at the same time, serves as an identifier for resource distribution and political mobilization based on demand. This closely relates to the republican conception of citizenship where the civic freedom through activities is accentuated.¹²⁵ The constellation-processual approach based on performative citizenship bases the fundamental

¹²³ McThomas, *Performing Citizenship*, 12.

¹²⁴ *Ibid*, 2.

¹²⁵ James Tully, *Public Philosophy in a New Key: Volume 2: Imperialism and Civic Freedom*, vol. 2, Ideas in Context (Cambridge: Cambridge University Press, 2008), 248. Also Owen, "Citizenship and Human Right, 264."

justification on the *equality of autonomous agency*, especially manifested as “the right to autonomous (political) action.”¹²⁶ It also bears witness to accepting the intentionality, objectives, and consequences of one’s actions on “how should one ‘govern oneself’,” which is decisively a perennial question in the humanities and social sciences.¹²⁷ Additionally, with the foundation on equality, several political conceptions of the nation follow, such as constitutional liberalism, and a community of mutual regards and common interest, to together reform the current conceptions of the nation along the problematic divides between modernism,¹²⁸ primordialism,¹²⁹ ethnosymbolism,¹³⁰ constructivism,¹³¹ civic (territorial) nationalism and ethnic (integral) nationalism¹³². The new conception rises above these divisions of typological nationalisms and proposes a new way and challenge to reimagine political communities.

D. The New Conception: Different and Better?

In the previous section, I have examined some existing non-paradigmatic conceptions that have populated the academic discourse for the past few decades: transnational and stakeholder citizenships, denationalized and postnational citizenships. At the same time, I have introduced an improved and new conception: the constellation-processual approach based on

¹²⁶ Étienne Balibar, *Masses, Classes, Ideas: Studies on Politics and Philosophy before and after Marx* (New York: Routledge, 1994), 97, parathesis mine.

¹²⁷ Michel Foucault, *Ethics: Subjectivity and Truth*, ed. Paul Rabinow, trans. Robert Hurley, Dits et Écrits (New York, NY: New Press, 1997), 87.

¹²⁸ Ernest Gellner, *Nations and Nationalism* (Oxford, UK: Blackwell, 1983).

¹²⁹ See, for example, Johann Gottfried von Herder, *Herder: Philosophical Writings*, ed. and trans. Michael N. Forster, Cambridge Texts in the History of Philosophy (Cambridge: Cambridge University Press, 2002), <https://doi.org/10.1017/CBO9781139164634>.

¹³⁰ Anthony D. Smith, “Introduction,” in *Myths and Memories of the Nation* (Oxford, UK: Oxford University Press, 1999).

¹³¹ Benedict Anderson, *Imagined Communities*.

¹³² See, for example, Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge, MA: Harvard University Press, 1992).

performative citizenship. I will use this section to explain why it is different and better and to address the immediate concerns about the new conception.

The value of the new conception is that it transforms existing citizenship ideals from a formalistic and passive status into an active and enabling process. Such a transformation has many benefits. The first one is that it helps address Arendt's concern with domination (i.e., the deprivation of republican freedom) by focusing on the form and mode of politics rather than the scale and scope of institutions. The elements of constellation, process, and performativity become the empowering and enabling basis for politics in various shapes and forms. For example, it can empower the centers of action outside of official political institutions and even outside any state-oriented civil society organizations or clusters of social movements. In Nancy Fraser's words, such a conception will help encourage "subaltern counterpublics."¹³³ And in this way, the new conception also inadvertently satisfy the Difference Principle in Rawlsian conception of social justice, namely, social and economic inequalities can be permitted if they are attached to positions and offices open to all in line with the fair equality of opportunity and if they will be of the greatest benefit to the least advantaged members of society.¹³⁴ Such a benefit is not by design of the new conception because it does not make the Different Principle as one of the starting points, but it is a positive outcome because it helps societies and communities navigate structures of inequality and differentiated experiences embedded in political processes and systems of power relations.

The second reason that the new conception is new and better is that, compared to other non-paradigmatic conceptions, the new conception can withstand the challenges that

¹³³ Nancy Fraser, "Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy," *Social Text*, Habermas and the public sphere, no. 25/26 (1990): 67.

¹³⁴ Rawls, *A Theory of Justice*, 5-6.

ethnocultural diversity, minority nationalism, and globalization pose to the pure image of a nation, which means the unity of nation, people, language, and citizenship under the current paradigm. This argument may sound slightly supportive of nationalism but that is not my intention; what it means is that the new conception incorporates many universalist principles such as equality of human rights while allowing them to situate in localized and particularistic contexts such as within an existing nation-state. The logic of the new conception does not endorse the ways nation-states shape contemporary politics but it takes into consideration the realities created by the development of nation-states, and it helps with “restraining and civilizing the more particularistic impulses of national citizenship.”¹³⁵ The conception of European citizenship has similar effects and dynamics of universalism-particularism. For example, it follows three implicit principles: the equalization of social status, the extension of the principle of administrative transparency, and the establishment of political participation rights based on residency.¹³⁶ The new conception pushes such principles further into a location more amorphous or “morphable” than a European-wide public sphere: the location of citizenship, as defined previously, is based on the particular arrangements of constellations.

The third reason that the new conception is new and different is that it provides another theoretical foundation to institute human rights. The new conception is related to emerging norms and what it does more is to address the problem of human rights lacking strong foundations, as critics often point out that the justifications of human rights are based on “agreement or assumption rather than proof.”¹³⁷ And here, even though the new conception does

¹³⁵ Bellamy, Castiglione, and Shaw, “Introduction: From National to Transnational Citizenship,” 17. See also Joseph H. H. Weiler, “The Reformation of European Constitutionalism,” *JCMS: Journal of Common Market Studies* 35, no. 1 (March 1, 1997): 97–131, <https://doi.org/10.1111/1468-5965.00052>.

¹³⁶ Bellamy, Castiglione, and Shaw, “Introduction,” 16.

¹³⁷ Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 2003), 20–21.

not engage with the descriptive questions about *whether* human rights exist or *how* they exist, the performative aspect is based on a kind of “proof” through the enactment of these rights. Simply put, rights are proven real because they are enacted. Furthermore, the new conception is not only about emerging norms because the norms and discourses of human rights since their genesis were entangled with the statist framework, the new conception provides grounds for the intellectual prospect of a new political order beyond the current paradigm.

From here on, I will address several concerns in a comparative lens, for example, how is the new conception different from Rainer Bauböck’s constellation perspective and stakeholder citizenship, from Ayalat Shacar’s *jux nexi* citizenship, from global citizenship, from democratic politics, etc.. Firstly, Bauböck’s constellation perspective is largely descriptive, which means he derives justifications from empirical claims.¹³⁸ But the constellation perspective constituted in my new conception flips the process of justification around: it starts from normative principles to understanding how things should work. Likewise, it is different from his stakeholder citizenship because his starting point is the reality that people are affected and therefore, they should be entitled to certain rights.¹³⁹ But the problem is that the framing is still too passive: while acknowledging the potential reality that people can be affected and such a situation may help justify the claims-making by these people, the emphasis of the new conception is that people are *making* themselves part of that reality where they are affected. The active verbs turn the framing around to recognize the importance of what people do and how those conducts and actions help them become qualifying persons for citizenship rights.

¹³⁸ Bauböck, *Transnational Citizenship*.

¹³⁹ Bauböck, “Stakeholder Citizenship and Transnational Political Participation.”

Secondly, there are also nuanced distinctions with Shacar's proposition for *jus nexi* citizenship, which advocates for a shift from *jus soli* and *jus sanguinis* based citizenship towards an assessment of the genuine link between a person and a polity.¹⁴⁰ The criteria he proposes are two: nominal heir, which is "the child born abroad to parents and families that have long lost their ties with the country of birthright membership," and stakeholder resident, which is "the person who participates in the life of the polity but lacks citizenship due to the weight presently given to ascriptive factors in defining the demos."¹⁴¹ While I am persuaded by Shacar's critical examination of the problems with birthright citizenship, especially its contribution to global inequality: in the spirit of Rawlsian veil of ignorance, the moral arbitrariness of birth should not determine the quality of rights protection and provisions one receives. There is few no justification for why a South Korean since birth is entitled to more rights than a North Korean. Also, to an extent, his conception of *jus nexi* citizenship and my new conception may create similar membership communities, expand rights for similar groups of people, and both improve upon global inequalities. However, the nuanced difference is how we conceptualize a citizen: in his framing, a citizen *is* a member in a polity; in my framing, a citizen *becomes* a member in a polity. Shifting the perspective from *being* to *becoming* allows for room to consider changes in the polity as well as people's self-constitution as members in a polity, and sketches a more dynamic situation rather than a static image. The new conception also directs the attention to all the agents involved in determining membership in a polity instead of making them invisible by referring to criteria or law as if they are set in stone by the sheer force of cosmos. It especially

¹⁴⁰ Ayelet Shachar, "Curtailling Inheritance: Toward a Jus Nexi Membership Allocation Principle," in *The Birthright Lottery: Citizenship and Global Inequality* (Cambridge, MA: Harvard University Press, 2009), <http://catdir.loc.gov/catdir/toc/ecip0827/2008038983.html>.

¹⁴¹ *Ibid*, 165.

highlights the agents that make themselves persons with rights, and the agents that choose to honor the claims-making. It can help avoid a situation where no one feels they are at fault simply because the system is set up in ways that create people with rights and without.

But it is also here, with the emphasis on performing rights and making citizens, that I must address one of the most pointy concerns about the new conception: Is it ableist? What will it make of the people who do not want to or simply cannot enact rights? I will use an extreme example — that of a person in a vegetative state — to illustrate why the new conception is not ableist in the slightest because of the combination of two elements: *processual* claims-making for (*basic*) *human* rights. Compared to children, the elderly, and the mentally challenged, which are often groups of people with limited capacity to participate in democratic politics, people in vegetative states can do even less. In many severe cases, they cannot even give responses if someone is imposing bodily harm to them, and they do not even show any brain signals. A full examination of the basic personhood theory and bioethics is outside of the scope of this paper, but for the purpose of this discussion, what is important to note is that this person has a past and a future that can become the basis for both the previous enactment of rights and the potential exercise of agency. No matter the vegetative state is a result of an accident or neuro-degenerative conditions, the person has belonged to a political community and performed certain duties within the family or a local environment, such as working and participating in neighborhood discussions to determine the common cost for the shared services in the neighborhood. These conducts have enabled the person's ability to make rights-based claims, for example, based on reciprocity and communitarianism. Whatever the empirical reasons, the performed acts validate the process of this person becoming a performative citizen. At the same time, if the family members or medical

professionals choose to keep the person in a vegetative state alive, there is a chance that the person can recover to some extent and regain the ability to exercise the agency to keep performing citizenship rights and duties. In this case, it is not emotions such as hope that justify providing the person basic human rights but a sense of recognition that maintaining basic human rights provisions for this person enables a process through which he or she may regain the capabilities to perform citizenship rights and duties in the end. The processual element provides an important new perspective to justify the continuation of respecting this person's basic human rights, such as the right from bodily harm, and of treating this person as a citizen as he or she has made legitimate claims for citizenship rights through past experiences and through the standing in a given community with some degree of governing power.

One might read until here and ask, how is citizenship still a useful term, then, if it practically means the same thing as "human." This concern speaks to the analytical usefulness of a potentially overstretched concept. I consider this also the reason behind asking whether the new conception is simply one and the same as democratic politics or global citizenship, or whether the new conception will reduce citizenship to national identity. The new conception is closely tied to citizenship because the definition of citizenship provides basic parameters for administering rights-provisions, namely, the existence of a membership community. In a way, it is not too broad because "human" makes a claim on the entire humanity, but "citizen" still needs a self-constituting community that can directly respond to the claims made by its members. Individuals do not exist in isolation and such a conception using citizenship ideals can help acknowledge their need for a group without reaffirming bounded groupness and groupism. It emphasizes connectedness without putting people into groups based on passive traits, and it

acknowledges people's abilities to make groups without compromising the important feedback mechanism which responds to claims by identifying members in need of rights-provisions.

And such is also the reason that the new conception is different from global citizenship based on individualist cosmopolitanism: it recognizes the social fact of membership and the sense of belonging and solidarity derived from it.¹⁴² It is not about defining the scope of citizenry or polity but about rearticulating the communities that people self-constitute as non-national sites of claims-making enabled by a citizenship framework of rights; it combines the individualism upon which human rights predicates as well as the communitarianism around which political communities revolve. Even though one may say that solidarity and belonging are not normative claims, the new conception makes sense of the existence of a community by considering structured feelings such as solidarity and belonging in order to build up a positive feedback loop between practices of rights within the polity and the bearing of rights for individual members in that polity.

To reiterate, the new citizenship conception intends to and works to reframe the debate about rights and citizenship politics from citizens as the passive receiver of rights and states as the giver and protector of rights. Citizens do not only exchange their political, civil, socio-economic rights provisions by answering to the functions determined by the states, such as conscription, taxation, and participation, because citizens, through those performative functions, also constitute and produce "pieces of civic reality."¹⁴³ It is not a simple exchange based on agreement (which is often made without the active consent of citizens) but a dynamic process in which rules of interactions and engagements are being shaped constantly by the agents'

¹⁴² Craig Calhoun, "'Belonging' in the Cosmopolitan Imaginary," *Ethnicities* 3, no. 4 (December 1, 2003): 531–53, <https://doi.org/10.1177/1468796803003004005>.

¹⁴³ Isin, "Doing Rights with Things," 5.

exercising their rights to make rules and define themselves as citizens. In this case, it goes beyond the ontological question about the universality of human rights, which claims that human rights should not even be codified as statutes or written as policies because *rights are rights* and *rights are there*. The new conception makes rights visible in their existence because they make up the lived realities of citizen politics in the public sphere.

What I can also acknowledge is that, in practice, citizenship is a mechanism of simultaneous inclusion and exclusion either territorially or ethno-culturally. As I move forward to introduce and analyze the case of Palestinians, more specifically, Palestinians with fragile citizenship status, I will bear in mind the objective and principle of inclusion and not decide who should be considered citizen insiders and strangers or outsiders. Practical feasibility aside, the new conception leads to new insights on justifying a Palestinian citizenship.

The Case of Palestinians

Before the discussion on the legal definitions and political practices of a Palestinian citizenship, it is essential to understand one question: who are the “Palestinians,” or is there such a thing as the “Palestinian people”? Here, I will invoke Rogers Brubaker’s conceptions of the categories of practice and analysis, with “category of practice” referring to general usage in everyday speech while “category of analysis” includes specialized usage in academic analysis.¹⁴⁴ It is no doubt that “Palestinians” as a category of practice is widely used: United Nations has a committee called “The Committee on the Exercise of the Inalienable Rights of the Palestinian People” and published documents such as “The right of self-determination of the Palestinian people,”¹⁴⁵ and the International Court of Justice in its 2004 advisory opinion of the Separation Wall the Occupied Palestinian Territories (hereinafter, OPT, see Appendix I.) refers to “Palestinian people” multiple times.¹⁴⁶ However, the term “Palestinians” is a constructed identity category with unclear and unfixed boundaries: is it an ethnicity, national identity, or a term referring to the residents in Historic Palestine? Does it include Arab citizens of Israel who self identifies as “Palestinian”? Does it apply to the millions of descendants of people who were expelled or fled Historic Palestine during the First Arab-Israeli War or the various wars between Israel and its Arab neighbors for the second half of the twentieth century?

¹⁴⁴ Rogers Brubaker and Frederick Cooper, “Beyond ‘Identity,’” *Theory and Society* 29, no. 1 (2000), 8.

¹⁴⁵ United Nations and Committee on the Exercise of the Inalienable Rights of the Palestinian People, *The Right of Self-Determination of the Palestinian People* (New York, US: United Nations, 1979).

¹⁴⁶ International Court of Justice, United Nations, and General Assembly, *Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (New York, US: United Nations, 2004).

There are a few parameters available for a scholarly construction of the “Palestinian people,” such as understanding Palestinians as “distinct” from Arabs but “not homogeneous,”¹⁴⁷ but they do not constitute an analytically meaningful term. The British Mandate of Palestine was a geographically bounded area (see Appendix II.) but included Arab populations of various religions as well as a Jewish population including Zionists; besides, the British Mandate did not refer to the population as “Palestinians” but as “Arabs” and “Jews”¹⁴⁸ and did not consult the inhabitants through referendum or plebiscite or approval from either Arab or Jewish representatives (e.g., in the form of a *Yishuv*) under the Mandate of Palestine.¹⁴⁹ The wars Israel found with its neighboring Arab countries between 1948 and 1973 involved the territories of Gaza, West Bank, and East Jerusalem, but “Palestine” was not a representing party in those conflicts and the Palestinians living in Historic Palestine did not originally derive a Palestinian national consciousness but rather a political consciousness under the influence of Pan-Arab Nationalisms while the powerful players such as Egypt and Jordan occupied Gaza and West Bank. It is hard to say that “Palestinians” as a socio-political group existed simply because the British Mandate of Palestine existed from 1920 to 1948. Likewise, it is also hard to say so simply because the United Nations had tried several times starting 1947 to partition the Mandate of Palestine into a Jewish home and a, for the lack of a better word, “Arab home.” Even the Palestinian Liberation Organization (PLO), founded in the 1964 and created to unite Arab groups

¹⁴⁷ Asem Khalil, “Palestinian Nationality and Citizenship: Current Challenges and Future Perspectives,” CARIM Research Report (European University Institute Robert Schuman Centre for Advanced Studies, 2007), <https://ssrn.com/abstract=1559205>, 9.

¹⁴⁸ Virginia Tilley, *Beyond Occupation: Apartheid, Colonialism and International Law in the Occupied Palestinian Territories* (London, UK: Pluto Press, 2012), 58-59.

¹⁴⁹ Raja Halwani and Tomis Kapitan, *The Israeli-Palestinian Conflict: Philosophical Essays on Self-Determination, Terrorism and the One-State Solution* (London, UK: Palgrave Macmillan, 2007), <http://site.ebrary.com/id/10485085>, 36.

to create a liberated Palestine (a nation-state) in Historic Palestine, appealed much broader to pertinent Arabs populations in the North Africa and Middle East regions and those displaced from Historic Palestine instead of speaking for and mobilization the “Palestinians.”¹⁵⁰

With a rigorous understanding of the social constructedness and historical contingency within the group “Palestinians,” it is important to recognize that the “Palestinian people” has been constructed in history as a dialectic with, albeit not diametrically opposed to, the “Jewish people” in the Israel-Palestine conflict,¹⁵¹ which means that Palestinians are, on the broadest terms, vaguely understood to be the non-Jews having lived or lived in Historic Palestine as well as their descendants. Such analytical clarifications have historical and political implications: For one, it means that Palestinian nationalism or national identity did not emerged merely “as a response to Zionism,” because parochial, local loyalties and cultural legacies also helped shape the national consciousness for different countries in the region: Lebanese, Syrians, Egyptians, Iraqis, Jordanians, and Palestinians.¹⁵² In the meantime, it is also not valid to claim that all non-Jews now in Israel Proper, OPT, or worldwide identify as “Palestinians” or with the national cause of a nation-state of Palestine, so the broad and inclusive framework of the “Palestinian people” is again analytically meaningless. Therefore, by looking at the case of the “Palestinians,” I do not imply an assumed groupness but to refer to different groups of people commonly known by self-identification or public perception as such. Besides, as the discussion of the new citizenship conceptions in the case of Palestine will invoke potentially new political and legal

¹⁵⁰ John A. Collins, “Self-Determination in International Law: The Palestinians,” *Case Western Reserve Journal of International Law* 12, no. 1 (1980): 163.

¹⁵¹ Tilley, *Beyond Occupation*, 30.

¹⁵² Rashid Khalidi, *Palestinian Identity: The Construction of Modern National Consciousness* (New York, US: Columbia University Press, 1997), 20-22.

thoughts, different groups of Palestinians will, beyond the scope of this paper, assume the category of practice and become the right-bearers or constitutive parts of a definable citizenry.

I. Mapping the Palestinian Citizenship Problems

This section does not mean to recount all the complexities of the Israel-Palestine Conflict or the larger Israel-Arab conflicts. In this session, I will map out the problems with Palestinian citizenship (or the lack thereof) in the political and legal senses, and focus on finding a common denominator — the fragility of their citizenship status — among groups of Palestinians. And these groups with fragile citizenship status will form the basis for a demonstration on how the non-paradigmatic citizenship conceptions can be helpful. There are complex causes and contextual factors at play in these Palestinians' fragile citizenship status. For the purpose of this paper and its rights-based approach to citizenship, the two main reasons to justify the need for new citizenship conceptions are the pervasive rights impoverishment, and the failures thus far in seeking political solutions primarily through nation-state leaders and representatives.

The structure I follow to illustrate the citizenship problems that will become the foundations for demonstrating the theoretical applicability of the non-paradigmatic citizenship conceptions is first, a historical analysis to understand the approaches and attempts to define Palestinian citizenship in the past, and second, a presentist approach to lay out empirical problems that urgently need addressing through a different framework of political solutions aside from the turbulent and currently stalled peace talk processes. This mapping section paves way to the following section in which I discuss the strengths and advantages of the different non-paradigmatic citizenship conceptions argued in the previous chapter.

A. A Historical Analysis of Palestinian Citizenship

The topic of citizenship during Ottoman Empire can lead to heated discussions involving the nature of citizenship, the biases of civilizational discourses, and the Western- and Euro-centrism in academic scholarship. Focusing Ottoman citizenship on the Empire's modernization reforms is "to limit the analysis of citizenship in the Ottoman Empire to only those moments when 'it' was imported from Europe during Westernization and Europeanization" and "to accept political orientalism."¹⁵³ Insofar as historians are concerned, if understood within the context of Ottoman Empire, Palestinian citizenship was not a distinct concept as those residing in the region of Palestine effectively enjoyed equal rights and obligations as others under the Ottoman rule, as subjects of the empire.¹⁵⁴ In order to better understand the evolution of Palestinian citizenship, especially through the lens of nationality laws and political (self-) interpretation, the beginning lies in the British Mandate period from 1920 to 1948, with the creation of The Palestinian Nationality Order in 1925.

The British mandatory power instituted legal changes that included a clear reference to "Palestinian citizenship" for the first time, and the civil administration of Palestine was responsible for enacting and implementing the Nationality Order, including facilitating the acquisition of Palestinian citizenship.¹⁵⁵ Accordingly, Palestinian citizens were those residing in the Mandate at the time of the Nationality Order in 1925 regardless of race and ethnicity, while

¹⁵³ Engin F. Isin, "Citizenship after Orientalism: Ottoman Citizenship," in *Citizenship in a Global World: European Questions and Turkish Experiences*, ed. E. Fuat Keyman and Ahmet Icduygu, Routledge Studies in Governance and Change in the Global Era (Abingdon, UK: Routledge, 2005), 42.

¹⁵⁴ Christine Isom-Verhaaren and Kent F. Schull, *Living in the Ottoman Realm* (Bloomington, IN: Indiana University Press, 2016), www.jstor.org/stable/j.ctt1b67wfv.

¹⁵⁵ Asem Khalil, "Palestinian Nationality and Citizenship: Current Challenges and Future Perspectives," CARIM Research Report (European University Institute Robert Schuman Centre for Advanced Studies, 2007), <https://ssrn.com/abstract=1559205>, 22.

the articles concerning citizenship acquisition helped materialize the promises in the 1917 Balfour Declaration by enabling newly-immigrated Jews to obtain residence and subsequently, Palestinian citizenship.¹⁵⁶ There are many problems with the British Mandate and the Nationality Order 1925, with the crucial one being the violation of Palestinian inhabitants' self-determination as they were not consulted through referenda, plebiscite, or their Arab and Jewish representatives.¹⁵⁷ For the purpose of mapping historical problems with Palestinian citizenship, the main implications are two. First, the Nationality Order created a citizenship community based not on ethnic unity but on residence or occupancy in the territory, which was supposed to help build a more inclusive civic/territorial national community. However, considering the present outcome of a Jewish national home, The State of Israel, and the rest of those from Historic Palestine, the law brings to the foreground the distinction and distance between the Arab Palestinians then under the Mandate and the Palestinians now: the Arab Palestinians then were protesting against the deprivation of self-definition and self-interpretation, while the current Palestinian state-building is aimed to create an Arab home in Historic Palestine (more on this will be discussed below). In this way, Arab Palestinians objected to and rejected the 1925 law through demonstrations and boycotts, as they perceived themselves as part of the broader Syrian and Arab Nations.¹⁵⁸ What they advocated for was, in principle, (equal) political representation under the Mandate in legislation and governance. Whereas present Palestinians saw the 1925 as a

¹⁵⁶ Victor Kattan, "The Nationality of Denationalized Palestinians," in *The Palestine Question in International Law* (London, UK: British Institute of International and Comparative Law, 2008), 121–56.

¹⁵⁷ Raja Halwani and Tomis Kapitan, *The Israeli-Palestinian Conflict : Philosophical Essays on Self-Determination, Terrorism and the One-State Solution* (London, UK: Palgrave Macmillan, 2007), 36.

¹⁵⁸ Lauren Banko, "The Creation of Palestinian Citizenship under an International Mandate: Legislation, Discourses and Practices, 1918–1925," *Citizenship Studies* 16, no. 5–6 (August 1, 2012): 641–55, <https://doi.org/10.1080/13621025.2012.698487>.

“dispersion” of (Arab) “Palestinian national identity.”¹⁵⁹ I do not subscribe to the implied ethnocentrism this view: it is only a “dispersion” if the Arab Palestinians in 1925 would not want to include non-Arab inhabitants in a nation-state of Palestine and in a Palestinian citizenry. However, it is necessary to recognize that Palestinian citizenship, from its inception in 1925, did not facilitate or lead to rights protection for the Arab Palestinians, especially regarding their political and civil rights, the right to self-determination, etc.

The second implication the 1925 Nationality Order has on Palestinian citizenship development is the emergence of localized leadership and control. The Jewish communities (“*Yishuv*”) and Arab communities alike constituted the context from which national leadership developed. In Arab communities, local leadership surfaced in the form of clans (“*Hamula*”), especially in larger cities, which gained control over the communities and facilitated rights-provisions for members of their communities through extensive use of socioeconomic and religious instruments.¹⁶⁰ This is one of the main reasons that many Palestinians living in West Bank, Gaza Strip, East Jerusalem, or the UNRWA refugee camps, still tend to rely on clan connections in the local regions today for resource provisions and feel identified through those clan connections.¹⁶¹ Such a historical development during the British Mandate period gives insights into how citizenship, rights-claims, and rights-protections can be performed on a local level in the constellation perspective of citizenship conceptions.

¹⁵⁹ Khalil, “Palestinian Nationality and Citizenship,” 21. See also, Mutaz Qafisheh, *The International Law Foundations of Palestinian Nationality* (Leiden, The Netherlands: Brill Publishers, 2009), <https://doi.org/10.1163/ej.9789004169845.i-254>.

¹⁶⁰ Benny Morris, *The Birth of the Palestinian Refugee Problem, 1947-1949*, Cambridge Middle East Library (Cambridge, UK: Cambridge University Press, 1989), <https://books.google.hu/books?id=IP7MRAAACAAJ>.

¹⁶¹ Mahmoud Mi’ari, “Transformation of Collective Identity in Palestine,” *Journal of Asian and African Studies* 44, no. 6 (December 1, 2009): 579–98, <https://doi.org/10.1177/0021909609343410>.

Between 1948 and 1967, The British Mandate of Palestine saw the establishment of The State of Israel, the Egyptian rule over Gaza Strip, Jordanian rule over West Bank, and an amalgamation of different nationality laws imposed over Palestinians and an expression of national aspiration. Two years after the promulgation of the 1952 Jordanian Constitution, Jordanian Citizenship Law 6/1954 conferred Jordanian citizenship on non-Jews who normally lived in the West Bank.¹⁶² On the other hand, Gaza inhabitants did not obtain Egyptian citizenship as Egypt did not annex but merely occupied Gaza strip. The Basic Law for the Gaza Strip 255/1955 did not mention “Palestinians”, only stating “the people of Gaza Strip.”¹⁶³ An All-Palestine Government was established in Gaza but remained under Egyptian authority and control until its dissolution in 1959.¹⁶⁴ However, what is noteworthy is the drafting and adoption of the Palestinian National Charter (first adopted in 1964 then replaced by a complete version in 1968) by the newly elected Palestinian National Council (PNC) through the newly established Palestinian Liberation Organization (PLO).¹⁶⁵ The Charter did not define citizenship but defined a Palestinian as “any Arab who normally resided in Palestine until 1947” (Art. 5) and aspired to “restore” a territorial homeland (“*watan*,” as in the land belonging to Arabs).¹⁶⁶

New discourses emerged after the Six-Day War in 1967 for Palestinian national self-understandings. Arab countries’ defeat during the war led to disillusioned sentiments among Palestinians to count on Arab regimes for the liberation of Palestine (from the Zionists);¹⁶⁷ the

¹⁶² Khalil, “Palestinian Nationality and Citizenship,” 24.

¹⁶³ Sara M. Roy, *The Gaza Strip: The Political Economy of de-Development* (Beirut, Lebanon: Institute for Palestine Studies, 1995).

¹⁶⁴ Fateh Azzam, “Palestinian (Non)Citizenship,” *The Middle East Journal* 73, no. 4 (2019): 579.

¹⁶⁵ Palestine National Council, “The Palestinian National Charter” (1968), https://avalon.law.yale.edu/20th_century/plocov.asp.

¹⁶⁶ Khalil, “Palestinian Nationality and Citizenship,” 13.

¹⁶⁷ *Ibid*, 18.

PLO had encountered difficulties in accomplishing major political changes within Jordan¹⁶⁸ but had gained more international recognition;¹⁶⁹ the decline of Pan-Arab nationalism in the region introduced new perspectives for the Palestinian struggle other than reliance on Pan-Arabism.¹⁷⁰ All of these changes, together with recurring and developing deliberations at several sessions of the PNC, contributed to a shift in how Palestine was imagined as a potential sovereign state and how citizenship was constituted under such a state. Notably, in the fourth session of the PNC (1968), a Palestine was phrased in a maximalist sense in which Palestine “is an indivisible territorial unit,” “Israel should be eliminated from the region,” Jews were a religious group and not a national group, and Palestinian citizens were Arab Palestinians while Jews were “citizens of the states to which they belong(ed).”¹⁷¹ In the fifth session (1969), changes were adopted to the National Charter to emphasize the distinctiveness of Palestinians from the rest of “the Arab nation.”¹⁷² However, by the eighth session (1971), the PLO adopted positions that took account of the presence of Jews in Historic Palestine, and first the first time, considered “the establishment of a secular democratic Palestinian state.”¹⁷³ By the twelfth session (1974), PLO forsook maximalism and explicitly accepted the establishment of a political entity in part of Historic Palestine rather than the entirety of it.¹⁷⁴

A monumental moment came in 1988 when the PLO and the parliament in exile PNC issued in Algiers The Proclamation of Independence, announcing “the establishment of the state

¹⁶⁸ As’ad Ghanem, “Palestinian Nationalism: An Overview,” *Israel Studies* 18, no. 2 (2013): 21.

¹⁶⁹ Maher al-Sharif, *In the Wake of the Entity* (Nicosia, Cyprus: The Center for Socialist Studies and Research in the Arab World, 1995), 181-2.

¹⁷⁰ Dan Tschirgi, “Palestine 2003: The Perils of De Facto Statehood,” in *De Facto States: The Quest for Sovereignty*, ed. Henry Srebrnik, Barry Bartmann, and Tozin Bahcheli (London, UK: Routledge, 2004), 196.

¹⁷¹ Bernard Reich, *Arab-Israeli Conflict and Conciliation: A Documentary History* (Westport, CT: Greenwood Press, 1995), <https://books.google.hu/books?id=vqNtAAAAAAAJ>.

¹⁷² al-Sharif, *In the Wake of the Entity*.

¹⁷³ *Ibid*, 182.

¹⁷⁴ Ghanem, “Palestinian Nationalism: An Overview,” 22.

of Palestine in our Palestinian nation, with holy Jerusalem as its capital.”¹⁷⁵ In the Proclamation, Historic Palestine or mandatory Palestine was not mentioned, only a vague concept of “Palestinian territory.”¹⁷⁶ Also, it explicitly referred to UN resolutions (e.g., 181, 242) to affirm Palestinians’ right of self-determination as well as to imply the recognition of a State of Israel.¹⁷⁷ It included a demand that “Israel withdraw from all Palestinian and Arab lands occupied in 1967,” and together with the definition of a capital, it moved forward to clarifying Palestinians expectations for statehood and peace.¹⁷⁸ Nevertheless, the Proclamation was a political and not a legal instrument that bear no effects on defining a Palestinian citizenry and delineating their rights and privileges, but it unified previous competing discourses to advocate for an ethnonational definition of a State of Palestine for “the Arab Palestinian people.”¹⁷⁹

Despite the scathing criticism from Palestine rejectionists and Israel rejectionists in the Arab world mainly supported by Syria,¹⁸⁰ the Proclamation had been recognized by nearly seventy countries within two weeks.¹⁸¹ However, the PLO did not establish any authority within the territories of Historic Palestine until the Oslo Accords in 1993, and the idea of Palestinian citizenship was not crystallized until the passing of the Basic Law in 2002. The Oslo Accords saw the transformation from PLO to the Palestinian Authority (PA), and from PNC to the Palestinian Legislative Council (PLC), and the Basic Law (2002) was to regulate the power relations in the PA and between the PA and other governing bodies during the provisional period

¹⁷⁵ Youssef M. Ibrahim, “P.L.O. Proclaims Palestine to Be an Independent State; Hints at Recognizing Israel,” *The New York Times*, November 15, 1988, <http://www.nytimes.com/1988/11/15/world/plo-proclaims-palestine-to-be-an-independent-state-hints-at-recognizing-israel.html>.

¹⁷⁶ Khalil, “Palestinian Nationality and Citizenship,” 14.

¹⁷⁷ Reich, *Arab-Israeli Conflict and Conciliation*, 214.

¹⁷⁸ al-Sharif, *In the Wake of the Entity*, 371.

¹⁷⁹ Ibrahim, “P.L.O. Proclaims Palestine to Be an Independent State; Hints at Recognizing Israel.”

¹⁸⁰ Ghanem, “Palestinian Nationalism: An Overview,” 22.

¹⁸¹ Deon Geldenhuys, *Contested States in World Politics* (London, UK: Palgrave Macmillan, 2009), 155.

until Palestine is a fully functioning state and a formal constitution is adopted (Art. 115). More importantly, the PLC produced, in tandem with the 2003 amendment to the 2020 Basic Law, the 2003 Draft Constitution that details Palestinian citizenship and nationality law. The Basic Law, for the first time, does not refer to the Palestinian people (*ethno*) but Arab Palestinians of the West Bank and Gaza Strip (hereinafter, WBGS Palestinians) (*demo*).¹⁸² But compared to the Draft Constitution, the Basic Law did not formalize a clear separation between national identity/nationality and citizenship (i.e., Palestinian nationals vs. citizens).¹⁸³ The Draft Constitution stipulates a comprehensive and inclusive list on who is entitled to and who can apply for Palestinian citizenship: First, WBGS and East Jerusalem Palestinians, Arab residents in Historic Palestine excluded from the 1925 Nationality Order, and all displaced Palestinian refugees are entitled to Palestinian citizenship; second, all displaced Palestinians with citizenship status in other states (which include Palestinian citizens of Israel, Palestinian-Jordanian, etc.) and Jews whose forebears resided in the West Bank and Gaza before 1948 and had Palestinian citizenship *ipso facto* the 1925 Nationality Order can apply for Palestinian citizenship.¹⁸⁴ In this way, the law does not prejudice the Jews and Arabs already with mandatory Palestinian citizenship and those residents in the British Mandate, nor does it privilege patrimonial lineage in passing down citizenship to descendants currently in the OPT or elsewhere (Art. 16).¹⁸⁵ It is only that the law is cognizant of Palestinians who already acquired other citizenships outside of the OPT, and it

¹⁸² Khalil, "Palestinian Nationality and Citizenship," 16

¹⁸³ Islah Jad, *Citizenship under a Prolonged Occupation: The Case of Palestine* (Berkeley, CA: The Berkeley Electronic Press, 2004), 6.

¹⁸⁴ Mutaz M. Qafisheh, "Who Has the Right to Become a Palestinian Citizen? An International Law Analysis," *Yearbook of Islamic and Middle Eastern Law Online* 18, no. 1 (2017): 144-45.

¹⁸⁵ Palestinian Legislative Council, "Full Text of Palestinian Draft Constitution," trans. FBIS, *Al-Ayyam*, February 17, 2003, <https://fas.org/irp/news/2003/02/paconst.html>.

allows them to apply for citizenship and accepts the principle of dual citizenships in agreement with other nation-states.¹⁸⁶

The two-state solution by Oslo Peace process, the State of Palestine, and the Draft Constitution failed to materialize to the full extent as the Second Intifada carried on beyond 2003 and especially after the death of Yasser Arafat, who was a constant figure in the Palestinian struggle for statehood from an activist in Fatah (Palestinian National Liberation Movement) to the chairman of General Union of Palestinian Students, and from the chairman of the PLO to the president of the Palestinian Authority. The functionality of the legal system to protect and expand on the rights of Palestinians and to constitute a citizenry is further impeded by deep internal schism and the parliamentary and electoral crisis in 2006 that led to the rise of Hamas and its control over Gaza.¹⁸⁷

The historical analysis unveils a tension between defining a people in an ethnonational sense and a citizenry in a democratic sense common to other nation-states. However, as the analysis moves on to the more current empirical state of Palestinian citizenship, history shows that the attempts of defining Palestinian citizenship is based on the intent of state-building. In another word, Palestinian citizenship was often not defined in order to help secure citizenship rights for Palestinians — very often, Palestinian citizenship is not constructed as a bundle of rights but as a necessary competent and exhibit of Palestinian statehood and its political power — and therefore, it reflects the primacy of a state and the presumption that rights enactment and protection will follow within the purview of the State of Palestine. In the following section, I will

¹⁸⁶ Qafisheh, “Who Has the Right to Become a Palestinian Citizen?,” 131.

¹⁸⁷ As‘ad Ganim, *Palestinian Politics After Arafat: A Failed National Movement* (Bloomington, IN: Indiana University Press, 2010), <https://books.google.hu/books?id=AONoD8zWNsQC>.

dissect the similar citizenship problems experienced by different groups of Palestinians and highlight the shared nature of fragility in their citizenship status and rights deprivations.

B. An Empirical Approach to Defining the Citizenship Problem

What some calls “Palestinian noncitizenship”¹⁸⁸ denoting the *de facto* effects of any *de jure* citizenship laws the PLC has passed is due to the limited sovereignty of the State of Palestine, or more specifically, the PA.¹⁸⁹ There are many terms prescribed to states with limited sovereignty: “contested states,” “unrecognized states,” or “quasi states,” which, in the case of Palestine, means “functioning realities” with “denied legitimacy” in the form of a *de facto* state with partial international recognition.¹⁹⁰ In 2012, Palestine gained “non-member observer state” status at the United Nations¹⁹¹ and as of 2019, it enjoys bilateral recognition from 138 states. Similar states include Kosovo, Taiwan, Abkhazia.¹⁹² Of course, these four states are functioning to various degrees and are capable of defining and protecting the rights of their citizens to different extents as well. The common feature is that their political elites try to establish “institutional fixtures of statehood” through different power apparatus such as border control, taxation, representative offices, social protection, and the administration of identity documents.¹⁹³

What is meaningful to the discussion of citizenship and citizen politics is that the limited sovereignty of the State of Palestine brings forth the limitations of regarding membership in a

¹⁸⁸ Azzam, “Palestinian (Non)Citizenship.”

¹⁸⁹ Risse-Kappen, *Governance without a State? Policies and Politics in Areas of Limited Statehood*.

¹⁹⁰ Scott Pegg, *International Society and the de Facto State* (London, UK: Ashgate, 1998), 3.

¹⁹¹ Gezim Krasniqi, “Contested Territories, Liminal Politics, Performative Citizenship: A Comparative Analysis,” *Robert Schuman Centre for Advanced Studies*, Research Paper No. RSCAS 2018/13, March 2018, 6.

¹⁹² Eiki Berg and Ene Kuusk, “What Makes Sovereignty a Relative Concept? Empirical Approaches to International Society,” *Political Geography* 29, no. 1 (2010): 40–49.

¹⁹³ Nina Caspersen, “Playing the Recognition Game: External Actors and De Facto States,” *The International Spectator* 44, no. 4 (December 1, 2009): 47–60, <https://doi.org/10.1080/03932720903351146>.

polity as discrete, definitive, and absolute as the act of a state granting formal citizenship, but rather, membership such as citizenship depends on the relationship between individuals and the polity and the degree and functionality of that relationship.¹⁹⁴ As I will demonstrate further in the following empirical analysis the faulty logic of the existence of the state as the primer and prerequisite for the existence of citizenship and, therefore, the right of people in the polity to have rights. The problematization based on empirical evidence will be reiterated and become the basis for the theoretical application of non-paradigmatic citizenship conceptions.

West Bank¹⁹⁵

As mentioned in the historical analysis, West Bank was part of the British Mandate of Palestine, and then annexed by Jordan in 1948 until the Six-Day War in 1967 which began the Israeli occupation period until today. Following the Six-Day War, Jordan ceased exercising control over but maintained claiming sovereignty of the West Bank, but starting 1983, Jordan started issuing different types of ID card to West Bank Palestinian-Jordanians to facilitate easy identification over the border between occupied West Bank and Jordan proper.¹⁹⁶ In 1988 during the height of the First Intifada, Jordan made the unilateral Royal decision to separate the two banks of Jordan and relinquish sovereign claim over Jordan, and as a result, the West Bank

¹⁹⁴ Ersun N. Kurtulus, *State Sovereignty: Concept, Phenomenon and Ramifications* (London, UK: Palgrave Macmillan, 2005), <https://www.palgrave.com/gp/book/9781403969880>. See also, Lindsey N. Kingston, “Statelessness as a Lack of Functioning Citizenship,” *Tilburg Law Review* 19, no. 1–2 (2014): 127–35, <https://doi.org/10.1163/22112596-01902013>.

¹⁹⁵ The rights violations discussion of Palestinians in West Bank and Gaza is based on my final paper for the course International Norms and their Application: Border Disputes, Self-determination and Minority Protection (Winter 2020), “The Occupied Palestinian Territories: A Legal and Political Analysis of the Principle of Self-determination and its Applicability.”

¹⁹⁶ Human Rights Watch, “Stateless Again: Palestinian-Origin Jordanians Deprived of Their Nationality” (Human Rights Watch, February 2010), <https://www.hrw.org/report/2010/02/01/stateless-again/palestinian-origin-jordanians-deprived-their-nationality>.

Palestinians “became *ipso facto* stateless as their Jordanian citizenship ceased to be valid.”¹⁹⁷

Instead, West Bank Palestinians were given renewable residency status and temporary passports that could function as travel documents but not proofs of citizenship.¹⁹⁸

West Bank was supposed to see the establishment of a governing body potentially capable of conferring citizenship to WBGS residents after the Oslo Peace process, and according to Appendix III, Art. 28 of the Interim Agreement on the West Bank and the Gaza Strip 2005 (Oslo II), the PA can “record in its population registry” all person who were born in WBGS or children of WBGS residents living abroad, has “limited powers to confer rights of residents” by way of *jus sanguinis* and *jus domicili* in tandem, but does not provide path to naturalization.¹⁹⁹ In the meantime, Jordan stopped renewing West Bank residents’ residency and temporary passports and deferred them to the Israeli military’s Civil Administration and the PA, effectively cutting ties with West Bank Palestinians.²⁰⁰

Now, there are Palestinians in the West Bank with PA administered ID cards, with East Jerusalem residence permit administered by Israel, and with Jordanian passport (citizenship) due to family and marriage. For the purpose of this essay, West Bank Palestinians with PA IDs are considered those with fragile citizenship status (East Jerusalemites and refugees will be explained further below) because of the limited sovereignty of the PA as well as the lack of proper citizenship and nationality laws. West Bank Palestinians have certain socio-economic rights (e.g., property rights) in PA administered Area A and B (see Appendix IV.) but they do not have

¹⁹⁷ Oroub Al Abed, “FMO Research Guide: Palestinian Refugees in Jordan,” *Refugee Studies Centre*, Forced Migration Online, 2004, 16.

¹⁹⁸ Michal Baer, “The Palestinian People: Ambiguities of Citizenship,” in *The Human Right to Citizenship: A Slippery Concept*, ed. Rhoda E. Howard-Hassmann and Margaret Walton-Roberts (Philadelphia, PA: University of Pennsylvania Press, 2015), 45–61, www.jstor.org/stable/j.ctt15hvv7q.6.

¹⁹⁹ Andrew Grossman, “Nationality and the Unrecognised State,” *The International and Comparative Law Quarterly* 50, no. 4 (2001): 860.

²⁰⁰ Human Rights Watch, “Stateless Again.”

internal freedom of movement. For example, they are subject to scrutiny and security checks when entering Area C and East Jerusalem for family visits. Moreover, the construction of the Separation Wall beyond the 1948 Armistice Line (the Green Line, see Appendix III.) that demarcates West Bank borders severely restricts West Bank residents access to education, employment, and health services.²⁰¹ PA as a governing body has limited internal and external sovereignty and cannot protect the rights of West Bank Palestinians on its population registry. Thus, PA passports for West Bank Palestinians are *de facto* travel documents.²⁰²

Gaza Strip

As mentioned in the historical analysis, after 1948, Gaza residents were effectively stateless as Egyptian occupying power did not confer Egyptian citizenship to Palestinians, only issuing residence permits and temporary passports.²⁰³ After Israeli occupation began in 1967, the statelessness continued for Gazans. The PA created as the product of Oslo peace process was supposed to be in charge of administration over Gaza as well, but between the 1993 and Israel's Disengagement Plan from Gaza in 2005, Israel was in charge of the tax system of the Gaza strip including setting the tax rate and collecting taxes on behalf of the PA.²⁰⁴ After the internal schism among Palestinian political parties, especially between the Fatah and Hamas, Gazans have not enjoyed their electoral rights since 2007 just like their West Bank counterparts. What's more, despite Hamas taking over control of Gaza and administering basic services such as medicare, food and water, and internal security control, Hamas is designated a terrorist organization

²⁰¹ International Court of Justice, United Nations, and General Assembly, *Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.

²⁰² Khalil, "Palestinian Nationality and Citizenship," 14-15.

²⁰³ Oroub Al Abed, "FMO Research Guide: Palestinian Refugees in Egypt," *Refugee Studies Centre*, Forced Migration Online, 2004, 1-17.

²⁰⁴ B'Tselem, "The Gaza Strip," *The Israeli Information Center for Human Rights in the Occupied Territories*, November 11, 2017, https://www.btselem.org/gaza_strip.

internationally, keeping Gaza further isolated. Together with the total blockade imposed by Egypt and Israel and frequent military skirmishes with Israel, Gazans live in one of the most populated regions in the world with poor infrastructure, severe poverty and widespread unemployment that is close to a humanitarian disaster.²⁰⁵ Gaza's distinct lack of functioning governing and economic systems makes its residents stateless and deprived of almost all kinds of basic human rights.²⁰⁶

East Jerusalem²⁰⁷

The situation in East Jerusalem is more complex and I will be more elaborate in my problematizations. Like West Bankers, East Jerusalemites got Jordanian citizenship in 1948,²⁰⁸ which was revoked when Jordan cut ties with the West Bank and East Jerusalem in 1987 and 1988.²⁰⁹ Prior to their loss of Jordanian citizenship, without a State of Palestine in sight, the Knesset passed a Basic Law on Jerusalem in 1980 declaring that the complete and united Jerusalem is the capital of Israel.²¹⁰ The law gave East Jerusalem a status different from the occupied West Bank as East Jerusalem was effectively annexed with Israel applying its jurisdiction, administration, and law. However, there is one exception: East Jerusalemites do not have Israeli citizenship so Israel only annexed the territory but not the population. Till today, East Jerusalemites hold Israeli permanent residency with no formal citizenship. Many hold a Jordanian

²⁰⁵ *Ibid.*

²⁰⁶ Sarah Adamczyk, "Undocumented and Stateless: The Palestinian Population Registry and Access to Residency and Identity Documents in the Gaza Strip" (The Norwegian Refugee Council (NRC), January 2012), <https://www.nrc.no/globalassets/pdf/reports/undocumented-and-stateless.pdf>.

²⁰⁷ The citizenship problem of East Jerusalemites is based on my final paper for the course Foundations of Citizenship Studies (Fall 2019), "Suspended and Liminal: The Legal Status of Palestinians in East Jerusalem and Potential Remedies."

²⁰⁸ Shingo Hamanaka, "Palestinian Migration Under the Occupation: Influence of Israeli Democracy and Stratified Citizenship," *Sociology Study* 2159-5534 3 (April 1, 2013): 247–60.

²⁰⁹ Amnon Ramon, "Residents, Not Citizens: Israeli Policy towards the Arabs in East Jerusalem, 1967-2017" (Jerusalem Institute for Policy Research, May 2017), https://jerusalemstitute.org.il/wp-content/uploads/2019/06/PUB_Amnon-Ramon-Residents-Not-Citizens-Abstract_eng.pdf.

²¹⁰ Knesset, "Basic Law: Jerusalem, Capital of Israel," Av § 5740 (1980), https://www.knesset.gov.il/laws/special/eng/basic10_eng.htm.

laissez-passer or an Israeli temporary travel document to travel.²¹¹ The current East Jerusalem population of 300,000 hold the Jerusalem ID card (the blue card), on which citizenship information is left blank.²¹²

The Israeli permanent residency status permits East Jerusalemites to work in Israel, receive social services such as free healthcare and education, travel freely in Israel and to the OPT except for Area A, where the Palestinian Authority has full administrative and security control. However, due to the construction of the Separation Wall, which cuts through some East Jerusalem neighborhoods such as Kufr 'Aqab, East Jerusalemites face increasing difficulties having convenient and equal access to healthcare and education services and therefore have impeded civil rights provisions and protection.²¹³ Moreover, even if East Jerusalemites' bundle of rights does not seem to differ too much from other Israeli citizens, the lack of citizenship (i.e., *de jure* stateless) means the lack of political rights and political presentation. As a result, they cannot exercise their political will and their issues are continuously neglected: chronicle insufficient budget and understaffing in public schools, the overwhelming number of rejections of building permit applications leading to unsafe housing practices and overcrowding, and an underregulated and stagnating economy.²¹⁴

Additionally, children born in East Jerusalem, the supposed capital of Israel, also do not receive *jus soli* citizenship status as practiced in all other parts of Israel.²¹⁵ The parents do not

²¹¹ Ramon, "Residents, Not Citizens: Israeli Policy towards the Arabs in East Jerusalem, 1967-2017."

²¹² Yael Stein, Moked la-haganat ha-perat, and B'Tselem, *The Quiet Deportation: Revocation of Residency of East Jerusalem Palestinians* (Jerusalem: HaMoked, 1997).

²¹³ Doaa Hammoudeh, Layaly Hamayel, and Lynn Welchman, "Beyond the Physicality of Space: East Jerusalem, Kufr 'Aqab, and the Politics of Everyday Suffering," *Jerusalem Quarterly*, no. 65 (2016).

²¹⁴ Safa H. Dhaher, "The Impact of the Current Situation on the Human Rights of the Vulnerable Palestinian Groups in East Jerusalem" (Heinrich-Böll-Stiftung, February 2017).

²¹⁵ Knesset, "Entry into Israel Regulations 5734-1974," Regulations § 11-12 (1974), <http://www.hamoked.org/Document.aspx?dID=3050>.

automatically pass down their permanent residency status either,²¹⁶ so the statelessness is passed down through generations, unless they decide to forfeit their East Jerusalem residency and take up citizenship or residency in other countries.

The most notable indication of fragility in their citizenship status and rights is the “Center of Life” policy adopted by the Israeli Ministry of Interior in December 1995. The policy requires Palestinian permanent residents to consistently prove that they hold residence in East Jerusalem by providing “documented evidence including rental agreements, homeownership documents, tax receipts, school registration and receipts of medical treatment in Jerusalem” under each individuals’ name.²¹⁷ Israel is not the only country that conceptualizes residency in such way; many countries have requirements restricting residents from spending the majority of their time elsewhere, but Israel’s Center of Life policy has two problems: the first one is that many of these East Jerusalemites were born and spent all their time in Jerusalem, but they still need to gather documents to prove their residency status so the undue burden is on the individual: it is not the municipality that keeps track of one’s continuous residence but the individuals who have to keep an archive of years of documents.²¹⁸ Hundreds of thousands of East Jerusalemites have lost their residency status since the “Center of Life” policy, and they are not automatically granted legal status by the Palestinian Authority either, as the PA fears that it would encourage Israel to revoke the residency status of East Jerusalemites.²¹⁹ Many families have been separated, as family

²¹⁶ Noga Kadman and Andrea Szlecsan, “Temporary Order? Life in East Jerusalem under the Shadow of the Citizenship and Entry into Israel Law” (Hamoked, September 2014), 61.

²¹⁷ Natalie Tabar, *The Jerusalem Trap: The Looming Threat Posed by Israel’s Annexationist Policies in Occupied East Jerusalem* (Ramallah: Al-Haq, 2010), 14. See also Bethany M. Nikfar, “Families Divided: An Analysis of Israel’s Citizenship and Entry into Israel Law,” *Northwestern Journal of International Human Rights* 3, no. 1 (2005): 1–20.

²¹⁸ Danielle C. Jefferis, “Institutionalizing Statelessness: The Revocation of Residency Rights of Palestinians in East Jerusalem,” *International Journal of Refugee Law* 24, no. 2 (2012): 202–30.

²¹⁹ The Danish Immigration Service, “Palestinians: Access and Residency for Palestinians in the West Bank, the Gaza Strip and East Jerusalem,” Country Report, Country of Origin Information (COI) (Copenhagen, Denmark:

members that lost their residency status will have to try and apply for citizenship or residency elsewhere, or they will live without legal status and risk physical deportation. The revocation of residency rights of stateless Palestinians has been called “silent deportation” or “quiet transfer.”²²⁰

The “Center of Life” policy has meddled significantly in East Jerusalemites’ private lives. East Jerusalemites cannot purchase or rent properties to live outside of Jerusalem even if good opportunities come up; they cannot marry and move to live with their partners in West Bank and instead, the West Bank partners have to move to Jerusalem; they cannot pursue better opportunities of study and work abroad, or else they will lose their residency status.²²¹ To make it worse, the Citizenship and Entry into Israel (Temporary Order) 5763 in 2002 denies the right to acquire citizenship or permanent residency status on the ground of family unification for spouses from the OPT who are married to Israeli citizens or Jerusalem ID cardholders. As a result, spouses from the OPT (mostly West Bank) will only have temporary resident status in Jerusalem, with minimal access to services in Jerusalem and limited provisions from the Israeli government. They cannot receive social benefits from the Israel National Insurance Institute (NII) and will often need to travel back to the West Bank to have access to various services.²²²

The “Center of Life” policy exposes critical problems with how states currently assess the “genuine link” in order to determine eligibility for citizenship and residency. One, many people

Ministry of Immigration and Integration, May 2019), https://www.nyidanmark.dk/-/media/Files/US/Landerapporter/palestinians_access_and_residency_-_g_wb_ej_may_2019.pdf?la=da&hash=85F2EB97AD4FBAD166B7A1D2ABB7BB5C9E914027.

²²⁰ Elodie Guego, “‘Quiet Transfer’ in East Jerusalem Nears Completion,” *FMR Online* 26, no. 26–27 (2006), <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/palestine/guego.pdf>. See also Stein, Moked la-haganat ha-perat, and B’Tselem, *The Quiet Deportation*; Yael Stein, Moked la-haganat ha-perat, and B’Tselem, *The Quiet Deportation Continues: Revocation of Residency and Denial of Social Rights of East Jerusalem Palestinians* (Jerusalem: HaMoked, Centre for Defence of the Individual, 1998)..

²²¹ Asem Khalil, “Human Rights and Governance Cluster Report” (Jerusalem: Palestine Economic Policy Research Institute, 2019), <https://www.nad.ps/en/publication-resources/studies/human-rights-and-governance-cluster-report>.

²²² Stein, Moked la-haganat ha-perat, and B’Tselem, *The Quiet Deportation Continues*.

with dual citizenships through the overlap between *jus soli* and *jus sanguinis* do not need to prove that they maintain a link with two nation-states and political communities, so it is unfair that East Jerusalemites bear the sole onus while being stateless and having little prospect for naturalization through family and marriage.²²³ Two, the fragility in East Jerusalemites' citizenship or residency status shows the double standard in nation-states' approach to recognizing people as members in a political community: If East Jerusalemites study or work elsewhere for some time, the permanent residency status automatically revoked. But permanent residency in East Jerusalem and other countries does not follow automatically after they move there for study or work. This double standard usually has made transnational migrants exist in a liminal state struggling with the loss of rights in their home country before securing status and rights in the host country. And in the case of East Jerusalemites who are stateless and may not have fulfilled the requirements for permanent residency elsewhere in the world, the automatic revocation of Israeli residency means the almost certain risk of losing secure legal status and standing in any political communities.

Additionally, East Jerusalemites' residency status and rights are comparable to that of a foreign citizen in Israel: any person holding foreign passports may apply for work permits or temporary residencies, and after a legal stay for a stipulated period of time depending on his or her language abilities, this person is entitled to permanent residency in Israel, which may also be lost if the person moves away from Israel. However, the problem here is that East Jerusalemites, autochthones to the territory on which they live, are born foreigners, even if many may have lived on the land for generations even before the establishment of Israel in 1948. The laws governing their legal status are not domestic civil laws, but immigration laws. It violates the principle of

²²³ Dov Lieber, "Israel Almost Entirely Halts Citizenship Approvals for East Jerusalemites," *The Times of Israel*, September 26, 2016, <https://www.timesofisrael.com/israel-almost-entirely-halts-citizenship-approvals-for-east-jerusalemites/>.

equality when comparing East Jerusalemites to Arab/Palestinian citizens of Israel who were incorporated into the citizenry when Israel was established. Furthermore, it violates the principle of democratic inclusion in Will Kymlicka's conceptions of liberal multiculturalism. Accordingly, liberal states can be multinational or polyethnic by either incorporating indigenous populations during nation-building and turning them (often involuntarily) into "national minorities," or by opening up for individual and family immigration to gradually build up the presence of "ethnic minorities."²²⁴ These two kinds of minorities have different entitlements to rights and obligations. Applying immigration management to national minority groups like the East Jerusalemites effectively negates their history and ties to the land before the existence of Israel. East Jerusalemites' foreigner-like residency status, in the reality of Israeli annexation, comes from a confused epistemological basis for the treatment of minorities.

Refugees in UNRWA Countries and the Worldwide Diaspora²²⁵

Some contest the existence of a "Palestinian diaspora," because the existence of a large refugee population poses a different kind of relationship with the host societies different from the archetypical exile-domicile dynamics for diasporas.²²⁶ Regardless, Palestinians displaced due to conflicts and other reasons during the twentieth century fall broadly into three categories: Palestinian refugees with legal documentation stating refugee identities; Palestinians with formal citizenships in other states but self-identify as the Palestinian diaspora living outside of the OPT; WBGS Palestinians and East Jerusalemites with temporary or permanent residencies living outside of the OPT. The third category is covered in the analysis of WBGS and East Jerusalem,

²²⁴ Kymlicka, *Multicultural Citizenship*, 19.

²²⁵ The analysis of the Palestinian diaspora is based on my final paper for the course Comparative Diasporas (Fall 2019), "On Being and Becoming: Palestinian Diaspora and Refugeehood."

²²⁶ Julie Peteet, "Problematizing a Palestinian Diaspora," *International Journal of Middle East Studies* 39, no. 4 (2007): 627–46.

only that they have another place of residency, which confer certain amounts of residency rights but not yet full naturalization.

For the Palestinians with formal citizenships elsewhere (see statistical data in Appendix V.), hundreds of thousands of Palestinians or people of Palestinian descent are residing in Europe, mostly in Germany and the Scandinavian countries.²²⁷ Palestinian migration to the Americas, comparatively, is also seen as not directly related to the *Nakba* but as regular migration such as family reunion or work, with sizeable communities present in United States, Canada, Chile, Brazil, and Argentina.²²⁸ The similarities between diasporic Palestinians and Palestinian refugees need acknowledgement, as they may share the same self-identification, emotional attachment to their origin of dispersal, and a degree of sensitivity to the idea of returning to the State of Palestine, should it become a viable option.²²⁹ However, considering their formal citizenship status, the group of Palestinians that are subject to examination for the purpose of this paper are those *de jure* and *de facto* refugees.

Palestinian refugees, in turn, have varied legal statuses and lived experiences. The first kind of refugees are those holding “Refugee Travel Document (RTD)” issued by Syria, Lebanon, Egypt, Iraq, and some other Arab countries or *laissez-passer* — the equivalent of RTD — issued by countries such as Jordan.²³⁰ The second kind of refugees are the refugees registered by

²²⁷ Abbas Shibliak, “Reflections on the Palestinian Diaspora in Europe,” in *The Palestinian Diaspora in Europe: Challenges of Dual Identity and Adaptation* (Jerusalem: Institute of Jerusalem Studies, 2005), 14.

²²⁸ Baer, “The Palestinian People,” 52.

²²⁹ *Ibid*, 53. See also Peteet, “Problematizing a Palestinian Diaspora;” Don Peretz, *Palestinian, Refugees, and the Middle East Peace Process* (Washington: United States Institute of Peace, 1996); John Quigley, “Displaced Palestinians and a Right of Return,” *Harvard International Law Journal*; *Harvard International Law Journal* 39, no. 1 (1998): 171–229; Gail J. Boling and Badil Resource Center for Palestinian Residency & Refugee Rights., *The 1948 Palestinian Refugees and the Individual Right of Return : An International Law Analysis* (Bethlehem: Badil Resource Center for Palestinian Residency and Refugee Rights, 2007).

²³⁰ Baer, “The Palestinian People,” 48. It is important to note that not all *laissez-passer* holders are *de jure* refugees unless they are identified as so in other identity documents.

UNRWA in the five countries of operation: Jordan, Syria, Lebanon, the West Bank, and Gaza Strip.²³¹ Indeed, refugee camps are present in the OPT, creating different categories of Palestinians within the OPT: those with UNRWA refugee status, and those with PA identity documents. The third kind of refugees are the UNHCR refugees, who have gone through the Refugee Status Determination (RSD) process outlined in the 1951 UNHCR Refugee Convention to obtain a refugee status. It is worth noting that the *Nakba* predates the 1951 Refugee Convention and, therefore, the Convention does not apply retroactively to the Palestinians displaced during the 1948 conflicts.²³² Those refugees are under the protection of UNRWA. The problem is that the Refugee Convention lays out different possibilities for long-term solutions such as resettlement, integration, and notoriously, repatriation, but UNRWA only provides a recognizable legal status and identity and not durable solutions. Therefore, many UNRWA refugees cannot be absorbed into other nation-states and end up in protracted refugee situations where temporary refugee camps become refugee cities having been in place for decades.²³³

The reason that I also mentioned *de facto* refugees is to account for the displaced Palestinians that do not have access to, cannot, or for whatever reason, do not want to obtain refugee status and are thus *de jure* stateless, which is a different legal category from refugees. The *de facto* refugees are perhaps grouped together as illegal immigrants and live mostly within a

²³¹ Riccardo Bocco, "UNRWA and the Palestinian Refugees: A History within History," *Refugee Survey Quarterly* 28, no. 2–3 (March 26, 2010): 229–52, <https://doi.org/10.1093/rsq/hdq001>.

²³² High Commissioner for Refugees (UNHCR), "Note on the Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian Refugees," *Committee on the Exercise of the Inalienable Rights of the Palestinian People*, October 10, 2002, <https://unispal.un.org/UNISPAL.NSF/0/68C845ADCF3671A85256C85005A4592>.

²³³ Ilana Feldman, "What Is a Camp? Legitimate Refugee Lives in Spaces of Long-Term Displacement," *Geoforum* 66 (2015): 244–52.

host country's informal economy and networks.²³⁴ They have perhaps also obtained some forms of non-asylum-related temporary or permanent residency status. No matter what, this group of refugees do not have access to legal refugee protection or the path to citizenship, which makes their citizenship status fragile.

These groups of Palestinian refugees have different ranges of rights and privileges in different countries but the commonality, mostly as a result of their fragile citizenship status, is widespread rights-violations or lack of rights-provisions. A few cases in point: In Lebanon, the government resists permanent settlements of Palestinians refugees and restricts their movements from refugee camps to the rest of the country;²³⁵ Palestinian refugees receive educational, healthcare and social services from UNRWA and cannot access the labor market and political life in Lebanon;²³⁶ Lebanon issues outbound travel permit to Palestinian refugees but does not guarantee re-entry.²³⁷ Egypt does not recognize the mandates of neither UNRWA and UNHCR and, therefore, does not facilitate any refugee protection programs and services for Palestinian refugees.²³⁸ In comparison, Syria is also restrictive in institutionalizing durable solutions for Palestinians refugees such as granting them citizenship *en masse*, but it takes a different refugee policy approach: Palestinians refugees are treated as residents and denizens with respective residency rights, such as access to employment and education, but without prospects of political participation because they do not have access to citizenship (i.e., no applicable path to citizenship

²³⁴ Kelsey P. Norman, "Inclusion, Exclusion or Indifference? Redefining Migrant and Refugee Host State Engagement Options in Mediterranean 'Transit' Countries," *Journal of Ethnic and Migration Studies* 45, no. 1 (January 2, 2019): 42–60, <https://doi.org/10.1080/1369183X.2018.1482201>.

²³⁵ Ramadan, "Spatialising the Refugee Camp."

²³⁶ Baer, "The Palestinian People," 49.

²³⁷ Khalil, "Palestinian Nationality and Citizenship," 31.

²³⁸ Badil Resource Center for Palestinian Residency & Refugee Rights (BADIL), *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention* (Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights, 2015), xiii.

because they do not have *de jure* residency status).²³⁹ Because of their lack of permanent status, they are particularly vulnerable to changing geopolitics and can become easy targets for political rent-seeking, bargaining, and manipulation — in the ongoing Syrian Civil War since 2011, many Palestinians have been further displaced from their homes in refugee camps in Syria and lost all *de facto* residency rights and became stateless.²⁴⁰

All of these examples help illustrate the rights-violations of Palestinian refugees according to international law, especially the laws that recognize the human rights of refugees.²⁴¹ And as the empirical evidence shows, the Palestinians with fragile citizenship status are easily subject to the rights violations or deprivations no matter if they are in or outside of the OPT. The tragic situations signal a need for reimagination of political solutions, and in the following section, I will look to apply non-paradigmatic citizenship conceptions, the old and new, to analyze the theoretical soundness for these conceptions to possibly better the rights-provisions for Palestinians with fragile citizenship status.

²³⁹ See also Khalil, “Palestinian Nationality and Citizenship,” 31. See also, BADIL, *Closing Protection Gaps*.

²⁴⁰ Noura Erakat, “Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement,” *International Journal of Refugee Law* 26, no. 4 (January 17, 2015): 581–621, <https://doi.org/10.1093/ijrl/eeu047>.

²⁴¹ Alex Takkenberg, *The Status of Palestinian Refugees in International Law* (Oxford: Clarendon Press, 1998), <http://catdir.loc.gov/catdir/enhancements/fy0606/97047469-t.html>.

II. Applications of Non-Paradigmatic Conceptions

One of the reasons, I posit, for the fragility of Palestinians' legal status and subsequently, their provisions of human rights, is the state-centric approach to peace processes. I have already argued in the previous chapter why using state-centric approach to human rights protection is insufficient and problematic, and the peace process is more intermediary and less focused on individual rights: the peace process, together with many past and present bottom-up civil society movements, has the objective to establish a Palestinian state which, in turn, will protect people's rights. I consider this a misdirected effort. Normatively, popular will legitimizes the sovereign power and authority to govern through constitutionalism,²⁴² instead of sovereign power allowing the expression of popular will (e.g., the right to self-determination, the ability to have an autonomous political life). If we follow the state-centric logic, a functioning State of Palestine will be everything and the only thing for all the groups of Palestinians that I have identified as people with fragile citizenship status: accordingly, it can offer stateless Palestinians some form of state protection, help with the State of Palestine's "claim to represent all Palestinians everywhere," "open the door to broader political participation," and "create new political realities."²⁴³ However, it should be that people create new political realities, rather than it being a monopoly of the state.

There are many moments in history during international negotiations for a State of Palestine when the state-centric logic went against the rights of Palestinians, or rather, people's rights were not of the primary consideration to start with. For example, when Israeli politicians

²⁴² Richard H. Fallon, "Legitimacy and the Constitution," *Harvard Law Review* 118, no. 6 (2005): 1787–1853.

²⁴³ Azzam, "Palestinian (Non)Citizenship," 589.

was discussing what to do with the Palestinian population living in East Jerusalem in 1967, there were several justifications for not granting East Jerusalemites full Israeli citizenship, with the most significant one being that East Jerusalemites would be the subject of the State of Palestine when such a state materializes.²⁴⁴ The concern was about political entanglements, rather than how to best protect the rights of East Jerusalemites. As a result, they have been living in suspension and liminality. Comparably, when Arab states contemplated how to deal with the Palestinian refugees in the country, they did not grant citizenships or opportunities of naturalization on the account of preserving their need for a State of Palestine and reminding Israel of its role in the dispersion of Palestinians.²⁴⁵ These (faulty) priorities lead to a framework of decision-making that disregards the best policies to protect more people, not less.

Another problem, in the case of Palestinians, with strictly adhering to a state-centric approach is that even when post-national and international principles and institutions are putting human rights as the primary purpose, the states' function in fulfilling their duties is far from satisfactory. After all the UN resolutions reiterating the rights of Palestinians, including the right to self-determination and the rights-violations by the Israel occupation forces, as well as the ICJ judgment on the Separation Wall and its violations of international law, Israel is still acting based on political interests rather than considerations of international law, especially human rights.

Even for some authors already touching upon the topic of performative citizenship, the scope of critical investigation is narrow with the focus on how political elites are performing "as a state" or like "institutions of statehood".²⁴⁶ I consider it a missed opportunity to reframe the entire conversation and find new ways of achieving political progress and social justice. Here, I

²⁴⁴ Klein et al., "Permanent Residency," 24.

²⁴⁵ Khalil, "Palestinian Nationality and Citizenship," 29.

²⁴⁶ Krasniqi, "Contested Territories, Liminal Politics, Performative Citizenship," 1.

will begin to analyze the theoretical applicability of non-paradigmatic citizenship conceptions to see if they can point to new normative frameworks for rights-protections. The analysis will involve examining the justifications for different citizenship conceptions as well as sketching what they might look like and to what kinds of rights these conceptions will entitle Palestinians with fragile citizenship status.

Transnational Citizenship and Stakeholder Citizenship

As analyzed in the empirical section, WBGS Palestinians, East Jerusalemites, and Palestinian refugees often engage in transnational politics. Not all of them do: for example, a Palestinian refugee born and raised in Syria who has no tangible connection with the OPT or the OPT residents and does not receive UNRWA services but receives residency rights and privileges from Syria, is more emplaced and embedded in the politics in Syria while maintaining a historical and emotional connection with Historic Palestine or the “homeland.” However, for another example, for the Palestinians with temporary passports in Jordan and frequently engage with the local communities in the OPT and in Jordan, they are translocals under the political institutions and affected by politics in both places of residence. However, they currently do not have the full range of rights in the OPT for the lack of a functioning Palestinian state, and they are not treated like Jordanian citizens despite having extensive connections and lived experiences. As a result, their mobility and economic rights are restricted.

Transnational and stakeholder citizenships would apply here by way of their entanglements with transnational politics and institutions. And these conceptions would, facing the absence of a functioning Palestinian state or government, obligate Jordan to, first, grant the usually citizenship-only rights such as electoral rights to Palestinian refugees to participate in

municipal elections where they reside; second, grant political representation rights so that they can be elected as representatives on different governing levels to participate in any legislation regarding WBGS, East Jerusalem, and Palestinian refugees in Jordan. The bottom line with stakeholder citizenship is citizenship rights granted to whoever affected by different levels of politics: local, regional, national, whenever they are affected. In such a case, Palestinians in the OPT with no formal citizenship status elsewhere, as well as the Palestinian refugees, can claim citizenship based on *jus domicili* (residency) and their participation in transnational politics. As a result, they are less at risk of being deprived of their fundamental human rights when they can perform legitimate claims-making in their place of residency, and when political representation and participation rights can prevent rights-violations to a large extent.

It is less obvious how transnational and stakeholder citizenships may affect Palestinians who are “emplaced” in the OPT, meaning they live their lives mostly in the OPT. The key here is to take into account the Israeli occupation forces. To an extent, all Israeli domestic politics and policies affect Palestinians in the OPT. However, the most relevant ones are the laws and policies directed towards Palestinians, such as the military laws applied to the occupied West Bank, the domestic laws applied to East Jerusalem. East Jerusalemites, compared to WBGS, have a direct claim to Israeli citizenship because their exclusion from Israel’s citizenry and demos violates the liberal democratic principles of equality and inclusion in the Israeli society where 300,000 people do not have political representation and participation rights in national politics. Without considering national citizenship (i.e., Israeli citizenship), in the spirit of transnational and stakeholder citizenships, East Jerusalemites and WB Palestinians, especially those living in Area B and Area C where Israel controls either the security or administration or both, should be

guaranteed by the Israeli occupation their political rights in decision-making regarding the OPT, socioeconomic and cultural rights in their places of residency (excluding Israeli proper), mobility rights to visit the Palestinian communities in Israel if they have legitimate connections. In this way, gradually, without the immediate and complete withdrawal of the occupation, Israel can better respect rather than deprive East Jerusalemites and WB Palestinians of a wide range of rights. Occupation is costly, and transnational and stakeholder citizenships can make a costly operation violating less rights.

It is inevitably harder for Gazans to claim transnational and stakeholder citizenship rights in the form of full citizenship-like rights because of the absence of an occupying presence from either Egypt or Israel. However, the total blockade is one that affects all Palestinians in Gaza, and they should be involved in the related decisions, even extraterritorially. In this way, if Egypt or Israel have any conditions for lifting the blockade, the Gazans — not Hamas — who participate in political decision-making will be responsible in negotiating their rights-provisions while satisfying these conditions. If Egypt or Israel, for example, wants the disintegration of Hamas in exchange of facilitating political and economic transition and development in Gaza, it is up to the Gazans to choose whether they can find another legitimate political expression, such as a different and new political party and elected governing body, than the Islamist Hamas.

Overall, the prerequisite conditions for transnational and stakeholder citizenships are the involvement in the transnational space, be it cultural or economic or political, and the actual policy and legal impact on such a transnational or translocal community. In effect, it may not improve the human rights provisions expansively because transnational entanglements and policy and legal effects do not apply to everyone all the time: a Tel Aviv major's decision to reduce the

fine for businesses' keeping open on Saturdays has little to do with Palestinians in the OPT. Still, it can improve the rights-provisions for many Palestinians with fragile citizenship status.

Denationalized Citizenship and Postnational Citizenship

Denationalized citizenship and postnational citizenship already exist for the Palestinians in some shape and form. For example, the clan networks in the OPT, as mentioned in the empirical analysis, help facilitate provisions of economic and cultural resources when the PA is not capable and when Israel is unwilling. These denationalized power structures help transform the nation-state as the most powerful authority in the polity. As for postnationalism, UNRWA and UNHCR refugees already live under the institutional fixtures above the nation-state, especially as UNRWA acts like a surrogate for the states by operating and performing functions including birth and death registrations, population census, and the provision of basic welfare and services.²⁴⁷ Considering UN organizations, in general, follow political and legal norms established through international law, Palestinian refugees are the ones most remote from the institutional embeddedness in a nation-state because of the permanent temporal and spatial suspendedness at the camp cities, but they also turn out to be the ones closest to the empirical manifestations of postnational powers.

Normatively speaking, the lack of a functioning State of Palestine creates power vacuums on different levels, and the existing State of Palestine is still not recognized and treated equally by many other states. Denationalized power relations and the fact that rights-provisions are based primarily on residency can help legitimize OPT Palestinians claim to rights, and denationalized citizenship works in similar ways as translocal citizenship: citizenship rights granted through *jus domicili* and genuine connection with the denationalized communities.

²⁴⁷ Ramadan, "Spatialising the Refugee Camp," 69.

For Palestinian refugees, the question of residency needs to be addressed, because refugeehood is not conceptualized to be a permanent condition of existence but a transitional period between displacement and return or (re)settlement. What counts as domicile is yet to be defined based on the potential durable solutions to one's exile. Refugee camps, at the same time, are not conceptualized to be a space or setting for spontaneous community-building even if refugees manage to develop "communities of co-responsibilities."²⁴⁸ refugee camps are containment strategies constructed around transience, dislocation, and liminality rather than emplacement and stability.²⁴⁹ So denationalized citizenship here may have limited applicability, unless the approach is based on performative citizenship, which will be discussed shortly. Nevertheless, as shown above, postnational citizenship helps organize the discourses and potential operationalization of rights-provisions for refugees, as refugee rights are closely connected to human rights.

The difficulty with any analysis of postnational citizenship is the poverty of imagination for institutionalization. Current postnational institutions mostly operate with nation-states as the sole unit of collective political agency, but that is simply not enough: political self-expressions of different communities of people(s) can take on different forms. Working through the states and their supposed obligations rather than somehow also working directly with ensuring people's rights helps perpetuate present injustices such as the rounds of occupation Arab Palestinians endured in the twentieth century. A postnational citizenship rested on the idea of "above and

²⁴⁸ Daniel Warner, "Voluntary Repatriation and the Meaning of Return to Home: A Critique of Liberal Mathematics," *Journal of Refugee Studies* 7, no. 2/3 (1994): 160.

²⁴⁹ Julie Mertus, "The State and the Post-Cold War Refugee Regime: New Models, New Questions," *International Journal of Refugee Law* 10, no. 3 (July 1, 1998): 321–48, <https://doi.org/10.1093/ijrl/10.3.321>.

beyond” the nation-state should help see international law having a much more direct effect on the human rights provisions for the Palestinians with fragile citizenship status.

A Constellation-Processual Approach based on Performative Citizenship

Once again, in this subsection, with the new citizenship conception, I will not explain the justifications for their applicability because it is conceptualized with the problems that it aims to alleviate in mind, which include the kinds of rights-violations that Palestinians with fragile citizenship status have experienced. Instead, I will use this space to illustrate how the new conception will work in the case of Palestinians. The elaborations here will also help clarify the abstract theorizations in the previous chapter.

The new citizenship conception brings all the arguments made for transnational, stakeholder, denationalized and postnational citizenships one step forward and emphasizes the autonomous agency and political power in these Palestinians with fragile citizenship status. What this means is that, firstly, it is up to the Palestinians instead of a presupposed Palestinian community on the local, regional, or national levels to form communities of all sizes, sub-local, subnational, postnational, transnational, and so on. Their political involvement and political claims-making create the boundaries for the communities and new institutions to facilitate their rights claims and protection. Even for the other non-paradigmatic citizenship conceptions, refugee camps are considered as a state of exception where the sovereign’s normal political order is suspended.²⁵⁰ The space occupied by refugee camps are outside of complete sovereign control, even if it is part of the sovereign territory. However, it is useful to conceptualize the space of refugee camps not in relation to the sovereign state (e.g., Lebanon, Syria) but as its own postnational polity where rules above and beyond the normative engagements of the nation-state

²⁵⁰ Agamben, *Homo Sacer: Sovereign Power and Bare Life*.

apply: international law, the human rights regime, etc.. Given that many camps, such as the UNRWA camps in Lebanon, already involve some level of refugee self-governance in collaboration with the UNRWA administration for service provisions such as security and policing,²⁵¹ the camps themselves can also be seen as sovereign communities with biopolitical power on denationalized and postnational levels. In this sense, the performance of autonomous politics by the Palestinian refugees legitimitizes their rights-claims, and it should be met in turn with new institutional fixtures that recognize and facilitate these rights.

Again, performative citizenship does not require the enactment of rights to be grand and spectacular: community service, voluntary participation in self-government, or donations to the communal fund used to provide food, health, and a range of other basic services to fellow refugees at the camp — all these actions help constitute a performative citizenry apart from the postnational institutions and provisions by UNRWA.

Apart from the above explication based on the Palestinian refugees' rights provisions, the next conception can be pictured as the following for Palestinians in the OPT: on the lowest level, they receive residency rights from the local communities by way of being a member of the local communities and participating in economic, social, and political development (from small actions such as information exchange and reporting complaints to bigger ones such as running for municipal posts and creating new community institutions). The lowest level provides the most basic claims for denationalized citizenship but it is not all: Regional connections also become the basis to transform national institutions, and by performing actions such as forming regional alliances or supporting growth in various regions, the involved Palestinians are creating a different public space parallel to national politics dominated by state institutions. A concrete

²⁵¹ Ramadan, "Spatialising the Refugee Camp," 69-70.

example outside the case of Palestinians is the migrant workers in Europe or the rural migrant workers within China: their contributions, not grounded in one nation-state or one local community, create a need for denationalized citizenship for the specific level in which they are involved, as their distinct experiences, albeit still within the context of the nation-state(s), reshape the political issues and concerns not limited to domestic or local political decision-making.

On the next level, national citizenship, as one potentially developed out of a State of Palestine, adds on to the claims-making capabilities of the OPT Palestinians: now they can make claims against their local and regional communities and seek for intervention from the state, for example. This is how citizenship already works in many nation-states. But this is not where the new conceptions stops: the next two levels of transnational and postnational citizenship help them hold the state(s) accountable for their rights by making claims against the PA, Israel, Lebanon, and so on and seeking legitimization and action from transnational and postnational institutions. Because Palestinians in the OPT are subject to an occupying power without recognized right to self-determination or opportunities to exercise such a right, their political actions, no matter the political struggle for statehood or against the occupation, are already transnational and, to some extent, postnational in nature because it involves the arbitration by bodies of international law like the human rights law. What is needed next are the new types of institutions that exist alongside state institutions and are more effective in protecting people's rights than the current civil society organizations. Palestinians in the OPT, as well as Israelis directly involved in and engaging with issues about Palestinian rights, should be the stakeholders for these new transnational and postnational institutions, which means they would be the citizens whose rights such as voting rights are honored and practised within these new institutions' operations and

arrangements. The postnational aspect may still seem abstract but it is not difficult to imagine the possibility of a political community existing beyond the State of Israel and the PA within the territories of WBGS and East Jerusalem, and the possibility that it can evolve gradually towards a polity that is more and more capable of recognizing and protecting Palestinians' rights.

The recognition of the gap between the present political landscape and a potential fully-fledged one incorporating the new citizenship conception is also why the "processual" aspect is important. New types of institutions, just like the historical development of many states before they are recognized as functioning states in the international states system, will go through challenges and setbacks. But if they adhere to the framework proposed in the new citizenship conception and, more importantly, to the logic behind the conception, namely the principles of equality and human rights promotion, then the process will see more and more people enabled to claim and exercise their rights that are not yet granted because of their fragile citizenship status.

Different non-paradigmatic citizenship conceptions remedy the faults of the state-centric citizenship paradigm in different ways: transnational and denationalized citizenship complement state citizenship and ensure additive protections, postnational citizenship mainly circumvents its structural limitations, while the new conception makes sure there is enough space for individuals' claim-making to complement and circumvents the *dos* and *don'ts*, *haves* and *have-nots* articulated by nation-states so that the *don'ts* and *have-nots* can be negotiated towards *dos* and *haves*.

III. Further Considerations

The significance of the new conception is that it provides new lenses to rethink political solutions for peace and development parallel to state development and state-centric solutions such as one-state or two-state solutions. As political communities develop and face challenges, many people may find themselves enveloped by liminal politics where everyday politics become stranded in a state of in-betweenness when polities are not yet full sovereignties or fully (re)integrated with a larger state or parent state.²⁵² It is under such circumstances that precarious populations, like the undocumented, the Palestinians, the stateless, and so on, “constitute themselves as political subjects by creating, using, and appropriating in-between spaces.”²⁵³ By challenging the prevailing conceptions of citizenship and statehood, the new citizenship conception helps people gain visibility and make space in the public sphere by performing their (denied or absent) citizenship status and claiming the rights they are not granted in order to gradually secure recognition for themselves as political agents.

And it is here where the real impact of the new citizenship conception lies: it helps restructure spheres of political legitimacy and authority, as the core difference for the people with rights and those without is a matter of power. For the Palestinians with fragile citizenship status, it is one way to consider them as rightless people, but that is only if we disregard the point that the source of political legitimacy lies with the people, rather than the power subjugating them. As analyzed above, all the non-paradigmatic citizenship conceptions may improve the situations of

²⁵² Peter Nyers, “Abject Cosmopolitanism: The Politics of Protection in the Anti-Deportation Movement,” *Third World Quarterly* 24, no. 6 (2003): 1097. See also Victor Turner, *The Ritual Process: Structure and Anti-Structure*, Foundations of Human Behavior (Chicago, IL: Aldine de Gruyter, 1995), 95.

²⁵³ Thomas Swerts, “Creating Space For Citizenship: The Liminal Politics of Undocumented Activism,” *International Journal of Urban and Regional Research* 41, no. 3 (May 1, 2017): 382.

these groups of Palestinians in one way or another. In the following paragraphs, I will consider the more specific concerns for applying the new citizenship conception to the case of Palestinians, by addressing the differences between the new conception and the existing sovereign government, localized politics or government, and Ayelet Shacar's *jus nexi* citizenship.

To start with, by the logic of state citizenship, many may argue that there is no need for non-paradigmatic conceptions because all the problems will be solved once the State of Palestine is fully functioning and recognized, e.g., when the PA has more governing capacity. But the reason that new conception is applicable is precisely that the state-centric citizenship creates gaps, and even if the PA suddenly has more functionalities, there will inevitably be other groups of people that do not fit into the neatly demarcated international states system. It is not to say that democratization within the context of a nation-state will ultimately fail or be ineffective, but the focus on the legal or political system (e.g., constitutional reforms, elections) has often "obscured deeper, more intractable social, economic, ecological, and other problems."²⁵⁴ In the case of Palestinians with fragile citizenship status, generations have lived through rights-deprived lives. The new citizenship conception helps create parallel or concurrent political processes. Similarly, the difference from the localized politics existing to some extent in the OPT and even in UNRWA refugee camps is that the new conception seeks to subvert the structures of domination and subjugation and transform these localized politics into the same kinds that engender rights-provisions as those currently on the national level.

As for the difference from the *jus nexi* citizenship that the nominal hairs and resident stakeholders have access to, the case of Palestinians especially demonstrates the specific differences. The "Center of Life" policy for East Jerusalem residents follows the logic of *jus nexi*

²⁵⁴ Ingram, "What Is a 'Right to Have Rights'?", 414.

citizenship but East Jerusalemites are still not full members on the territory. Even if within East Jerusalem, the accounting of their rights may show that they are more or less *jus nexi* citizens, it does not show the full picture of the predicaments East Jerusalemites experience from disenfranchisement to unaccountable political representatives such as judges at the Jerusalem Magistrate's Court. Because the center for all political decision-making is still the state, it is up to the state to examine the genuine link between residents and the political community (based on the two *jus nexi* criteria), but the state does so without the residents' oversight and accountability, and the undue burden is on the individuals. Therefore, the residents are still subject to the domination by the state. The new citizenship conception reframes the process of evaluating the genuine link so that it is demonstrated through performative enactments of citizenship rights rather than the collection of rental documents and utility bills.

At the same time, the case of Palestinians with fragile citizenship status helps illustrate the differences between citizenship and national identity, and citizen and human. The historical analysis shows that citizenship, besides it being a legal construct, is not always aligned with the national identity development of the "Palestinians." And the new conception furthers that misalignment by recognizing the commitment and contribution by Palestinians and residents of other countries to the same community's growth and development, and by treating such an exhibition of agency as meaningful enough to make claims for rights protections. The previous section also illustrates the particular boundaries that OPT Palestinians and Palestinian refugees can set up for themselves, and therefore nullifying the "human" identity or "common humanity" as the sole boundary for a polity in the new citizenship conception.

What is paramount to note here is that, in the spirit of Jürgen Habermas, after recognizing that the nation-state is not “a necessary condition for a constitutional order,”²⁵⁵ not only should we not regard exclusionary territorial control as “an unchecked sovereign privilege,”²⁵⁶ but we should also recognize deliberative and participatory democracy through citizen politics as an integral part of claims-making in the public sphere: it should be seen as an alternative to or as crucial as the balance of power between a potential confederation of republics (the international states system) and a world republic (a cosmopolitan democratic government). Citizenship practices taken place outside the limits of a nation-state should be recognized as such: beyond the confines of domestic politics. This also means that the new conception, with its constellation and performative elements, challenges the current notions of “public” and “domestic,” and prescribes a different (if not new, considering the Athenian citizenship ideal) way of defining juridico-political spheres to treat performative citizen acts as the site of political claims-makings.

²⁵⁵ Jürgen Habermas, *The Divided West* (Cambridge, UK: Polity, 2006), 137.

²⁵⁶ Benhabib, *The Rights of Others*, 406

Conclusion and Discussions

In this paper, I have broken down the theoretical foundations for citizenship and analyzed the problems with the paradigmatic state-centric citizenship using a (human) rights-based approach. I have articulated the non-paradigmatic citizenship conceptions such as transnational and stakeholder citizenships, denationalized and postnational citizenships, and proposed a new conception, the constellation-processual approach based on performative citizenship. All these conceptions have advantages compared to the paradigmatic citizenship, and I have used the case of Palestinians with fragile citizenship status and therefore with extensive rights-deprivations to illustrate how the non-paradigmatic citizenship conceptions can improve their conditions of existence and facilitate more human rights provisions. The new conception provides theoretical foundations to reframe the citizenship paradigm specifically around human rights rather than nation-state authority and, as a result, using the moral universalising conception (human rights) to restrain the civic particularizing conception (the Westphalian sovereign-state principles).

There are several broader significance of the new citizenship conception. First, by extending the Arendian civic republicanism, it proposes new ways of thinking about the path to citizenship that help empower individuals to form civil communities through performative citizenship. The emphasize on *making* citizens and *forming* political communities is also an effort against reification: when viewed as a concept imbued with millenniums' of social, political, legal, and cultural changes and development, citizenship is not a purely "stable" "status" but a site of gradual contestation, negotiation, and transformation. Therefore, taking the paradigmatic conception for granted together with the contestable meanings of citizenship, be it normatively or

positively contestable, is to ignore that *people inhabit citizenship*: the site of citizenship (claiming membership, exercising rights, practicing duties) is not necessarily the nation-states but the individual rights-bearers when they engage with political claims-making. Through such a deductive logic, citizenship comes to share the same foundation as the human rights ideals.

According to Saskia Sassen, who is the main proponent for denationalized and postnational citizenships, the promising outlook of seeing people *become* citizens instead of *being* citizens is that citizenship is then “a heuristic category through which to understand the question of rights and subject formation and to do so in ways that recover the conditionalities entailed in its territorial articulation and thereby the limits or vulnerabilities of this framing.”²⁵⁷ The new conception adds an additional prospect that it can help critically interrogate the prevailing sentiments about the embeddedness of localities. Research has shown that people locate their fundamental identities and solidarities with a variety of communities neither defined nor circumscribed by the nation-state.²⁵⁸ For example, some may say, “San Francisco is in the United States but it is not really American,” or “I am a Berliner but not so much a German.” Performative citizenship sheds light on how individuals play a role in defining their membership and challenges the assumed nested relationships between the local, the regional, and the national.

The source of many counterarguments to the new conception, as it is for postnational citizenship, is descriptive ones about institutions safeguarding and enforcing rights. As mentioned at the beginning, this paper does not engage with practical concerns. I recognize that the concrete institutional and organizational changes to recognize the practices of performative citizenship are difficult to imagine and that is a limitation of the theoretical explorations in this

²⁵⁷ Sassen, “Incompleteness and the Possibility of Making: Towards Denationalized Citizenship?”

²⁵⁸ Thomas M. Franck, “Community Based on Personal Autonomy,” in *The Empowered Self* (Oxford, UK: Oxford University Press, 2001), <https://doi.org/10.1093/acprof:oso/9780199248094.003.0005>.

paper. Even so, there has been articulation in description terms claiming that, as an empirical matter (e.g., cultural awareness, political activism, civic education, etc.), citizenship is increasingly taking denationalized and postnational forms.²⁵⁹ At the same time, material conditions of globalization and its products such as multinational firms and digital nomads are undermining the capacity of nation-states as fully autonomous and independent entities with absolute or exclusive control over inhabitants of the territory. As a result, there has been imposition on states' to be obligated towards the environment and people outside of their borders have emerged, as well as the call for moral and legal intervention against states for the rights of individuals and minorities within their borders.²⁶⁰ This is the second critical element that the new citizenship conception has: it can help strengthening (e.g., constitutionalizing) the rights allowing citizens to make claims against their states and non-citizens to make claims against a state by producing measures of formal political autonomy out of the distance between the formal apparatus of the state and the institutions of citizenship.²⁶¹

A limitation that the new citizenship conception has is from democratic theories. The new conception works only if there are new norms of democratic participation, as currently formal citizens feel more entitled to participate in politics and activism and non-citizens may face more difficulties and harsher retributions for participatory actions such as running as local

²⁵⁹ Bosniak, "Citizenship Denationalized," 490. See also Hildebrandt-Wypych Dobrochna, "National Postnational Transnational? Changing Conceptualizations of Citizenship in Comparative and International Education Research," *Annual Review of Comparative and International Education*, International Perspectives on Education and Society, 28 (January 6, 2016): 309–22, <https://doi.org/10.1108/S1479-367920150000028019>; Pippa Norris, *Democratic Phoenix: Reinventing Political Activism* (Cambridge, UK: Cambridge University Press, 2002), 222; Bryan S. Turner, "Postmodern Culture/Modern Citizens," ed. Bart van Steenberg (London, UK: SAGE Publications, 1994), 153–68, <https://doi.org/10.4135/9781446250600>.

²⁶⁰ Onora O'Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge, UK: Cambridge University Press, 1996). See also Thomas W. Pogge, "Cosmopolitanism and Sovereignty," *Ethics* 103, no. 1 (1992): 48–75.

²⁶¹ Saskia Sassen, "Assembling Mixed Spatial and Temporal Orders: Elements for a Theorization," in *Territory, Authority, Rights* (Princeton, N.J.: Princeton University Press, 2008), 378–98, <https://doi.org/10.2307/j.ctt7sx98>.

representatives and joining protests. Because the new conception of citizenship also incorporates principles of democracy such as equality, fairness, and inclusion, then there needs to be a process of democratization to empower everyone on different levels of the constellation so that they feel justified in claims-making activities and, thus, in performing citizenship. For example, on the postnational level, the notion of rights, presentation, and accountability needs to be extended to the operations of postnational institutions so that people whose lives are regulated have the opportunities to participate in selecting and becoming leaders specifically engaging with postnational politics.²⁶² However, such social empowerment as one decentering and sometimes transcending national political life “requires that people have a meaningful voice in shaping the world they live in.”²⁶³ How can the new citizenship make sure that people still have a voice in participatory politics when a community may cross geographical boundaries? One answer, I propose, lies in digital solutions. Without getting into the scholarship on digital citizenship²⁶⁴ or digital political activism such as the Palestinian-led Boycott, Divest, and Sanction movement (BDS),²⁶⁵ digital connectivity deterritorializes politics and helps restructure the processes of performing rights: the site of claims-making is not directly in front of the state but to an “Internet citizenry” who, irrespective of their formal citizenships in real life, can put pressure on the

²⁶² Richard Falk, “The Making of Global Citizenship,” in *The Condition of Citizenship*, ed. Bart van Steenberg (London, UK: SAGE Publications Ltd, 1994), 128.

²⁶³ Bosniak, “Citizenship Denationalized,” 504.

²⁶⁴ See Liav Orgad and Rainer Bauböck, “Cloud Communities: The Dawn of Global Citizenship?,” *Robert Schuman Centre for Advanced Studies*, Research Paper No. RSCAS 2018/28, June 1, 2018;

²⁶⁵ See Anat Ben-David, “The Palestinian Diaspora on the Web: Between de-Territorialization and Re-Territorialization,” *Social Science Information* 51, no. 4 (2012): 459–74, <https://doi.org/10.1177/0539018412456769>; Maia Carter Hallward, “The History and Theory of Boycott, Divestment, and Sanctions,” in *Transnational Activism and the Israeli-Palestinian Conflict* (New York, US: Palgrave Macmillan, 2013); Abigail Bakan and Yasmeen Abu-Laban, “Palestinian Resistance and International Solidarity: The BDS Campaign,” *Race & Class* 51, no. 1 (2009): 29–54; Rich Wiles, ed., *Generation Palestine: Voices from the Boycott, Divestment and Sanctions Movement* (Chicago, IL: Pluto Press, 2013); Omar Barghouti, *Boycott, Divestment, Sanctions: The Global Struggle for Palestinian Rights* (Chicago, IL: Haymarket Books, 2011).

responsible institutions and accelerate the process of rights-provisions or alleviate rights-violations. Such deterritorialization and restructuration also derive from the prospects of democratization through creating digital realities, and can be potentially an intermediary or an answer to the concerns about the appropriate institutional arrangements and ways of representation for the new citizenship conception.

Additionally, the universality of the new conception stands scrutinized. The normative principles from which the new conception draws its basis are supposedly universal, so it should have universal applicability. The difference exists in the aspects it helps to improve. For Swedish citizens, perhaps the constellation perspective gives them additive layers of protection that they may or may not invoke, but for the Chinese citizens, for example, citizenship lacks certain civil and political freedoms. This means that performative citizenship can help them express and exercise the rights that are yet to be recognized. In this way, Chinese citizens can use performative rights-claiming to, at least in practice, make changes that may only seem possible in a democratic state where all political and civil freedoms are granted. Indeed, in urban and rural China, performative citizenship comes in many forms through local or factory assemblies, protests and demonstrations, as well as neighborhood political phone-banking.²⁶⁶ In the ideal world, the new conception will lead to these performing citizens in various assemblies and associations being recognized as rights-bearers and in due time, being protected by different overlapping political communities in China in case of rights-violations.

²⁶⁶ Dorothy J. Solinger, *Contesting Citizenship in Urban China: Peasant Migrants, the State, and the Logic of the Market* (Berkeley, CA: University of California Press, 1999). See also Merle Goldman, *From Comrade to Citizen: The Struggle for Political Rights in China* (Cambridge, MA: Harvard University Press, 2005); Zhonghua Guo and Sujian Guo, eds., *Theorizing Chinese Citizenship: Challenges Facing Chinese Political Development* (Washington, D.C.: U.S.: Lexington Books, 2015).

To the critique that the new citizenship conception may create a group of people “unworthy” of citizenship status because they do not actively perform their citizenship practices and therefore engendering inequality within the citizenry, as well as the critique that it may “devalue” citizenship in its present form, I would refer back to the example of the person in vegetative state and reiterate on the point that the new citizenship conception does not see citizenship as a static status but as an enabling condition and process that allows people to achieve certain standing in their communities in their everyday life even though the smallest exhibits of individual agency in relation to community development. And I do not consider that it will devalue citizenship because the goal of the new conception is still about rights, only that it removes the state as the necessary component connecting people and their rights; instead, it connects people (and their actions) directly with their rights — a strong normative stance that this paper puts forth.

This paper, hence, sees citizenship as a normative project, as the making of rights-bearing agents. It rearticulates the relationships between rights and power, rights and legitimacy.

Some may still stand by the argument that the new conception has the problem of conceptual over-stretching because acting like a citizen (claims-making) is not the same as being a citizen (rights-bearing), because the rights guaranteed under any legal regimes are not self-executing. However, I consider it a narrow-minded interpretation of citizenship politics. Citizenship, even in a state-centric sense, is “partly produced by the practices of the excluded.”²⁶⁷ Social categories such as citizens, strangers, and aliens are co-constructing each other. In the meantime, as the lack of rights afforded to strangers and aliens is being critically examined and transformed, many of which into citizens, “citizen” is also challenged and further transformed. So

²⁶⁷ Sassen, “The Repositioning of Citizenship and Alienage,” 84.

far, the sites of struggle for social movements have been the nation-states, but transnational activism has provided new outlets to achieve bigger goals such as environmental justice and legal personhood for rivers and reservations. So what was considered a national minority in the past today has formal status, and what is considered the excluded outsiders today may be in the process of becoming recognized as full members in some communities not yet existing. It is to be reckoned with that those assumed to be completely powerless are still actors even though lacking power guaranteed by institutions. Rights and the power to exercise them are not solely about institutionalization. Having rights through legal status may still not be secure in terms of having the conditions to exercise them, as many minorities and vulnerable groups have achieved great progress on the formal legal status front in different political and civil rights movements over the twentieth century. However, the structures of dominance in society are not fully dismantled yet, and now there are existing and emerging inequalities beyond the formal equality of rights for historically disadvantaged groups as well as migrants and refugees. The new citizenship conception can help demand socio-political progress beyond the counting of the number of rights and create opportunities outside of existing power structures and institutions to practice them.

And it is here that I submit that this paper takes upon the role of advocacy in addition to research and analysis. The binding of human rights and citizenship allows citizenship to tap into the “emancipatory possibility” of human rights.²⁶⁸ It is possible to achieve conceptual changes politically if a paper as such is seen beyond a mere assertion of facts and arguments and as a political act constituted with language.²⁶⁹ And it is my hope that the thoughts and ideas put forth here can contribute to the ongoing debates about transforming statist citizenship and spark critical

²⁶⁸ Kennedy, *The Dark Sides of Virtue*, 6.

²⁶⁹ James Farr, “Understanding Conceptual Change Politically,” in *Political Innovation and Conceptual Change*, ed. Terence Ball and Russel L. Hanson, Ideas in Context (Cambridge University Press, 1989), 26-27.

and creative thinking on alternative configurations of citizenship and political institutions for the improvement of rights and lives.

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Appendices

Appendix I. Map of Israel and Occupied Palestinian Territories

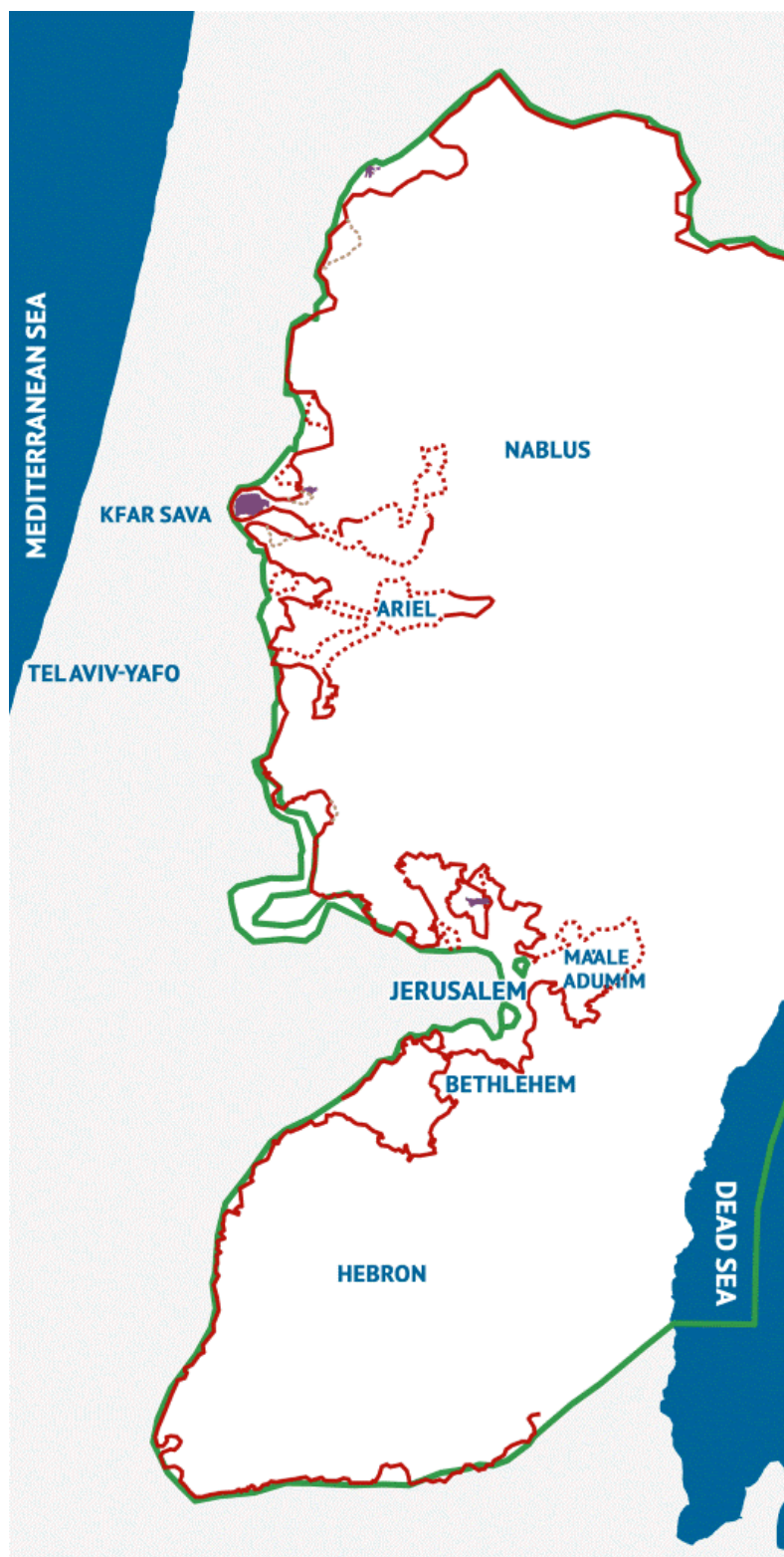


Appendix II. Map of The British Mandate of Palestine (1920-1948)

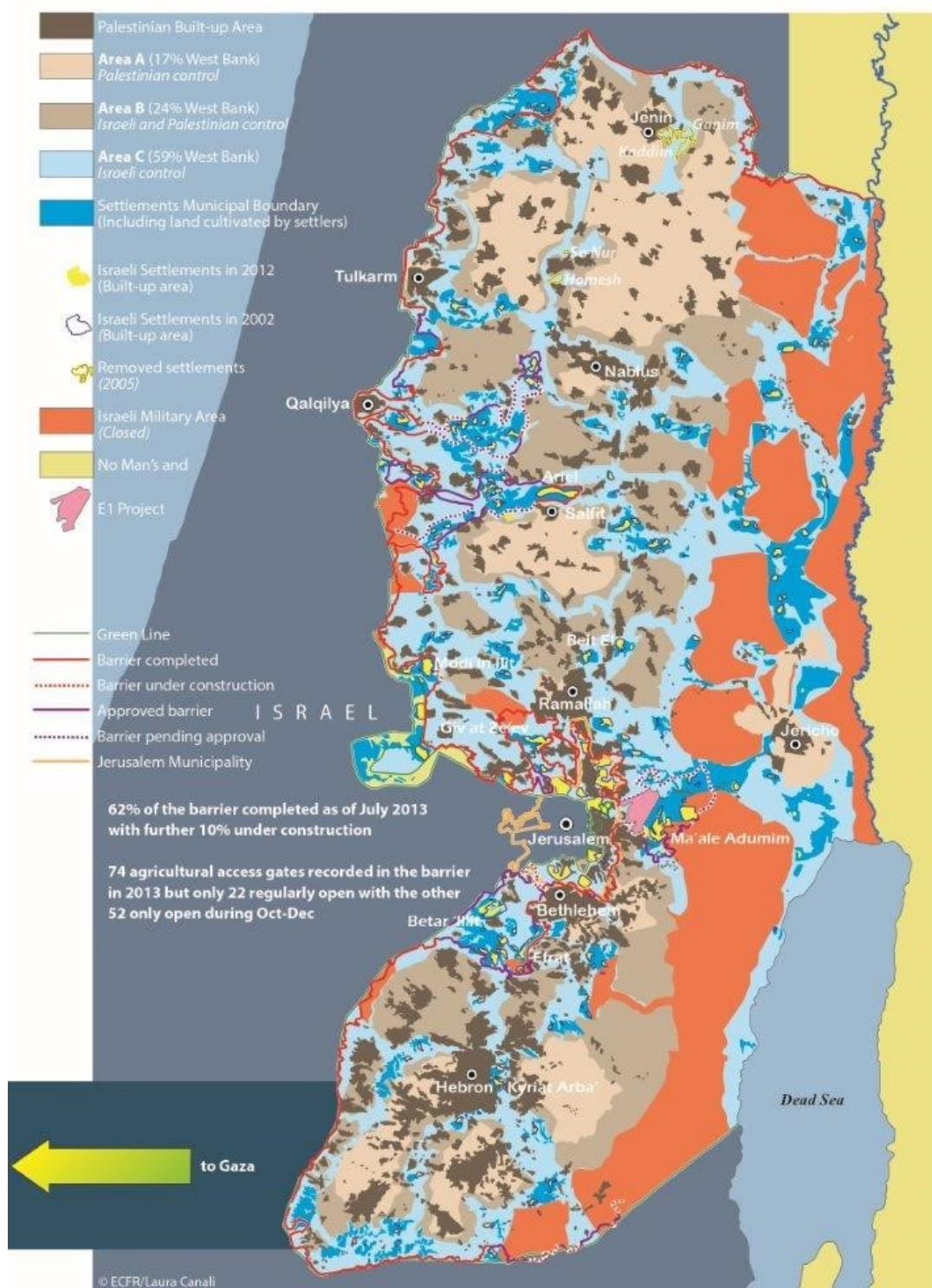


Great Britain's Division of the Mandated Area,
1921-1923

Appendix III. Map of The Separation Wall (2003-)



Appendix IV. Map of West Bank with Areas A, B and C (1995-)



Appendix V. Statistics of Palestinian Populations in the World (2017)

West Bank	2.60 million	Stateless persons, and more than a third are refugees registered with the UN Relief and Works Agency (UNRWA). [*] They are also considered permanent residents under Israeli military occupation law.
Gaza Strip	1.90 million	Stateless persons, more than 70 percent of whom are UNRWA-registered refugees. They are also considered permanent residents under Israel's military law.
East Jerusalem	281,000	Stateless persons, and many are UNRWA-registered refugees. They are also considered permanent residents under Israeli civil law, which allows them to apply for citizenship. [†]
Israel	1.42 million	Citizens of Israel. As of 2011, an estimated 335,000 were internally displaced persons. [‡]
Lebanon	514,000	Mostly stateless UNRWA-registered refugees. Tens of thousands were given citizenship in several waves.
Syria	618,000	Mostly stateless UNRWA-registered refugees
Jordan	2.29 million	Citizens of Jordan (both non-refugees and UNRWA-registered refugees); those who sought refuge after the 1967 war are considered internally displaced persons, and approximately 140,000 are stateless, refugees, and noncitizens.
All other countries	2.87 million	Many are citizens or permanent residents of their countries of residence. Others are living on temporary renewable work or residence permits, especially in Egypt and the Gulf states. Some are citizens, refugees, or asylum-seekers in Europe, North America, and elsewhere.
Total	12.5 million	

Sources: State of Palestine, Palestinian Central Bureau of Statistics (hereafter PCBS), كتاب فلسطين الإحصائي السنوي، 2018 [Statistical Yearbook of Palestine, 2018] (Dec. 2018): 22. Estimate for East Jerusalem taken from PCBS, 2018, كتاب القدس الإحصائي السنوي، 2018 [Jerusalem Statistical Yearbook, 2018] (Aug. 2018): 27. The "All other countries" figure was calculated from end-of-year 2016 projections in PCBS, كتاب فلسطين الإحصائي السنوي، 2017 [Statistical Yearbook of Palestine, 2017] (Dec. 2017): 299.

^{*} In 2017, there were just over 5.8 million registered Palestinian refugees. Increasing 1.8 percent per year, this number is closer to 6 million today. UNRWA, Communications Division, "UNRWA in Figures as of 1 Jan 2017" (June 2017).

[†] According to Israel's Interior Ministry, only about 15,000 East Jerusalem Palestinians applied for Israeli citizenship between 2003 and early 2017. Around 6,000 were approved. See Karin Laub and Mohammed Daraghme, "More East Jerusalem Palestinians seek Israeli citizenship," *Associated Press*, March 22, 2017, <https://apnews.com/68d8d15561864af2b93b192671955761>.

[‡] BADIL Resource Center for Palestinian Residency and Refugee Rights, "What You Need to Know About Palestinian Refugees and Internally Displaced Persons" (May 2011): 8.

Appendix VI. Fox's Table of Transnational Rights and Membership (2005)

TABLE 1 Domains and intensities of transnational rights and membership

Domains	Intensities	
	Thick	Thin
Rights vis-à-vis public authorities	Full cross-border political standing, equal political and civil rights (including migrant rights in host societies and/or in home societies)	Recognition of basic human rights, regardless of citizenship status
Membership rights in a supranational public body, such as the European Union	Membership rights in a supranational public body, such as the European Union	Recognition of subnational rights for migrants (e.g., drivers' licenses, police acceptance of consular IDs, noncitizen voting rights for local government)
		Nominal standing and voice, including the right to self-representation in international forums—the right to be heard, but not necessarily listened to (e.g., International Criminal Court, World Bank Inspection Panel, NAFTA labor and environmental commissions)
Societal membership	Full membership in a civic or political community that is rooted in more than one state, or in more than one nation within a state, usually based on shared cultures (nationality, ethnicity, religion and/or language)	Shared political ideals and/or ideologies (e.g., democracy, transparency, accountability, gender and racial equality, environmental sustainability, peace, national self-determination)
	Clear minimum conditions for membership in a cross-border political community, with explicit rights and responsibilities	Mutual affinity, shared targets, joint action