

WEAKENING CITIZENSHIP

Under Laws that Allow Citizenship Deprivation on National Security
Grounds

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Introduction

In the broad class of what we might call associational ethics – the ethics of life in associations and within social relationships that extend beyond relations among intimates – we find relations between citizens. Other members of the class of associational ethics include the ethics of larger social and economic collectivities, such as corporations and social movements. This area has been much less studied than the ethics of family and friendship, on one hand, and the classical concerns of political justice such as the state, human rights, and international relations, on the other. This may be at the root of the uncertainties that at times afflict thinking about such meso-level structures like citizenship. Hence, the interest contemporary political philosophy reserves for citizenship policy: Citizenship¹ typically regards associative obligations, i.e., in Dworkin's terms, "the special responsibilities social practice attaches to membership in some biological or social group, like the responsibilities of family or friends or neighbours" (Dworkin, 1986, p. 196). Such responsibilities are most often content-dependent: one does not owe one's neighbour the same behaviour as one's colleague or co-nationals.

In relation to the particular practice of citizenship policy that this text focuses on, namely citizenship deprivation on national security grounds, a question raised concerns what citizens may do to their fellow nationals: May they inflict deprivation of citizenship? Under which conditions? It is not merely a question of what justice requires us to do in our relations to others in general, but what we owe to those towards whom we have special obligations of the particular kind that citizenship concerns. While justice may require that we treat the deprived, former co-citizens in ways respectful of their human rights (for instance, by not denying them a general right to nationality), special obligations may require more (for instance, not denying them the right to nationality in this particular polity). It may require that we resist designing a deprivation policy in ways that would weaken the very bond, citizenship, that is constitutive of the special obligations we may owe one another as members of a given polity. It may, e.g., give

¹ Citizenship, or nationality, refers to the legal status of individuals who enjoy full membership in a political community. It represents a relationship that reflects a significant link between those members and their political community. This status is typically associated with a bundle of rights, and duties. Thus, being a citizen of a given state implies a set of obligations on the part of the state towards its citizens, including the state's obligation to protect its citizens also when they are abroad, as well as a set of rights of the state to require citizens to meet certain obligations.

rise to an obligation not to weaken the bond of citizenship for those who get to keep it, even under the assumption that no harm is made to those who lose it.

Therefore, a law imposing deprivation that does not harm citizenship itself may be consistent with our special obligations as citizens. But such a law that would jeopardize our joint collective bond, say by weakening it, would be at odds with what we owe one another *qua* members of this collective, even before other concerns are taken into account. There are voices in the contemporary political philosophical debate who fear that deprivation on national security grounds would not only be a breach of justice generally but that it would breach the obligations we have towards our fellow citizens. To find out if this is so, we need to ask: does the deprivation policy weaken citizenship?

This weakening may be understood in the sense that the policy would change what citizenship means. As I will explain later, it might be understood in terms of detaching the concept of citizenship from some, or all, of its main components, namely being attached to exclusive rights, having distinctive features (security and equality), or reflecting a significant relationship with the state. All these components are parts of what citizenship means and reducing or taking away some of them means that the conception of citizenship would become thinner under the deprivation laws. In this sense, the question would be of a conceptual nature; it would reflect a concern with whether the policy changes the concept of citizenship. However, even if the policy does not change the concept of citizenship, it might still weaken it (in practice at least) because it might imply that the governments are allowed to treat the citizens as if their citizenship is attached to no rights, insecure, unequal, or reflects no significant relationship. From this perspective, the question would be of an empirical nature because it is concerned with whether the negative impact on citizenship is implied by the way in which the policy is practiced. It is notable that most of the suggested arguments for the policy deny that the policy has a negative impact on the concept of citizenship. More importantly, my assessment of the arguments against the policy will rely heavily on how the policy is being practiced and whether there is enough evidence to support the claim that this practice, in its best current version, de facto weakens citizenship as most scholars view it, which gives a heavier weight to the empirical approach in finding an answer to this question.

In this essay, I examine the position taken by some scholars who have given an affirmative answer to this question against the backdrop of the Belgian legislation, so as to establish

whether they are right in fearing a dismantlement of the legal status of citizenship in the version we have grown accustomed to associating with the modern democratic state. More specifically, I examine whether there is indirect jeopardy of the human right to nationality at play in the deprivation of citizenship on grounds of national security. I will consider that critics are justified in fearing dismantlement of citizenship if there is indirect jeopardy of the right to nationality, and vice versa unjustified if no such jeopardy is at hand.

To do so, I proceed like follows: I provide a quick review of the practice of citizenship deprivation on national security grounds before I move to delineate an appropriate policy object to clarify the object of disagreement (namely the Belgian deprivation policy); I delimit the disagreement proper (namely, over the weakening of citizenship) so as not to confuse it with closely connected but different disagreements (e.g. effects on international relations or democracy); fourthly, I offer three different readings of what it means to say that we are witnessing a form of weakening of citizenship; fifthly, I list the arguments that have been made in favour of the idea that citizenship would be weakening, indicating which of the aforementioned three readings each argument relies on; and finally, I discuss how convincing (or not) these different arguments are, illustrating, when appropriate, the counter-arguments that have been made in the literature. This allows me, in the conclusion, to say whether the Belgian policy can be held to lead to a form of weakened citizenship.

The Practice Under Examination

A growing trend in contemporary citizenship policy is deprivation of nationality on national security grounds: a national can involuntarily lose his or her nationality because the state considers her or him to pose a threat to national security, most often in the context of the fight against terrorism. A heated normative debate over this practice has followed. This essay examines the quality of the arguments of the respective sides in this debate, against the backdrop of a real-world example of such a policy.

During the second half of the 20th century, the tendency to strengthen citizenship grew gradually. After WWII, the tendency to grant more rights to citizens and develop human rights strengthened globally. Deprivation for national security reasons became less popular. Rights were granted to citizens who typically retained their nationality regardless of their conduct. But after the September 11 attacks in the United States (2001) and other terrorist attacks in Europe,

many states have passed legislation that allows deprivation on such grounds. Therefore, theorists have argued that citizenship as an unconditional status is facing a setback. Anti-terrorism legislation making it easier for governments to deprive individuals of their citizenship for misconduct has challenged the view of citizenship as secure and unconditional, making it instead conditional upon the conduct of the person who acquires it.

To understand the phenomenon that this essay focuses on it is important to emphasize the difference between loss and deprivation of citizenship. Citizenship loss can be either voluntary or involuntary. Voluntary loss typically occurs upon an explicit renunciation of citizenship. As for the involuntary loss, the individual does not choose to lose her citizenship rather it is the state that deprives her of the status. Deprivation and citizenship loss cannot be used interchangeably.² However, this essay is only interested in citizenship deprivation on a specific ground: posing threat to national security.³

To which extent states are justified in depriving citizens of their nationality may depend on many factors. *Prima facie*, among such potential legitimacy influencing factors we find whether one has multiple citizenships or only one nationality, whether one is resident in the country or has habitual dwelling there, whether one has reached the age of majority in the eyes of the law, whether the state's ideology and/or generalized legitimacy setting is one that is respectful or purports to be respectful of the individual's fundamental rights and rule of law practices, whether the individual in question is present on the territory or not, etc. All these factors, and possibly others, should be taken into consideration when discussing deprivation generally. But here I am only interested in one form this deprivation may take.

² Other terms like revocation and denationalization can be used to deliver the same meaning, whereas denaturalization refers to depriving those who acquired their nationality by naturalization and not by birth (Bauböck & Paskalev, 2015, p. 4).

³ There are several other grounds for deprivation, such as the flawed acquisition of citizenship, long residence abroad, failure to renounce second citizenship in cases of acquisition of nationality in a country that bans multiple nationality, or acquisition of second citizenship in cases where multiple nationality is prohibited. Whether states are justified in depriving citizens on such grounds is a complicated question. However, it is reasonable to accept that some of the mentioned grounds for deprivation seem more solid than others, like in the case of a fraudulent acquisition, and states might thus be (more or less) justified in depriving individuals of their nationality.

Among the different grounds of deprivation, depriving individuals of their citizenship on the ground of protecting national security appears to be one of the most controversial, which is why I have chosen this form. The basic assumption this form relies on is not questioned: The state is responsible for establishing and implementing security policies and is also responsible for determining who poses threat. The definition given by Makinda of ‘security’ in this context is “[t]he preservation of the norms, rules, institutions, and values of society [...] It also covers the protection of people from military and non-military threats, and the guarantee of basic needs and fundamental freedom” (Makinda, 1998, p. 282). Here I take an individual who “poses threat to national security” is the one who is designated as such by the state. This typically includes persons found guilty of committing acts that threaten the state’s security, stability, and interests, or have the intention to commit such acts, which may include espionage, terrorism, and treason among other possible acts.⁴

In most states that have passed legislation allowing deprivation on national security grounds, the reasons given for adopting these legislations focus on their effectiveness in protecting national security, most often with the promise that deprivation will not affect the deprived individuals’ access to their fundamental rights. Whereas in several states, many of these promises have not been kept, other states, like Belgium, have shown a greater commitment to keeping them. This commitment has not been sufficient to allay the concern that this kind of legislation, even though it might not directly affect many rights, could indirectly jeopardize the right to citizenship and weaken citizenship. This is the view of many scholars opposing the policy. They express concerns about the negative impact of this practice on the very conception of citizenship as it appears in the constitutional bedrock of the liberal democratic state. If their concerns are correct, the policy may jeopardize the special obligations we owe one another as citizens.

Problem - Setting

The policy of depriving nationals of citizenship on grounds of protecting national security is at the centre of a heated debate. Scholars opposing deprivation on this ground express the concern that the practice may violate fundamental human rights and weaken citizenship itself. This claim may be interpreted as a concern (1) that depriving of nationality individuals who commit

⁴ I will not deal with the intricate issues of whether and how these matters can be established in a court of law.

acts that threaten national security makes retaining citizenship conditional upon the conduct of its holder; and (2) that this will make citizenship a less secure status since there is a risk that its holder may lose the status against her will. On the other hand, scholars supporting the policy contend that this deprivation is justified only insofar human rights are respected. They commonly refer to one right in particular which is the right to nationality. Art. 15 of the 1948 Universal Declaration of Human Rights (UDHR) states that (1) Everyone has the right to a nationality, (2) No one shall be arbitrarily deprived of his nationality. The main concern related to this article is that depriving individuals on the ground of protecting national security might render the deprived stateless, which would jeopardize their human right to nationality and may also amount to arbitrary deprivation.⁵

All parties to the debate, therefore, agree that violating Art. 15 would not be justified. Hence, there is agreement about a necessary condition that should be satisfied when depriving someone of citizenship: i.e., not to put the deprived at the risk of becoming stateless. A common way to address this concern is to delimit the scope of application of the law by inflicting deprivation exclusively on citizens having multiple nationality.

Most scholars who support deprivation on national security grounds also agree that it requires strong procedural safeguards against statelessness, such as fair trial conditions and due process, which may imply that the decision should be adjudicated by a court and not by an agency belonging to the branch of the executive power. This requirement is rarely fulfilled in laws that allow deprivation on national security grounds, with the notable exception of the Belgian case.

The *Belgian Nationality Code*, modified by the *Act of 2012*, enables deprivation of nationality only for a naturalized person in case the person is found guilty of a terrorist crime and sentenced to at least five years of imprisonment (Wautelet, 2017).⁶ Today, the Belgian law permits deprivation of citizenship only for naturalized nationals who possess another nationality at the

⁵ ‘Arbitrary deprivation’ in Art. 15(2) means that the loss of status did not occur through voluntary renunciation, nor could be challenged in court.

⁶ The Act initially allowed deprivation only for nationals who had acquired their citizenship less than ten years before the terrorist acts were committed. This requirement was altered in 2015: the Belgian law now allows deprivation to be inflicted on naturalized citizens who are sentenced to more than five years, regardless of when they acquired their citizenship.

time of deprivation. In this regard, it is not different from most other laws on deprivation on national security grounds in democratic states. But two factors make the Belgian law one of few laws that provide strong procedural safeguards against statelessness: (1) it allocates the power to deprive in the judiciary branch, namely a court, instead of in the executive branch; and (2) the deprivation decision is effective only after exhausting all legal remedies.

The Belgian law is formulated in such a way that, beyond ensuring the criterion of being applied only to individuals having multiple nationality and guaranteeing ways to challenge the deprivation decision, it also ensures the separation of powers in that the executive branch of government, charged with the protection of national security, is not the organ set to decide over whether the evidence against the person being deprived is sufficient to warrant the application of the law on deprivation on national security grounds. It is also worth mentioning that this law takes the proportionality between the committed act and the punishment into consideration as it ensures that deprivation is off the table if the convict is sentenced to less than five years of imprisonment, and, finally, it also ensures that the deprivation has ground in the law and is not the fruit of discretionary power of the administration. The Belgian law also gives the judge the discretionary power to not order citizenship deprivation if she believes that it would imply a violation of the convict's fundamental rights. The Belgian law thus exemplifies well laws that scholars may have in mind when they defend deprivation on the ground of protecting national security, yet guard against the perils of statelessness and lack of procedural guarantees. The Belgian law is not likely to subject anyone to the risk of statelessness, which means that it would not directly violate the right to nationality or deprive a person arbitrarily of nationality.

At least in this version, citizenship deprivation on national security grounds would be permissible, according to the scholars supporting the policy. This view is not shared by the scholars opposing the practice. For them, citizenship deprivation on the grounds of protecting national security, even in Belgium since 2015 is still impermissible since it indirectly jeopardizes the right to nationality: it would – or so they argue – do so in that it weakens citizenship by making it insecure and conditional upon the conduct of its holder. This affects citizenship for all, including those who have not engaged in unlawful conduct. Therefore, it may constitute a breach of what we as citizens owe one another as members of the same polity.

Whereas in much of the debate, participants seem to be refereeing to very different policies and also seem to be talking past each other on several points, there seems to be a genuine

disagreement here between the proponents and the opponents of nationality deprivation on national security grounds: the Belgian case, which lives up to several desiderata of such laws, offers a case to meaningfully test the quality of the arguments of each side of the debate.

Delimiting the arguments about the relevant type of policy object

There are many arguments put forward by scholars who oppose deprivation on the ground of protecting national security. Some arguments express categorical rejection of the notion of deprivation on such a ground, whereas others seem to be directed at specific aspects of laws that may seem to be violating some important interest or human right, including the right to nationality.

But, as we have seen, the scholars who defend deprivation on this ground would not accept just any version of this policy, especially not the versions that directly jeopardize the right to nationality or any other fundamental rights. This delimits the scope of the discussion to regard only particular types of policy objects, like the Belgian Nationality Code which does not attract criticism based on violating human rights or international law.

Therefore, I can exclude from purview arguments against deprivation on national security grounds that claim it would be impermissible because it is incompatible with human rights and/or international law since it *directly* jeopardizes the right to nationality or implies arbitrariness: These views are irrelevant for discussing laws that do provide strong safeguards against both statelessness and arbitrariness. I exclude such claims because they deal with the wrong type of object: laws on deprivation on national security grounds that lack safeguards against statelessness and arbitrariness. Instead, I focus on claims that are about the policy object of disagreement proper, namely laws that present the safeguards of the Belgian case.

Citizenship Weakening as Indirect Jeopardy of the Right to Citizenship

There is a set of arguments that favours the claim that the practice would weaken citizenship and indirectly jeopardize the right to citizenship. The concern is common among scholars opposing the policy although they use different wordings for it. I have adopted the formulation of Audrey Macklin who uses “weakening citizenship” to express this concern when she states that the policy should be rejected because “citizenship revocation weakens citizenship itself”

(2015, p. 1). Frequently made, the claim is that this type of deprivation is unjustified, no matter the strength of procedural safeguards surrounding denationalization.⁷ This claim is important because it is not meant to criticize any specific law, nor is it concerned with the consequences of the policy on international relations. Rather than rejecting how it is being practiced, it rejects deprivation on national security grounds as such. Even excluding a direct violation of the right to nationality, an indirect violation of the right to nationality could still occur, which would be one way in which citizenship can be weakened through the practice I am discussing.

The arguments about weakening of citizenship typically do not offer any explicit description of how the right to nationality would be indirectly jeopardized. Therefore, I will need to make an effort to fill the gaps. This is what I do in the following section. I have identified six arguments based on three readings of how citizenship would be weakened. Let me present these: the first is weakening the exclusive right/s attached to citizenship, the second is stripping citizenship of some of its main features, namely, security and equality, and the third is concerned with weakening the right to citizenship described in the UNDHR.

First Reading of ‘Weakened Citizenship’

The first understanding of weakening citizenship identifies the weakening in relation to the exclusive right/s typically attached to the status. In its general form, *the argument from weakened rights* claims that *the policy weakens citizenship in that it strips it of one of its main contents, namely rights typically attributed to citizens as such*. The general idea is that the protection that should be provided through citizenship is held to extend also to rights typically associated with it. That is, not only would citizenship be a well-protected legal status as such, but this status would, if not always at least typically, come with a number of rights that should be protected too. Admittedly, with the development of human rights in the 20th century, there has been a growing trend of detaching fundamental rights from citizenship, but there are two rights that remain typically attached to citizenship; the right to vote, and the right to return and stay in the state. Many social rights seem to be contingent on the latter, as having access to work, education, or health care services, for instance, would require lawful territorial presence.

⁷ In addition to Macklin and Bauböck, this claim has been made (directly or indirectly) by other scholars like Patti T Lenard, Iseult Honohan, Vesco Paskalev, and Matthew J Gibney.

One could imagine that this general argument, according to which citizenship would be weakened because emptied of its contents, would be relevant in relation to each right typically associated with citizenship. But it has been put forward mostly in relation to the right to return/remain on the territory, the reason being, as Macklin puts it: “The exercise of virtually all rights depends on territorial presence within the state, and only citizens have an unqualified right to enter and remain on state territory. So once stripped of the right to enter and remain in the state, enforcement means that one is effectively deprived of all the other rights that depend (de jure or de facto) on territorial presence” (Macklin, 2015, p. 2). Therefore, we should say that the *argument from weakened right to territorial presence* articulates the argument from weakened rights in the following claim: *The policy weakens citizenship in that it strips it of one of its main contents, namely the exclusive right of citizens to return and remain in their state of nationality.*⁸

From this perspective, the policy has an unclear purpose other than providing the state with a legal way to deprive wrongdoers of their right to return and reside in its territories. But, if this right can be restricted, the citizenship to which this right is attached is emptied or meaningless, because this is one of the few rights still exclusively reserved for citizens, and because depriving someone of this right means hindering access to other rights that become actionable once legally present in the state. Since many social rights are granted to residents (regardless of nationality), it is reasonable to say that what distinguishes a citizen from a permanent resident is that the latter can always be deprived of residence rights, in virtue of which (s)he enjoys the other rights. So, if citizens too can be deported, being a citizen is not much different from being a legal resident (a.k.a. denizen): we would then be treating the in-group and the out-group identically which violates the special obligations we may have towards one another as citizens, not just as persons in general. Some scholars, like Patti Lenard, go further in stressing the significance of the right to return and reside by considering the right to ‘secure residence’ as “the foundation of the right of citizenship” (Lenard, 2018, p. 4). So, it would not matter how

⁸ To understand how the policy deprives citizens of their right to return and reside, it might be useful to refer to Macklin’s description of how the policy operates: “deporting one’s own citizens is exile, and exile extinguishes a singular right of citizenship, namely the right to enter and to remain. Citizenship revocation circumvents that problem by introducing the two-step exile: first, strip citizenship; second, deport the newly minted alien” (Macklin, 2015, p. 1).

many other rights citizenship guarantees; if the right to reside in the state of nationality is not secured, citizenship would be utterly weak, possibly meaningless.

Second Reading of ‘Weakened Citizenship’

The second reading holds that deprivation would weaken citizenship by emptying it of its core elements. The scholars who share this position typically start by identifying the features that characterize citizenship (Bauböck & Paskalev, 2015; Gibney, 2013; Lenard, 2016 & 2018; Macklin, 2015; van Waas & Jaghai, 2018). Two features are typically mentioned: security and equality of status. Concerning the first, for instance, Macklin thinks “the defining feature of contemporary citizenship is being secure status” (2015, p.1); for Bauböck, citizenship also has a ‘sticky quality’: “it does not have an expiry date; it can be passed on to subsequent generations and it can be carried abroad and increasingly also exercised from outside the state territory” (2015, p. 27). Concerning the second, citizenship would offer the same status to all its holders regardless of the method of acquisition. The general idea is that if security and equality of status would constitute citizenship, then undermining one, or both, of these features would weaken it. Let me explain what these two core features of citizenship are so as to present these arguments.

Arguments from revocability or insecurity of status

‘Irrevocability’, ‘permanence’, ‘stability’, or ‘well-protectiveness’ are terms used by scholars to emphasize different aspects of the security that would characterize citizenship (see Bauböck & Paskalev, 2015; Gibney, 2013; Lenard, 2016 & 2018; Macklin, 2015; van Waas & Jaghai, 2018). As I understand it, ‘security’ of status is coterminous with that sticky quality described by Bauböck. Citizenship is normally an irrevocable albeit renounceable status (Lenard, 2018, p.11). By making the status revocable, it would become less secure, hence weak.

One reason why citizenship needs to be stable in this sense is that it guarantees the state’s constitutional stability through time: citizenship is “an entitlement of the sovereign citizen, whose status as such cannot be altered by the government” (Bauböck & Paskalev, 2015, p. 2). Protection against citizenship revocation is justified with reference to the fact that citizenship should not depend on “the government of the day and its political goals” (Bauböck & Paskalev, 2015, p 2). In relation to this view, citizenship is sometimes perceived to have an intrinsic

value: the interest should be in membership itself rather than using the status as means to an end. This membership is what defines a political community seen as a collective of members. Granting states extensive power to revoke this membership would not only change the nature of the membership but also the identity of the collective (e.g., the form of government).

The general argument from revocability concerns the risk of making citizenship a less secure status and can be roughly formulated as follows: *The policy weakens citizenship in that it strips it of one of its defining characteristics, namely security, by making it revocable.* There are at least three versions of this general argument that I call the ‘instrumentalization argument’, the ‘state’s responsibility argument’, and the ‘conditionality argument’.

Instrumentalization Argument, the first variant of the argument from revocability

The *instrumentalization argument* affirms that *the policy discussed weakens citizenship (in the just aforementioned sense) by making it a tool or instrument in the hand of the state to serve policy goals other than safeguarding the identity of the constitutional setting and/or form of government.* This point is made, for instance, by Van Waas and Jaghai from whom “citizenship stripping becomes an instrument that enables states to treat nationality policy as complementary to immigration laws, to continue to control inclusion and exclusion of citizens with a migrant background” (2018, p. 418). To understand this argument some background knowledge is important: citizenship was long seen as a value desirable in itself, not for the advantages it might give access to.⁹ It was assumed that both states and individuals should be interested in citizenship as part of their interest in the national identity that citizenship reflects, and to maintain the stability of the state against radical political changes that might affect the constitutional setting or form of government. Therefore, it has generally been assumed that states should not be granted extended (unchecked) powers in matters related to nationality laws to limit their ability to make major changes that may not be in the best interest of their citizenry. It was also uncommon for individuals to have their own plans in such matters: individuals usually did not get to decide what nationality would serve their personal interests better and

⁹ According to Christian Joppke, this is no longer the case given the recent trend of ‘lightening of citizenship’ by attaching it to fewer exclusive rights and the view that it does not necessarily reflect the identity of the state since “nation-state identities are increasingly liberal and universalistic” (Joppke, 2021, p. 1). This lightening of citizenship would ‘legitimize’ its pure instrumental use as Joppke puts it (2019, p. 871).

acquire or renounce nationalities accordingly. One reason why instrumental use of nationality was limited was the traditional ban on multiple citizenship, which was, in turn, most often grounded in the need to ensure drafting for military service in one state only. Today, however, according to the instrumentalization argument's version of the argument from revocability, the state's extended power to revoke citizenship would imply its ability to use nationality laws as a tool to serve political goals, which would instrumentalize citizenship, no longer seen as a value in itself, and make it less secure because the state's interest would no longer be in protecting the legal status from change, but instead in the varying goals that might be achieved through instrumental use of citizenship policy.

The State's Responsibility Argument, the second variant of the argument from revocability

The second argument, which I call the state's responsibility argument, comes in two versions: that put forth by Bauböck and that suggested by Honohan. In the first version, the argument claims that *the policy weakens citizenship, making it insecure/revocable, because it allows the state to shun its duty to protect its citizens*. Bauböck affirms that "citizenship is a mechanism for assigning responsibility for individuals to states. [...] If states can abuse their powers to confer citizenship by naturalising foreigners who lack a genuine connection, they can also do so by denationalising their citizens in order to shift responsibility for them to another state. This is exactly what happens when Western countries deprive terrorist suspects of their citizenship" (Bauböck, 2015, p. 28). Can states discharge themselves of their responsibility towards their own citizens in cases where another state shares this responsibility? States are responsible for their citizens, including protecting them by holding lawbreakers accountable. By cutting the legal bond with the wrongdoers, the state would – according to this argument – shun (i) its responsibility to protect certain citizens, and (ii) to restore justice by punishing the illicit acts committed by these "bad citizens".

In the second version of this argument, Honohan views state responsibility from the perspective of the non-domination principle.¹⁰ Her version of *the state's responsibility argument* claims

¹⁰ Domination is understood here as being vulnerable to the arbitrary power exercised by other agents, or a systematic subjection to the threat of interference by others (Honohan, 2019, also McCammon, 2018). This idea comes from the republican tradition that views the freedom enjoyed by citizens as non-domination according to Philip Pettit (2003). Non-domination is thus where individuals are not subjected to arbitrary power. According to Honohan, citizenship protects individuals from relations of domination and hence its revocation might put the

that *the policy weakens citizenship, making the status insecure/revocable, because it allows the state to render some citizens vulnerable to domination and make citizens more like subjects*. Honohan explains her view by stating that “losing citizenship removes a person’s security against many kinds of state interference, exposes them to an increased risk of private domination by other agents, and constitutes an exercise of arbitrary power, imposing a new and unequal status of alien, and reducing the security of citizenship itself” (Honohan, 2020, p. 355). In Honohan’s view, the policy is impermissible because of two different reasons: (i) it makes the deprived vulnerable to domination, and (ii) it makes citizens who live under laws that grant the state “broad powers of revocation” more like subjects. This would include all citizens regardless of whether their citizenship is revocable because citizenship is “a common good that can only be enjoyed securely if enjoyed by all in the same ‘vulnerability’ group as native and naturalised, single and dual citizens are subject to a common jurisdiction” (Honohan, 2020, pp. 366-367).

The Conditionality Argument, the last variant of the argument from revocability

Finally, the general worry that the policy would make citizenship less secure is also articulated in the *conditionality argument: The policy weakens citizenship, making it insecure/revocable, by rendering it conditional on good behaviour in ways it was not before*. This argument against the policy considers the insecurity of citizenship as a direct result of it being conditional on good behaviour. Macklin explains how conditionality on good behaviour weakens citizenship: “The defining feature of contemporary legal citizenship is that it is secure. Making legal citizenship contingent on performance demotes citizenship to another category of permanent residence. Citizenship revocation thus weakens citizenship itself” (Macklin, 2015, p. 1).¹¹

This argument expresses a concern related to a possible ‘regression’ of citizenship. Prior to the introduction of the legislations depriving nationals of their citizenship for acts against national

deprived person at the risk of being dominated, either by other states or by private agents, including the state that has revoked its citizenship in case it fails to deport her from its territory. Honohan’s view is premised on the assumption that citizenship is geared to ensure protection for its holder against domination (Honohan, 2020, p. 366).

¹¹ The idea is frequently mentioned by many other scholars as well. E.g., Van Waas & Jaghai who claim that “if their [the naturalized citizens] continuing-to-belong is contingent on behaviour, naturalisation serves little purpose and becomes indistinguishable from a form of conditional residence status” (2018, p. 427).

security, wrongdoers could not be deprived of their citizenship even when they committed a severe crime.¹² While good behaviour is often required for naturalization, it was not considered a condition for retaining citizenship. But in so far as posing threat to national security counts as misconduct, allowing deprivation to be inflicted on individuals on this ground implies that retaining citizenship has become conditional on the conduct of its holder. This is considered at odds with the view that citizenship should be a secure status that cannot be revoked unless its holder voluntarily chooses to renounce it.

It should be stressed that the ‘good behaviour’ commonly referred to is understood as ‘not committing certain kinds of criminal acts’. Notice that the argument is not concerned with conditionality upon non-criminal acts that might result in loss of citizenship in some states. For instance, citizenship loss may occur upon doing certain actions such as acquiring another nationality under laws that do not tolerate dual nationality or residing abroad for an extended time. In these cases, citizenship is lost automatically (a.k.a. lapse of status), and the lapse is not considered a punishment, which makes it different from citizenship deprivation based on committing criminal acts, in which case the loss of citizenship is seen as an ancillary penalty to the sanctions imposed on the offender because of the illicit act itself (most typically incarceration).¹³ Those who put forward the ‘conditionality argument’ make it clear that their argument is concerned with making citizenship conditional *on good behaviour* (in the sense of not committing a specific kind of criminal acts), rather than being conditional on other factors, like maintaining the genuine link.¹⁴

¹² E.g., the US supreme court in 1958, while referring to Arendt’s famous definition of citizenship as the ‘right to have rights’, struck down legislation that deprived US citizens of nationality because they had deserted during WWII.

¹³ An ancillary penalty is a sanction imposed in addition to the punishment an offender receives, such as, in many criminal law cases, an injunction prohibiting the offender from approaching the victim of the offence. Paskalev for instance notes that this sort of citizenship deprivation is a ‘redundant punishment’ (2015, p.16) because the convicted person will have to serve his time in prison anyway. The function of the deprivation as an ancillary penalty may depend on the strong belief that persons convicted of terrorism would be likely to continue posing threat after being released and therefore, they must be permanently removed from the community. This understanding may imply an unwillingness to think that persons convicted of terrorism can be rehabilitated.

¹⁴ Under the assumption that the nationality bond is to be upheld where there are genuine ties between the individual and the state, one could argue that these ties may be severed both by residing abroad for an extended

The conditionality argument is also compatible with a wider reading of ‘good behaviour’ than the aforementioned. The argument would be compatible with views suggesting that the policy makes citizenship conditional *on sharing certain values*,¹⁵ or *willingness to remain a citizen*,¹⁶ for which ‘good behaviour’ in the form of abstention from committing certain crimes would be a proxy. In particular, it has been suggested that the good behaviour that naturalized citizens¹⁷ are required to demonstrate would be too demanding: they would be required to

period and by committing crimes against the state. Such an argument would erase the difference between the non-criminal cases of lapse of nationality and the criminal cases of the policy we are discussing. One may then say that if the state is justified in depriving of citizenship naturalized citizens who live abroad for an extended time, then it would be justified in depriving those who pose threat to national security as well since both would imply loss of ties with the state. This line of argument would however lead to another type of argument, that we can call the ‘loss of genuine link argument’, according to which deprivation of citizenship in general would be permissible where there is no genuine link. One could say that this way of reasoning has some connection to the conditionality argument that I am discussing in the sense that citizenship deprivation in cases related to national security makes citizenship conditional on having a genuine link with the state, which is occasionally taken to be a justified ground for imposing lapse of citizenship. The reason why I have excluded this line of argument is that the conditionality argument is not about whether citizenship becomes conditional on just any factor, but only on ‘good behaviour’. For this line of argument, see Paskalev, 2015, p. 16. It is worth mentioning however that the “genuine link” was originally used in the judgment of the International Court of Justice in the *Nottebohm* case in 1955. The court used the term to describe the “strong factual ties” that need to be available for nationality to be effective. These ties can be determined by considering several factors like the place of habitual residence, family ties, the person’s centre of interests, participation in public life, etc. It has been even suggested that the circumstances of birth can also be considered among these factors (Bauböck, 2019, p.6)

¹⁵ The “shared values” argument presupposes that citizen need to share some fundamental values; hence, expressing rejection of some or all these values would de facto make the concerned a non-citizen. Therefore, it is the monstrosity of the committed act that would make the deprived non-citizens to start with. If this is the way to read the conditionality argument, citizenship would still be conditional on good behaviour, i.e. omission from certain behaviour.

¹⁶ The tacit renunciation argument is that the renunciation of citizenship would not be explicit but inferred from the behaviour of the deprived. So, certain acts would communicate a willingness to renounce citizenship. This view does not change the fact that it is the acts, and not what the person’s mental state, that triggers citizenship deprivation.

¹⁷ Notice that the view according to which naturalized and citizen-by-birth would be held to two different standards when it comes to ‘good behaviour’ is often related to another argument proposed to support the policy of citizenship deprivation on national security grounds, namely the ‘contract argument’ that I only mention here because of its affinity with the conditionality argument. According to the ‘contract argument’, citizenship acquired

constantly show that they deserve to be citizens and the kind of behaviour expected from them would make a naturalized person a kind of ‘super-citizen’.¹⁸ The requirement for some citizens, namely naturalized, to behave like super-citizens can be seen as a result of making citizenship conditional on good behaviour, and thereby insecure.¹⁹ Nevertheless, it can also be viewed in another light: the requirement that some be held to a different standard than others is a problem not only for the security of the status but also for the equality of status that citizens share.

The Erosion of the Equality of Status Argument

by naturalization would be different from citizenship acquired by birth; the latter ought not be conditional, but the former should be so because it would rely on a contract between the naturalized and the state. Some who share this view explain their view by stressing that citizenship is akin to a contract, if not to all citizens, then at least to the immigrants who were born without it (Joppke, 2015, p.12) because they entered this relationship with the state willingly, unlike citizens-by-birth. Regardless of the plausibility of the assumption that all naturalizers chose to enter the relationship with that state of their citizenship (e.g. it is unclear whether minor naturalizers can be said to have naturalized willingly), the ‘contract’ that this view refers to would be between naturalized citizens and the state so that contract breach on behalf of the naturalized would justify the state’s right to withdraw from the contract. Gibney, for example, refers to the idea presented by the British government at the end of WWI: “The British government, for example, presented its case for measures to strip citizenship from naturalized Germans in 1918 by arguing that the naturalized, unlike the native-born, held their citizenship by contract, the terms of which could be violated and thus rendered void” (Gibney 2013, p. 653). If citizenship is akin to a contract, then a national who refuses its terms or acts in a way that expresses this refusal should be “asked to either sign up to the contract or leave” (Miller, 2016, p. 267). I am not sure what Miller exactly means by “sign up to the contract”, should this person start behaving in a way that expresses commitment to the terms of this contract? If this was the case, then this contractual view is not different from viewing citizenship as conditional on good behaviour in the sense mentioned above.

¹⁸ Otukoya, for instance, notices that “the requirement for naturalised citizens to demonstrate an intention to retain their citizenship, with the possibility of losing that citizenship if this is not done, is a demand for ‘supercitizen’ qualities, which distinguishes naturalised citizens from other citizens” (Otukoya, 2018, p. 8).

¹⁹ According to an HRW report, there is a counterterrorism measure in Belgium that “provides for prison sentences of five to 10 years for indirect incitement of a terrorist act through a disseminated message, regardless of whether it created a risk that the act will be committed” (See <https://www.hrw.org/news/2016/11/03/belgium-response-attacks-raises-rights-concerns>). We may infer from this that, since the law allows depriving a person who received a prison sentence for more than five years in a case related to terrorism, one might be deprived of citizenship if one said or wrote the wrong kind of messages on social media for instance. This, I think, exemplifies the deep concern about the good behaviour expected by naturalized citizens.

Other than offering a secure status, citizenship offers an identical status for all its holders within a given polity. Citizenship offers the same rights and imposes the same duties on all citizens *qua* citizens. This equality should apply to the rules of loss too.

The *erosion of the equality of status argument* affirms that *the policy weakens citizenship in that it strips it of one of its defining characteristics, namely equality, by making it revocable for some citizens and irrevocable for others, creating two classes of citizens and entailing unequal treatment*. To understand this argument, we need to bear in mind that the policy is not applicable to all citizens but targets citizens with multiple nationality or naturalized citizens with multiple nationality, to avoid statelessness. As a result, only these subcategories of citizens can be subjected to deprivation, while citizens with only one nationality and/or having acquired their only nationality by naturalization remain protected against being deprived. This suggests that the policy would risk creating second-class citizenship for ‘deprivable’ citizens. For Van Waas & Jaghai, “citizenship becomes a less secure status for specific groups of citizens. [...] Threatening specific groups with denationalisation measures creates a divide between those who are deemed ‘real’ citizens and ‘others’, underpinning a divide between ‘native citizens’ and those with a migratory background and a less equal status (2018, p. 418). Therefore, a policy that allows revocation of citizenship only for some (e.g., according to the method of acquisition or availability of multiple nationalities) would violate the principle according to which all citizens are to be treated equally. Violation of this basic equality among members of the polity would make citizenship unworthy of its name, as Gibney puts it: “A deeper objection is that the status of citizenship, as the grounding principle of state membership, simply ought to be a status which admits of no gradations. Citizenship worth its name entails equal standing amongst the members of political community” (2013, p. 655).

Non-deprivable citizens would be *indirectly* affected as the policy has an impact on the whole community by making distinctions between citizens (van Waas & Jaghai, 2018, p. 418). One way in which such distinction is made concerns equality of punishment for equal crime. Two citizens convicted for the same terrorist act in the same circumstances will get two different sets of sanctions according to whether they have another nationality and/or the way they acquired citizenship (by birth or by naturalization). In this case, the citizen who is non-deprivable will receive one punishment (say, a number of years of incarceration) whereas the deprivable person will receive this punishment as well as permanent ancillary penalties:

deprivation of citizenship, and consequent deportation after serving time in prison, as well as loss of all other rights connected to citizenship and residence in the country.

Furthermore, non-deprivable citizens could also be *directly* affected in so far as they maintain social relationships with deprivable citizens. Notice that deprivable persons will have social ties to other citizens who will also be affected by the policy even if their citizenship will not be revoked. For example, a whole family could be affected by the policy, if one of its members is subjected to revocation of citizenship.

A third concern is related to the possibility that the policy may imply indirect discrimination against deprivable citizens of certain ethnic or religious backgrounds (Wautele, 2016, p. 12). The idea is that since the policy is applicable to naturalized citizens and mostly in cases related to terrorism, the segment affected by the policy would, *de facto*, consist of immigrants from Arab or Muslim backgrounds²⁰ (Stasiulis & Ross, 2006).

Some of the common responses to the erosion of the equality of status argument contend that since the deprived persons have another citizenship, the inequality implied by the policy within the polity should not be concerning because the deprived would retain their fundamental rights elsewhere (Miller, 2016, pp. 268-269). Others have suggested that this sort of inequality restores the balance between citizens with more than one nationality (which is considered an advantage since it allows them to have additional passport/s, vote in another polity, etc) and citizens with only one nationality who lack this advantage. Making the former category's citizenship revocable would be an appropriate way to adjust this imbalance in advantages between the two categories of citizens (Lenard, 2016, p. 81). Both views take having another nationality to be sufficient to alleviate the major concern about the impact of this inequality on the political community.

Third reading of 'weakened citizenship'

According to this reading, which relates to Art. 15 UDHR, rendering the deprived stateless is not the only way in which the right to nationality can be violated: this is so because "it matters,

²⁰ Since there is nothing that clearly implies that the policy is meant to target certain ethnicity or religious groups I will not be dealing with the issue of discrimination.

not just whether you have a nationality, but which nationality that is” (van Waas & Jaghai, 2018, p. 414). This reading assumes each citizenship as special or unique. This *uniqueness argument* claims that *the policy weakens citizenship since it denies the uniqueness of the citizenship bond*. The policy could indirectly jeopardize the right to nationality even where statelessness is avoided, as Audrey Macklin has suggested: “the violence of rupturing the link between citizens and state is not negated by possession of citizenship status in another polity, if one conceives of the relationship (whatever its intensity, depth, etc.) between a state and a citizen as singular and unique. On this view, citizenship revocation inflicts an intrinsically grave harm that is separate from (though exacerbated by) the harm of statelessness” (Macklin, 2015, p. 5). The uniqueness argument *à la* Macklin hence affirms that the policy weakens citizenship since it breaks the ‘unique bond’ to the state, whatever this bond consists in because it has inherent a ‘violence of rupture’ that has nothing to do with neither becoming stateless nor the quality or value of the nationality. The violence depends on the involuntary nature of the loss of status.

Macklin’s point is that citizenship is not fungible. Art. 15 UDHR is not explicit about which citizenship one ought not to lose. Some scholars argue that article 15 should be read as implying the right to a particular nationality rather than the right to an unspecified nationality (Macklin, 2015; Spiro, 2015; Bauböck & Paskalev, 2015). The practice that we are discussing can therefore be said to ignore the ‘uniqueness’ of the bond citizens have with their state of nationality (Macklin, 2015, pp. 4-5). This view assumes that the bond the citizens of France have with France is not identical to the bond Germans have with Germany. Viewing citizenship as a legal status that reflects a unique bond entails that citizenship is non-substitutable, in the sense that any given citizenship (say, German nationality) of any given individual (say, Agnès) does not have transitive properties so that it would make no difference whether the citizenship attributed to her would vary (say, become French) or whether the persons to whom a given citizenship is attributed would vary (say, all Icelanders would become Germans). Therefore, citizenship revocation could indirectly jeopardize the right to a (particular) nationality. Inflicting such deprivation would be problematic from the point of view of weakened citizenship and a breach of the special obligations we owe one another as citizens.

Discussion

I found that some think that depriving citizens of nationality on national security grounds (in its, at least *prima facie* admissible, Belgian version) would weaken citizenship in these aforementioned ways. Now that I have outlined and explained the arguments, we are ready to discuss these.

The Argument from Weakened Rights

The first way to understand the ‘weakens citizenship’ idea identifies the weakening in relation to the exclusive right/s typically attached to the status. Building on this reading, the argument from weakened rights claims that *the policy weakens citizenship in that it strips it of key components, namely the right to return and remain*. The argument is provided that the right is of the same crucial significance for all citizens. This is however not obviously the case. Perhaps it makes a difference if the right to return/remain is stripped from citizens who do not usually reside in the state and have a weak connection with it. We saw earlier that the importance of the right to return/remain does not stem from only the fact that it is one of the few rights still attached to citizenship, but from being key to accessing residential security and other rights, most notably social rights. A convicted person deprived of her citizenship may however not reside in the state and may have no interest in residing in it. His or her residential security would not be threatened, and the policy would be less likely to cause grievous harm. Even if such considerations mitigate the concern about threatening residential security, it will not change the fact that citizenship, under the policy, is stripped of rights attached to it, and specifically the right to return which needs to be equally protected for all citizens, regardless of where they reside. But it is not yet clear why we should worry about stripping citizenship of one of its contents in cases where this does not cause harm. Whether citizenship is weakened when one of the rights associated with it is taken away is a question that depends on the nature of the right. If the right has no value, stripping citizenship of it will not weaken citizenship as the right was irrelevant to start with. But if the right taken away is important, it weakens citizenship. So, the question is then: is it important for citizens to have a right to remain in their country and, when abroad, to have a right to return? The reason international law imposes on states an obligation to let in their citizens unconditionally is to avoid one state being able to create a burden on another state by refusing to take in individuals for whom they are responsible. Hence, we may say that the right to return clearly plays an important role in the ecology of human rights in the international legal system. This right is important for states to uphold for reasons independent of whether this right is enjoyed by citizens abroad. Also, the

right to return is extremely important for all who are citizens of only one country: they have no absolute right to remain anywhere else on the globe; entry of non-nationals requires state permission. There should be no question as to the importance of the right to remain/return for states in general and for their citizens who have no other nationality to rely on. However, it is not clear that individuals having several nationalities are as dependent on the right to return to one of their countries of nationality. Say that the person held several nationalities; the loss of the Belgian nationality will not jeopardize the security of residence since (s)he may still enjoy full residence rights elsewhere, in virtue of having the nationality of that country. For such a person, whether Belgian nationality law deprives her of a right to live and return to Belgium may matter less if (s)he has at least one other nationality of a state that will let her in and that is unlikely to subject her to human right abuses. Macklin's argument about the uniqueness of the Belgian nationality may still hold, as (s)he may suffer from loss of the specifically Belgian right to remain/return, but the worry of the argument from weakened rights would not necessarily hold: we cannot say that Belgian nationality would be weakened by the fact that the deprived now needs to rely on another country's obligation to let her in, since a key concern in the right to remain/return is after all that some country (regardless of which) accepts you on its territory and does not, while there, subject you to human rights violations. If these two conditions are upheld, the deprivation will not weaken citizenship as the argument suggests. An even stronger case in this direction would be the case of a deprived ex-Belgian who has another citizenship in a country where (s)he is unlikely to be subjected to human rights violations, and also currently lives in that country: the ancillary penalty of deprivation of Belgian citizenship as far as the right to remain/return is concerned seems to matter even less.

As the argument focuses on rendering citizenship weaker by stripping it of one of the rights attached to it, it seems that it cannot provide a convincing answer for all and any case of deprivation in line with the policy. The scope of validity of the argument is hence limited. It is unclear why we should worry about the loss of the right to return/remain in cases where this does not result in any harm to the deprived person. Therefore, I find that this argument, albeit convincing at first glance, is not strong enough to support the idea that there would be a breach of special obligations between citizens, making the policy impermissible.

Arguments from Revocability

There were three versions of the general argument from revocability. Let us assess these in turn.

The Instrumentalization Argument

For the instrumentalization argument, the policy weakens citizenship by making it an instrument in the hand of the state to serve policy goals other than safeguarding the identity of the constitutional setting.

Let us start by asking if it is true that citizenship was long seen as a value desirable in itself, not for the advantages it might give access to. This has been suggested by Christian Joppke (2019). Under the assumption that his empirical evidence is sound, this would be a simple sociological fact.²¹ This sociological fact might justify worry, regardless of whether the instrumentalization is done by states or individuals. However, notice that the argument is formulated in such a way that what merits our worry is foremost the instrumentalization by states, not by individuals. The reason for this would be that instrumental use of such a constitutional bedrock instrument as citizenship policy is not an advisable thing: it is like allowing the shifting majorities of the day to make changes to the constitution as they see fit, which would make the constitution unstable.

Whether this argument is convincing may depend on the nature and type of policy goals we are discussing. Under the assumption that something, say, citizenship policy, would become an instrument for, say, promoting greater justice and fairness, it would be hard to see why such a noble goal (if realized) would ‘weaken’ the tool employed to realize it. The argument would hence seem flawed.

However, there is no reason to assume in this context that the goals would be of this noble nature. To the contrary, many who lament the instrumental use of citizenship policy are worried

²¹ The reasons why individuals can act in this instrumental way is due to various factors such as technological improvements that made transport easier, which led to greater movements, which led to increased migration, cross-national marriages, and thus multiple citizens. The perhaps most important change in citizenship policy in the 20th century was the recognition that citizenship could be given by both sexes: this implied a huge number of children with dual nationality whose mother had one nationality and their fathers another. All these children would previously have had only their father’s nationality.

about the fact that citizenship law becomes the kind of politically very divisive matter that immigration policy already is. If we face very strong polarisation about who should be a citizen, and thus have the right to vote in a country, we would in all likelihood also see increased polarisation over the parts of the constitutional settlement that should be beyond the reach of everyday politics, namely such bedrock constitutional things as the electoral system, the design of constituencies, etc. Many think that states should not be able to change nationality law, e.g., by a simple majority vote in parliament because, witnessing an increased pace of change,²² this would limit foreseeability, a basic value in law, and the ability of prospective naturalizers and parents to know how to act in order to obtain citizenship for themselves or their offspring; this, in turn, would impact the integration of immigrants negatively or risk augmenting segregation; and a single government's ability to make major changes that may not be in the best interest of the citizenry over time would increase, possibly paving the way for the government to be tempted to 'get rid' of their most abhorred minority in ways that may be profoundly unconstitutional. Others fear it might lead to decreased civic solidarity among citizens with the risk of seeing lower levels of trust in the citizenry over time. Under the assumption that these fears, which ultimately depend on empirical matters, are warranted, the argument is sounder: if the goals are questionable, as critics suggest, it makes the tool to reach such goals questionable as well. For those who uphold the instrumentalization argument, the problem is essentially a question of means-ends rationality: if the goal is objectionable and the tool enables the reaching of the goal, we should avoid the tool, namely instrumentalizing citizenship policy.

A third possibility remains: let us say that the goal is objectionable, but that the tool is not adapted to reaching that goal. Then, we would no longer hold the objection to be valid against the tool as such, and instead point to a failure of means-to-end rationality in those who would opt for such a clumsy tool. This would make the argument less convincing since its consistency would then be questionable.

Another problem with this argument is that it does not clarify whether granting the state constrained, instead of extended, power to manipulate the citizenship policy by, say, revoking citizenship for certain individuals, would make a difference in terms of instrumentalizing citizenship. Indeed, the instrumentalization argument says very little about why citizenship

²² We already are witnessing an increased pace of legislative change in this policy area in certain regions of the world: over 100 changes to citizenship laws in the EU only between 2013-2019.

would not be instrumentalized where citizenship policy is made harder to change by, for instance, constitutionalizing it. There are regions of the world that have constitutionalized citizenship policy (most notably, Latin America) and it is an open empirical question whether the ‘instrumental turn’ in citizenship policy affects this region as well (Acosta, 2018).

The main concern of the argument, as explained earlier, is about the long-term consequences of instrumentalization, which would shift the interest from membership (e.g. civic solidarity among citizens who view themselves as sharing authorship of a set of institutions and hence depend on the same joint project) toward the advantages that may be achieved through instrumental use of citizenship (e.g. economic rationality in opting for a given citizenship today without accepting the joint burdens that may follow from the membership in the future). It is not clear whether constraining the state’s power in revoking citizenship would justify the concern that the state would be able to use citizenship policy to achieve any policy goals. It is possible that a deprivation policy may have different consequences on the lamented instrumentalization of citizenship as compared to, say, a policy concerning naturalization.

This could speak in favour of those who defend the policy by claiming that it should be permissible for the state to deprive citizenship on national security grounds. The very indication of national security as the justifying aim of the policy would hinder the state from treating citizenship as a mere instrument to achieve other, perhaps more questionable, policy goals. Therefore, I tend to consider this argument as weak: it fails to support the claim that the policy should be rejected in that it relies on a series of unproven assumptions, namely (1) that all other policy goals, except safeguarding the constitutional setting, would be questionable; (2) that the citizenship policy would be a worthy tool for achieving these goals, and (3) that granting the state constrained, rather than extended, power over citizenship policy would be sufficient to avoid the evils associated with instrumentalization. All these assumptions would need to be empirically tested before we could admit the soundness of the argument.

The State’s Responsibility Argument

The state’s responsibility argument claims *that the policy weakens citizenship*, in the sense of making the status insecure/revocable, *because it allows the state to (1) shun its duty to protect its citizens; or (2) render some citizens vulnerable to domination.*

While the state is not responsible for the unlawful acts committed by citizens who are not officials, this state is still responsible for protecting its citizenry in general, and in particular ensuring that prosecution, punishment, and rehabilitation occurs in accordance with the law. However, the talk about responsibility needs to be put in its context. The responsibility of the state for the consequences of some persons' acts should be understood in the context of counterterrorism policies, specifically in cases where states revoke the nationality of citizens who travel to join terrorist organizations abroad. By denationalizing them, they become some other state's problem. Their state would hence shun its responsibility for them, and for dealing with the consequences of their actions. The state of origin would no longer hold itself responsible for protecting, receiving, punishing, and if possible, rehabilitating these individuals. The only objective this sort of deprivation serves is keeping the terrorists permanently out, with no possibility for repatriation: citizenship deprivation becomes an alternative to the punishment these persons would normally receive under the criminal law. However, such practice does not respect the norms of international relations, and it can be easily criticized on other grounds like the possible violation of the due process of law, which none of the scholars who defend the policy would support. Therefore, I will not take this practice into account: it lies beyond the policy object that I am discussing.

The first version of the state's responsibility argument that rejects the policy because it allows the state to shun its duty to protect its citizens simply cannot be applied to the Belgian case: the Belgian practice demonstrates the state's willingness to take responsibility for those whose citizenship is revoked until they are released from prison. The first version of the state's responsibility argument is hence possibly a good argument for rejecting other policies, but it is irrelevant for the case we are discussing. I can hence dismiss this argument as irrelevant since it is obvious that, under the Belgian law, the state does not forsake its responsibility for punishing the wrongdoer who will typically be subjected to trial and serve at least 5 years in prison. Belgium also does not push the burden onto some other state that the individuals do not already have a link to, and it will not deport individuals to locations where their fundamental rights are likely to be violated. The state's responsibility argument as it is formulated by Bauböck cuts no ice: he seems to be talking about versions of the policy different from the one we are examining.

Honohan's version of the argument merits a different assessment. She views citizenship in terms of the protection it provides against domination, instead of the protection against

violation of fundamental rights. Notice that Honohan does not clearly distinguish between the different types of domination. This is important because the validity of her argument depends on the assumption that citizenship provides protection against domination. This assumption may strike the reader as unwarranted in these general terms. Take economic domination, for instance. If we take economic domination to be a set of economic relations in which one party enters into contractual obligations relating to, say labor or other economically relevant types of obligations, out of sheer necessity and not out of free will, to the effect that the other party is effectively able to exploit the first party, in the sense of taking unfair advantage of her (Zwolinski 2017), then we have no reason to assume that citizens cannot be exploited and hence subjected to economic domination. A similar argument can be made for domination based on gender, race, and other social identity markers: to be dominated, in this social sense, is “to have cause for indignation and resentment against the dominator or against institutions that dominate or make domination possible” (Allen 2021), which is something a citizen subject to social forms of domination may plausibly have.

Let us concede, however, that Honohan’s argument is mainly concerned with domination in its political sense which may explain why she refers to “subjects” (and not, e.g., exploited). From this perspective, one may accept that citizenship plays a crucial role in protecting citizens against political domination generally, but this would not be the case of convicted criminals (terrorists in our case) since they can be disenfranchised, and thereby politically dominated, at least in states that apply felony disenfranchisement. Since 2009 Belgium no longer automatically disenfranchises prisoners, but a compulsory voting system is in place yet no polling stations in prisons are set up, making political rights/duties for felons a *de facto* non-option²³. Also, in Belgium, disenfranchisement can be permanent, and this is so for those subjected to citizenship deprivation while serving time. Hence, it would be plausible to argue that convicts in general in Belgium are exposed to political domination. This line of argument would nevertheless overshoot the target since Honohan’s argument is geared to reject a practice that only concerns *some* of those who will be subject to disenfranchisement. Her argument has a broader scope of validity than what it purports to have: a number of Belgian citizens are deprived of their political rights, sometimes in a permanent way. Therefore, the argument might

²³ Vote by proxy is the only available option but organizing such a vote requires a certificate of detention, a proxy form, and finding a person of trust residing in the same city. Therefore, few prisoners vote in Belgium (See <https://www.prison-insider.com/en/articles/belgique-pas-d-evolution-du-vote-en-vue>)

be a good argument against felon disenfranchisement in general, but not against the practice we are discussing in particular.

Another concern with the argument comes from the fact that, if the point is to avoid that terrorists may continue to pose threats after release, so that it would make sense to keep them under surveillance and limit their freedom of mobility instead of revoking their nationalities and deporting them, such surveillance measures, or their social consequences for the person concerned (e.g. lack of access to the job market), might also entail forms of domination that Honohan's argument is meant to reject. Perhaps it would even be inconsistent to, on the one hand, argue against the policy that it exposes the concerned person to domination and, on the other hand, demand that the state exposes this person to another kind of domination. Furthermore, since the policy allows deprivation only for citizens with multiple nationalities, it is not clear why we should assume that only the revoked nationality can provide protection. If a person has dual nationality and both states are democratic and respect human rights, it could be argued that citizenship deprivation would not render the deprived vulnerable to domination as long as the other state of nationality would guarantee political rights. I think that there is too little evidence to suggest that the convicted person, whose Belgian citizenship is revoked, will therefore become vulnerable to domination. The argument proves too little.

Even though it is not unlikely that deprived persons may become more vulnerable to domination, we do not know whether this happens in all or even most cases of citizenship deprivation on national security grounds. This makes the argument empirically insufficiently founded.

The Conditionality Argument

This argument, which contends that *deprivation weakens citizenship, by making it insecure/revocable, because it makes citizenship conditional on good behaviour*, is harder to resist than the previous arguments.

Scholars have countered this argument in two main ways. Both ways deny that deprivation policy introduces changes to citizenship in that citizenship would not have become conditional, but rather would have always been conditional, either on good behaviour or on genuine link. Both these ways of countering the argument fail.

The first counterargument is based on the “contract view” according to which citizenship acquired by naturalization would already be conditional on good behaviour because it would amount to a contract between the naturalized and the state. As I pointed out earlier, this line of reasoning leads to holding the naturalized and citizen-by-birth to two different standards when it comes to ‘good behaviour’. This is unwarranted: while good behaviour is indeed often required for naturalization, no similar requirement is necessary for *retaining* citizenship. If posing threat to national security counts as misconduct, allowing deprivation to be inflicted on individuals on this ground implies that citizenship retention would be made conditional on the conduct of its holder.

A second way to counter the conditionality argument is to argue that the policy does not make citizenship conditional on good behaviour but that, instead, citizenship is always expressive of a genuine link-type of bond, which can be broken in several ways, one of which is demonstrated by the type of actions that the deprived citizens have engaged in. In other words, the claim is that citizenship would already be conditional on the genuine link, and this would explain why long residence abroad can result in lapse of status. This argument is not convincing because it confuses unconditionality with the lapse of status. One thing is that the status may not endure in time under just any circumstance (e.g., if the genuine link is lost), but another thing is that the status becomes conditional upon the misbehaviour of the citizen, all other things being equal. So, in a condition where no modification of circumstance has occurred (e.g., the genuine link is maintained), if the status can be revoked due to how the citizen behaves, it makes sense to speak about the conditionality of status, not merely of a change in circumstance regarding the genuine link that would justify the relationship between the individual and the state in the first place.

The Erosion of the Equality of Status Argument

The argument contends that *the policy that allows revocation of citizenship for some, but not for others, would violate the principle of citizen equality*. The reason is that if we distinguish between citizens with full rights (non-deprivable) and citizens with lesser rights (deprivable), citizens are no longer what they were: i.e., equals with respect to their rights as citizens.

I think that the inequality created by the policy should be rejected in principle, regardless of the severity of the impact of this inequality. Note that creating inequality is unavoidable in this

version of the policy since deprivable citizens would not share equal status with those whose citizenship is protected against deprivation. However, no one denies that the policy entails inequality by distinguishing between citizens based on how their citizenship was acquired. Instead, the supporters of the policy contend that this inequality is of no concern. Some scholars, like Peter Schuck, have suggested that “this particular inequality between categories of citizens is hardly one that should trouble us – any more than we should be troubled that a dual citizen has an additional passport and can vote in an additional polity” (2015, p.10). Indeed, this sort of inequality based on the method of citizenship acquisition is permissible under international law and it is not uncommon to distinguish between citizens based on the citizenship acquisition method.

Admittedly, many democratic states distinguish between citizens on this ground. For example, only a citizen by birth can be eligible for the office of president in the United States. Similarly, many states reserve special treatment for their citizens-by-birth and sometimes make it extremely difficult for naturalized citizens to hold certain offices or join, e.g., law enforcement agencies. Such differential treatment is often accepted. Supporters of the deprivation policy on national security grounds view the inequality that the policy would lead to as similar to such commonly accepted differential treatment.

But this analogy does not hold. None of the aforementioned cases of differential treatment on the basis of the method of citizenship acquisition seem to have a similarly severe effect on the naturalized person’s life as denationalization does. Moreover, the fact that such a practice is common does not make it right.

Besides denying the relevance of the inequality at hand, there are two other ways scholars have countered the inequality argument. The first is to insist on the fact that the harm to the individual would be mitigated by the fact that (s)he retains fundamental rights in the other state of nationality. The second way is to claim there is a trade-off between the risk of seeing one’s citizenship revoked and the advantages of holding multiple nationality.

Both these views fail to alleviate the concern about the inequality caused by the policy. The first ignores the fact that the argument is about citizenship as an equal status in a particular polity, regardless of whether its holder has rights elsewhere. As for the second view, it misses the point that one category of citizens ought not be subjected to an ancillary penalty in virtue

of the fact that they enjoy the privilege of having more than one nationality: it is the imposition of having to do a trade-off that is objectionable, not the terms of the trade-off.

It is important, however, to notice that the ‘erosion of the equality of status argument’ does not speak against deprivation as such, but only against the fact of introducing a distinction between deprivable and non-deprivable citizens. Therefore, in the event the law was formulated in such a way that all Belgian citizens could be deprived of citizenship for posing threat to national security, the argument from erosion of equality of status would not bite. The policy could still be objectionable on other, independent grounds (e.g., it would violate international law by creating statelessness), but it would be compatible with the principle of equality of status, associated with citizenship. Another option could perhaps be to formulate the policy in such a way that it would apply to all citizens holding other nationalities, including the native-born multiple citizens. But such a policy would still have the defect of introducing a distinction on the basis of the availability of a second nationality, and could also be rejected out of independent reasons, namely because it would be cruel to expel a person who was born and perhaps spent her entire life in the state to a state with which she has weaker, or no, ties. However, given that the version of the policy discussed here makes deprivation applicable to naturalized citizens only, the erosion of the equality of status argument speaks against the Belgian practice, but not against deprivation policy on national security grounds as such.

It seems thus that none of the objections to this argument is good enough to refute it or to mitigate the concerns it raises. Moreover, in a common conception of the “special obligations” citizens have toward one another equal concern for all citizens is required (Dworkin, 1986, p. 200), which would be inconsistent with a law that deprives a subcategory of citizens of their security of status, while protecting the others. It thus seems that the policy ought to be rejected if the special obligations citizens have toward one another impose an obligation to treat all citizens equally.

Therefore, I consider this argument, along with the conditionality argument, as one of the strongest arguments against the policy, albeit I understand that it does not, as such, argue against the policy of deprivation, only against a particular way of practicing deprivation.

The Uniqueness Argument

The third way to understand the ‘weakens citizenship’-idea relates to Art. 15 UDHR: the *uniqueness argument*, building on this understanding, claims that *the policy weakens citizenship since it denies the uniqueness of the citizenship bond*.

According to Macklin, the bond between a national and her state is unique in that it is not fungible. It does not matter whether this bond is strong or weak, significant or otherwise; what matters is that the bond between a national and the state of one of her nationalities, in case of dual nationalities, is different from the bond this person has with the state of her other nationality, and retaining one of them does not mitigate the harm caused by the loss of the other. However, the policy seems to assume the opposite: that all bonds are the same and that it does not matter which citizenship one loses so long as the person retains some citizenship. This Belgian version of the policy denies this uniqueness of citizenship: it allows depriving even those who have strong bonds with the state, and therefore, I find the argument strong.

Conclusions

In this text, I have examined whether there is indirect jeopardy of the human right to nationality at play in the deprivation of citizenship on national security grounds in the case of the Belgian law on deprivation. Overall, we can say that even though some concerns have been raised about the human rights of some persons convicted of terrorism in Belgium²⁴, the policy offers high guarantees against the risks of weakening citizenship. This makes it an appropriate object of study. Yet, I have found that there is a risk of indirect jeopardy to the right to nationality: critics are in part justified in fearing a “weakening of citizenship”. The first concern has to do with the ‘conditionality argument’: the way in which the law is practiced makes citizenship conditional on good behaviour in the sense explained above. Another problem with the Belgian law is that it cannot avoid the criticism raised by the ‘erosion of the equality of status argument’: the Belgian Nationality Code does distinguish between naturalized and native citizens, and this entails an unequal treatment, which weakens the equality of status, characteristic of citizenship. Finally, even though it does not allow depriving naturalized citizens if this would result in rendering them stateless, the Belgian law permits depriving

²⁴ See the Human Rights Watch’s report “Belgium: Response to Attacks Raises Rights Concerns” about human rights violations in cases related to terrorism in Belgium <https://www.hrw.org/news/2016/11/03/belgium-response-attacks-raises-rights-concerns>).

citizens with other nationalities who have a special relationship or a genuine link with Belgium. This fact, according to the uniqueness argument, indirectly jeopardizes the right to nationality. This is a serious concern since the law would allow depriving a person who has lived the largest part of her life in Belgium and possibly has no ties with the state of the other nationality.

However, I also showed that this risk of weakened citizenship is limited by the fact some of the criticisms of the policy geared to show that we are facing a ‘weakening of citizenship’ are misplaced or otherwise unconvincing. Even conceding this point, however, the problems raised by the conditionality argument, the erosion of equality and the uniqueness argument are such that we can exclude that the Belgian case is the kind of law imposing deprivation that does no harm to citizenship itself. Therefore, by weakening our joint collective bond, the Belgian law can be said to be at odds with what we owe one another *qua* members of this collective, even before other concerns are taken into account.

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