Citizenship for Children: By Soil, by Blood, or by Paternalism?[1]

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The debate over the ethics of immigration has been primarily focused on assessing the moral claims of individuals who would like to immigrate to a state other than their state of citizenship in order to pursue dearly held projects and relationships. Two contending liberal theories have emerged in this debate. Statists (or liberal partialists) have argued that prospective immigrants lack a moral or human right to immigrate and that it is up to the recipient state to decide whether or not it would like to include such persons as part of the self that forms the self-determining political community (Wellman 2008; Pevnick 2011; Blake 2013).[2] Strong cosmopolitans, on the other hand, have argued that the mere interest on the part of prospective immigrants in pursuing personal projects and relationships across international borders suffices to create a strong claim for inclusion on their part (Carens 1987; Cole 2000; Oberman 2013). Yet, both sides agree that refugees and children born into the territory of the state have a strong claim for inclusion, and that such a claim holds irrespective of what is ultimately required from states with regard to their overall immigration and citizenship arrangements.

The agreement about the claims of refugees is not likely to go away. Critics of the state's right to exclude believe that all persons have a human or moral right to immigrate, and so by implication, they believe that refugees also have this right. And although statists are significantly concerned with the right of political communities to exercise self-determination with regards to their self-regarding affairs, they also hold that human

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[2] For a liberal view that also appeals to the value of culture, see Miller 2005; 2016.

rights violations can give rise to stringent duties on the part of liberal states, which at times, can only be effectively discharged with the provision of asylum.[3]

Given the extreme vulnerability of children, one would expect both sides of the debate to have the theoretical resources to explain why children should be considered full members of their state of birth and residence, whether or not self-determination gives states the *prima facie* right to exclude prospective immigrants. However, there is some doubt that statists can adequately explain why a newborn in a liberal state should not be treated just like any prospective immigrant (Cole and Wellman 2011; Blake 2013; Brezger & Cassee 2016). For if the self-determining political community has the right to decide who should form the self in the first place, then that right should count against both newcomers by immigration and newcomers by birth. Or so the concern goes.

In this essay, I defend statism against the charge that it lacks the resources to protect newcomers by birth from being denied citizenship status and the core rights associated with it, such as a right against deportation. I argue that the answer to the question "why citizenship?" is different for adults and children, and that this has important implications for the immigration arrangements and citizenship laws of liberal states. In particular, I argue that children's entitlement to citizenship is a result of the *unique* relationship they enjoy with the state where they reside. More specifically, I argue that children have a moral right to be subjected to reliable effective paternalism and, under normal socio-political conditions, the provision of citizenship is necessary for the reliable exercise of effective paternalism on the part of their state of residence.

The following discussion proceeds in four parts. In parts I and II, I discuss the challenge for statism in more detail and explore some tempting ways of responding to it. In part III, I give an argument as to why children are morally owed citizenship in their state of residence that is compatible with the claim that states have a *prima facie* right to exclude prospective new members. I thereby explain why there is an asymmetry between prospective immigrants and resident children that necessarily grounds a claim for full inclusion on the part of the latter, but not the former. In part IV, I respond to objections.

[3] Note that Wellman (2008) believes that states can help refugees without including them as members.

I - The Problem

Do states have a right to exclude prospective immigrants as they see fit? According to three prominent statists the answer is yes. Christopher H. Wellman (2008) famously argues that the state's right to self-determination entails a right to freedom of association, and that citizens have the fundamental right to decide who they would like to associate with. Michael Blake (2013) argues that the right to exclude on the part of the political community is grounded in its right to avoid incurring the human rights obligation that necessarily follows the inclusion of new members. Finally, Ryan Pevnick (2011) maintains that citizens have a claim of co-ownership over their public institutions, which in turn, entitles them to exclude prospective immigrants from accessing the benefits such institutions make available.

Despite the fact that these accounts focus on different justifications for the right to exclude, they all share a similar structure: for each one of them, there is a liberal right (i.e, to freedom of association, to avoid incurring unwanted obligations, to keep control of one's property) that explains why the political community should enjoy a significant level of control over its immigration and membership arrangements.

There are, however, genuine concerns about the scope of the state's right to exclude prospective new members. In particular, Jan Brezger and Andreas Cassee (2016) have argued that if statists are correct in their defence of the states' right to exclude, then that right will apply to both prospective immigrants and children who are born within the borders of the liberal state. Their claim is that the right to exclude, whether grounded in the collective's right to freedom of association, freedom from unwanted human rights obligations, or co-ownership of public institutions, cannot be arbitrarily limited to newcomers by immigration. Statists themselves have raised similar concerns. Wellman (2011) recognizes that a liberal right to exclude is not tremendously congenial towards a human right against statelessness, and Blake (2013) recognizes that procreation also imposes unwanted human rights obligations on others. The overall concern here is that if statists are correct in arguing that it is up to the political community to decide whether it wants to include prospective immigrants as new members, then they might also be committed to the claim that it is up to the political community to decide whether it wants to include those who enter the territory by being born there.

At first blush, it may seem that statism has an easy way out of this problem. Children have an interest in avoiding the perils typically associated with statelessness, as

well as enjoying a parent-child relationship that is territorially located. More fundamental is the fact that children are subjected to the coercion of their state of residence, and so it is only fair that the state grants them the recognition that is allegedly necessary (albeit arguably not sufficient) for rendering such coercion legitimate or justified.[4] However, as I will show in the following section, neither of these strategies is ultimately successful. An appeal to the fact of statelessness relies on controversial empirical assumptions about the plea of stateless children residing in liberal states. An appeal to the interests of parents fails to take the moral claims of parentless children seriously. And finally, an appeal to the fact of coercion inadvertently includes adults who the statist believes to lack a moral claim for inclusion. The result here is that if the statist wants a successful justification for the inclusion of children in their country of birth and residence, she must offer an argument that speaks to *all* children, and that does not have as an unintentional side-effect the inclusion of the prospective immigrants the theory was initially developed to exclude.

Before I proceed to criticise these potential solutions in more detail, a few preliminary points are in order. First, in what follows, I assume that 'newcomers by birth' are children residing in the state where they were born. This is not to deny that some children emigrate immediately after birth, but only to put aside cases where a denial of citizenship by the liberal state does not seem at all problematic. Indeed, statists would happily agree with Matthew Lister who argues that the strong *jus soli* principle we find in the United States, where children acquire citizenship even if they leave the United States immediately after birth cannot be a requirement of justice (Lister 2010). Second, I understand the state's *prima facie* right to exclude prospective immigrants as covering both matters of immigration and matters of citizenship. However, I understand an individual's rights to immigrate and to acquire citizenship as distinct from one another since the first gives her access to the territory of a state other than her state of citizenship, whereas the second gives her a right to become a full member of a given political community (See Bosniak 2000). Third, and relatedly, what I take to be special about *citizenship* is that it provides individuals with the most complete package of legal rights and entitlements available in a society, and that it does so robustly. All else being equal, a citizen is in a better position than a mere resident to pursue the things she cares deeply about. The precise reason why this matters for children, who are not yet developers and pursuers of their own good, will become clearer later in the discussion. Finally, the aim here is to

[4] For this distinction, see Simmons 1999.

identify the correct principle(s) for allocating citizenship *for children* under current socio-political conditions and not to engage in the more radical enterprise of re-thinking the various practices associated with legal membership in a state.

II – Under-Inclusive and Over-Inclusive Solutions

Let us now discuss some potential solutions to the problem at hand by first discussing the claim that the perils typically associated with statelessness suffice to explain why newcomers by birth have an automatic claim for inclusion. Following Hannah Arendt, a stateless person lacks the right to have her human rights protected, which make her position one of extreme vulnerability (Bernstein 2005). Stateless children would be even more vulnerable, for in addition to being physically and psychologically vulnerable, they would be politically vulnerable due to their lacking protection of their basic human rights. This line of argument takes us back to the two exceptions to the right to exclude generally accepted by the statist: refugees and newcomers by birth. It could well be that the perils associated with both *de facto* and *de jure* statelessness adequately explains why these two groups have a claim for inclusion that ordinary prospective immigrants lack.

Although an appeal to the vulnerabilities of statelessness seem promising at first glance, this strategy fails for one of two reasons. First, with the emergence of an international human rights regime, there is serious doubt that one must be a *citizen* of a liberal state in order to have one's basic human rights protected and promoted in that state (Soysal 1994). Indeed, individuals who legally reside in a liberal state are in fact able to protect their basic human rights, even though they might be unable to enjoy a number of other rights which liberal-egalitarians deem necessary for the creation of a fully just society.

But even if an appeal to the perils of statelessness succeeded in explaining why every child should be granted citizenship in at least one state, this would still not help the statist in explaining why the liberal state should include all newcomers by birth, for not all of them are at risk of statelessness. This is true of children who qualify for citizenship elsewhere due to having at least one parent who is a citizen of another state, and whose state subscribes to a *jus sanguinis* principle of citizenship law (whereby citizenship is acquired by virtue of having one or both parents who are already citizens of the state in question). In a world where states have a *prima facie* right to include or exclude as they see fit, they are within their rights to extend citizenship to the children of citizens residing

abroad, thereby contributing to a mismatch between residency and citizenship for many individuals. Yet the fact that some newcomers by birth are not at risk of statelessness does not seem to detract from the fact that, at least intuitively, they are owed citizenship in the state where they were born and currently reside.

To see the point, take a child of a New Zealander couple who was born in the Netherlands and will reside there for the foreseeably future. Under current Dutch law, this child is not be entitled to Dutch citizenship, even though she will go to school in the Netherlands, engage in a number of meaningful relationships with other Dutch children, and have many of her interests protected and promoted by the Dutch government. She will, however, be entitled to citizenship from New Zealand even if she spends her entire childhood without setting foot there.[5] I take it that even though this child is not at risk of statelessness, something goes wrong from the point of view of justice when she grows up as a denizen, and not as a *citizen* of the Netherlands.[6]

Now that we have seen that an appeal to the perils of statelessness either fails to provide a convincing justification for the inclusion of newcomers by birth or that it leads to under-inclusiveness at the level of justification, let us see why the argument from family formation will also not help the statist. There are two ways of linking the interests of parents to the alleged obligation that the state has in providing citizenship to those who enter the territory by being born there. One might think that there is an interest in procreating, or one might think that there is an interest in parenting (or perhaps a combination of both). But irrespective of how we specify the interest in family formation, it cannot adequately justify the inclusion of children as full members of their state of birth and residence.

Consider first the interest to procreate. This interest can itself be grounded in either a morally fundamental interest in bodily integrity or in creating life. If the interest to procreate is an interest in bodily integrity, then all that is required from the political community is that they do not prevent their citizens from conceiving, gestating and giving birth to a child. The provision of membership to the resulting child is not needed for the protection of the bodily integrity of her procreative-parents. The same is true if the right to procreate is grounded in a more fundamental interest to create a human life,

[5] I am not arguing that it is illegitimate for this child to also hold citizenship in New Zealand. Everything I say here is compatible with the principle of *jus sanguinis* also being employed by states in order to ensure that if parents were to return to their states of citizenship, they could bring their child without having to apply for a right to family reunification.

[6] Here I refer to denizens to pick out individuals who are similarly situated as citizens, but lack citizenship.

for it is also the case that the state can protect that interest without having to extend citizenship to the resulting child.

So the putative right to inclusion on the part of newcomers by birth cannot be grounded on the alleged interest that their parents have in procreating. The interest that seems to be doing the work is the interest of adult citizens *in parenting*, whether or not they have also played a causal role in the creation of the child they will enjoy a parent-child relationship with (Macleod 2002; Brighouse and Swift 2006; Gheaus 2012). It is certainly uncontroversial that adoptive and biological parents have an equally strong claim to enjoy territorially-located relationship goods that arise in the context of a parent-child relationship. They also seem to have an equally strong interest (and obligation) to advance the interests of their child.

Although an appeal to the interest in parenting on the part of citizens seems promising, it too fails to generate a membership entitlement on the part of all newcomers by birth. This is due to the simple (and regrettable) fact that not all children have parents. Children who are orphaned or have been abandoned by their parents seem intuitively to have a strong claim for inclusion in their state of birth and residence and yet they do not have a parent or family member whose interest allegedly grounds their right of inclusion. Indeed, if the correct *justification* for the inclusion of newcomers by birth is one that appeals to the interest of *parents* in enjoying a relationship with their children or in protecting their interests, then surely this is bad news for the group of parentless children who are particularly vulnerable precisely for having been denied the opportunity for partaking in a parent-child relationship in the first place.

As it happens, citizenship laws that aim to avoid statelessness or protect parent-child relationships are likely to be over-inclusive in practice, and are likely to extend citizenship to children who are citizens of another state or who are parentless. But this observation cannot fully rescue the statist. For what is troubling here is that these children will lack a moral right to citizenship even if they enjoy the legal right in practice. Indeed, a very similar concern would arise if the justification for the right to freedom of religion appealed to (say) a fundamental interest in connecting with God. For although it certainly true that a Buddhist is likely to benefit from a legal right to freedom of religion in a liberal society, it seems quite problematic for her to be excluded from the actual moral justification behind the legal right.[7]

[7] I thank a reviewer for this example.

At this stage, a statist might hold that although an interest to avoid statelessness on the part of newborns and an interest on the part of parents to enjoy a territorially-located relationship with their children cannot on their own be sufficient to explain why all newcomers by birth should be included in the state, they are surely *jointly sufficient* for explaining why every resident child who is born in the territory of a state should be granted citizenship there. This is because each child will either have a (citizen) parent or not. In the first instance, her parent's interests will answer the question of why she is entitled to citizenship. In the second instance, a right against statelessness will do the necessary justificatory work.

It is true that if we combine these two alleged grounds for inclusion, we are better suited to explain why most newcomers by birth should be included as citizens of their state of residence. However, even combined, these two grounds for inclusion lead to under-inclusiveness. This is due to the fact that parentless children could still be eligible for citizenship in another state due some desirable property of theirs. For instance, Jewish children who are born outside Israel qualify for citizenship there and so are not at danger of statelessness even if parentless. But again, the fact that some Jewish orphans are entitled to citizenship in Israel does not seem to detract from the fact that, at least intuitively, they also have a strong moral claim to be properly included in the state where they were born and will reside in the future.[8]

A final route available to the statist is to appeal to the fact that newcomers by birth are subjected to the laws of the state and so have a claim to receive *all* the benefits that come with the burdens of state coercion (Blake 2001). This strategy focuses on the fact of residence in a territory so as to avoid the under-inclusiveness we have seen with the previous two strategies. There are, however, two problems with this approach. First, it is not clear that state coercion requires a justification in the case of children given that they do not yet possess a full-fledged capacity for autonomy. Indeed, if coercion is to do some justificatory work in the right of children to acquire citizenship, it has to be part of a more complicated story that recognizes the interest of children to be 'paternalized' by their state of residence, and not to be the authors of their own lives (I will return to this point later).

The main problem here, however, is that an appeal to coercion as a sufficient ground for citizenship acquisition over-generalizes to include tourists, temporary

[8] At this stage, the statist can add a third ground for inclusion so as to account for such cases. I take it that such *ad hoc* move would only be acceptable if we lacked a general theory that accounts for all resident children. Later I defend a theory that is neither under-inclusive nor *ad hoc*.

residents, and unauthorized immigrants, all of which are coerced by the liberal state and yet are seen by the statist as individuals who can be justifiably excluded if the political community so wishes. This strategy is even more likely to fail if Arash Abizadeh (2008) is correct in claiming that immigrants who are excluded at the border of the state are subjected to state coercion merely by being prevented from entering its territory, for the result will be that almost everyone the statist would like to exclude will then have a moral claim for inclusion.[9] An appeal to coercion thereby puts the statist in an uncomfortable position for either there is a meaningful right to exclude prospective immigrants, or there isn't. A right to exclude that can be avoided by anyone inside or at the border of the liberal state does not seem worth all the theoretical trouble.

III - A Solution

In the previous sections, I noted that statists face a justificatory challenge. If the challenge cannot be met, we either have a world where justice requires open borders, or a world where children can be justifiably placed in a position of 'denizenship' in the course of their childhood. I have assessed a number of familiar responses available to the statist, and have concluded that they fail. The question still remains: can we stop the right to exclude from going as far as to exclude newcomers by birth?

Before I explain why newcomers by birth have a strong claim to full inclusion in their state of on-going residence, let me make clear what the statist is actually committed to. First, the statist is committed to providing a *liberal* justification for the state's right to exclude—hence why their position is also labelled 'liberal partialism' in the literature. This rules out justifications that appeal to controversial comprehensive views about the value of membership in a state, while simultaneously making it unnecessary for statists to provide a justification for the immigration and membership arrangements of *illiberal* states.[10] Second, implicit in the statist position is the idea that collective decision-making is of great value and that political communities should be free to craft their own political future (Ferracioli 2015). Finally, and connected to the previous point, what sets the statist apart from her opponent in the debate about the ethics of immigration is that the former subscribe to a weaker form of cosmopolitanism, one that demands equal respect for

[9] For a response, see Miller 2010.

[10] The discussion therefore does not apply to national forms of partialism. See Walzer 1983; Miller 2005. In recent work, Miller's position seems to have become less "nationalist" and more liberal (See Miller 2016).

persons, but not equal entitlements at the global level (Lister 2010). Because the statist takes political autonomy very seriously, she is necessarily attracted to a view of global justice whereby members of the state can prioritize their own domestic interests so long as they concomitantly protect and promote the basic human rights of non-members. This is why the state's right to exclude is only a *prima facie* one, since at times, justice requires the inclusion of those fleeing human rights violations at the hands of their government.

Now that we have a better grasp of what statism entails, we can see that the justification for requiring that newcomers by birth be included as a matter of justice must be strong enough to explain why it overrides the state's *prima facie* right to exclude, without simultaneously overgeneralising so as to include prospective immigrants whose basic human rights are not at stake. This raises the following challenge for the statist: if her reason for including newcomers by birth is weak, then it is hard to see how it can override the state's *prima facie* right to exclude.[11] We are then left with a highly counter-intuitive statism, one that allows for the exclusion of children who are born and reside in the territory of the excluding state. On the other hand, if the reason is strong but overgeneralizes, then statism has the theoretical resources to rule out the exclusion of newcomers by birth but only by equally ruling out the exclusion of a significant subset of newcomers by immigration. In this case, we are left with a statism that is so close to open borders that it might not be worth having.

In what follows, I provide a justification for the obligatory inclusion of newcomers by birth that avoids both horns of this dilemma.

The Question of Legitimate Authority Over Children

What are children owed as a matter of justice? Who in particular has duties of justice towards children? And how does citizenship fit into this picture? In order to understand why newcomers by birth are different from newcomers by immigration, we need to delve deeper into these questions.

Let us start by recognizing that many of the interests of children are similar to that of adults. For instance, both parties have an equally strong right to life, bodily integrity, freedom from unnecessary and cruel pain, and freedom from discrimination.

[11] This would be true of expressive views that appeal to an interest on the part of the child to enjoy the identity or status of citizen. Such views are likely to overgeneralize as well.

Moreover, public goods such as safe roads are seen to be in the interests of all members of society, regardless of age. However, the interests of adults and children can come apart once we take their agential capacities (or lack thereof) into account (Brighouse 2002). The interest in marrying a spouse of one's own choice or to take up paid work are interests we can attribute to adults, but not at all to children. And what explains this difference is the fact that, unlike adults, children are not yet competent knowers and pursuers of their own good, and so must be actively supported in leading good lives. In practice, this means that children must be prevented from making certain choices in childhood, as well as have many choices made on their behalf.[12]

Indeed, the fact that children lack a full fledged capacity for autonomy is taken by most liberals to be a *weighty* reason for subjecting them to effective paternalistic treatment—understood here as an action or omission by an agent A who imposes her will and has it exert control on agent B because of A's superior ability in tracking one or more of B's interests.[13] That is, effective paternalism takes place when (say) a father with a PhD in nutrition unilaterally decides to spend the family's grocery income on sugar-free supermarket items. Because adults typically possess the capacity for pursuing their own good, liberals think that it is disrespectful for an agent to impose her will on another competent adult even in cases where the latter would be better off as a result (Mill 1863; Feinberg 1980). But because children lack that same capacity, liberals deem it quite appropriate for an agent to impose her will on the life of a child with the purpose of advancing her interests (Ibid). It is therefore no exaggeration to claim that whereas liberals typically see paternalism over adults as a form of profound disrespect for persons (save in some extreme cases where life and liberty are at stake), they see it as a requirement of social justice in the case of children.[14] This is why liberals would typically think that the father above acts rightly with regards to his children, but wrongly with regards to his wife.

Still, we should not exaggerate the agreement among liberals vis-a-vis the role of paternalism in the lives of children, for liberals disagree deeply about *which agents* have an

[12] This is compatible with the claim that children can exercise some limited degree of autonomy (Bou-Habib and Olsaretti 2015).

[13] This definition is based on Seana Valentine Shiffrin's definition of paternalism. Shiffrin (2000) believes that paternalism in the case of adults is problematic whether or not the agent believes correctly that she has a superior ability to track the interests of the person she acts paternalistically towards. Note that it is important to make a distinction between effective and ineffective paternalism, since the latter seems to lack a justification even in the case of children.

[14] All liberal theories that accept paternalism for children face a problem of demarcation between childhood and adulthood. See Anderson and Claassen 2012.

obligation to act paternalistically within each domain of a child's life. In fact, much philosophical discussion about the right of children to education following the 1972 U.S. Supreme Court case *Wisconsin v. Yoder* can be seen as an internal debate among liberals about how parents and the state should divide the duty that correlates with the right of children to be subjected to effective forms of paternalism (Gutmann 1980; Arneson and Shapiro 1996). In what follows, I shed some light on this question by providing some criteria for deciding who has the obligation to promote and protect each of the interests of a child. This will help us explain why the extension of citizenship to newcomers by birth is a requirement of justice.

Let me start with one important observation. Although liberals take for granted that parents and the state have an obligation to act paternalistically towards children, the question of *what* precisely gives *the state* such an obligation has not received enough attention in the literature. But this oversight has important implications. If we cannot explain why the state has a duty to act paternalistically towards children, then it is not clear why there should be any division of responsibility between parents and the state to begin with. For while we can point to procreation, adoption or some other fact to explain why parents are responsible for inserting their will in the lives of their children, we have nothing to point to when it comes to the state. This is not to deny that the state has a number of obligations towards the citizenry, be they adults or children, but only to call attention to the fact that the liberal state is not typically in the business of ensuring that people's lives go well. We therefore need a story that explains what is special about the relationship between the state and children, such that the state needs to go beyond the protection of basic rights and liberties and actually act in the best interests of children. And what is more, such a story cannot merely conceive of the state as the agent with *secondary* responsibly in case of parental failure or absence, for what we want to achieve here is explain why parents and the state must work in tandem even in cases where parents are present and doing their job well.

The reason why there is a paternalistic relationship between children and parents and children and the state, such that both parents and the state have stringent and co-extensive moral obligations to ensure that children's lives go well, comes down to a *unique* capacity that each party has to advance a subset of children's interests. Capacity thereby explains what distinguishes the parent and the state from other parties, as well as determines when a duty of paternalism falls on the parent, and when it falls on the state.

Consider first what makes the liberal state uniquely capable of advancing a subset of children's interests. First, the state possesses evidence-based knowledge about what is in the best interest of children as a group. Second, the state has access to the legitimate (or justified) use of coercion within its territory, and so it is able to promote a number of children's interests irrespective of its ability to secure consent from other parties. Such a capacity to coerce parents, carers and educators into doing what is best for children will be particularly important when it comes to advancing the interest of children in developing a capacity for autonomy and critical thinking, to enjoy high-quality education, preventive healthy, good nutrition, among other interests. Indeed, the state is uniquely positioned to decide against the provision of fast-food at school, to make vaccination compulsory, to require that educators abide by a certain curriculum, to reserve parts of public spaces for playgrounds, to enforce the legal right to parent by reference to the best interests of the child, and so on and so forth.

Consider now the role of the parent in seeing to it that children's lives go well. Unlike the state, the parent typically finds herself in an intimate loving relationship with the child, which makes her disposed to take on costs for the benefit of the child and gives her privileged epistemic access to the child's preferences and temperament that is so important for advancing many of her interests. Parents are therefore uniquely positioned to protect many of the child's interests, such as her interest in leisure, intimate relationships and affection.

As becomes clear, for each of the child's interest, there will be a fact of the matter about which agent is uniquely capable to promote that interest to a high level without incurring unreasonable costs or imposing such costs on others. Some interests can be best protected by the liberal state because of its evidence-based knowledge of what is good for children and its ability to legitimately coerce adult citizens into complying with its directives. Other interests can be best protected by the parent because of the intimate and loving nature of the parent-child relationship. And of course, at times, parents and the state have to work together, as when the state bans fast-food advertisement, and a parent spends her discretionary time and resources experimenting with nutritious food that the child might like.

Before we turn to the question of citizenship, a few points bear stressing. It is not my intention here to show that the parent and the state merely have obligations to protect the basic human rights of children. I also don't mean to deny that neighbours, friends and extended family can, at times, play an important role in the protection and

promotion of children's interests. Rather: parents and the state have an *obligation* to see to it that children's lives *go well*, an obligation which is grounded on the unique capacity that each party has, and other parties typically lack, to engage in effective paternalism towards children.[15]

So far so good, but how do we decide when it is the job of the parent, and when it is the job of the state to advance a specific interest on the part of the child? Unsurprisingly, both parents and state will often have to work in collaboration so that children have many important interests protected and promoted to a high level. The interests in good health, good nutrition, and playing, are all interests that require cost-taking from both parties. At times, each party can successfully advance an interest whilst acting alone. For instance, only the state can see to it that children grow-up in a non-obesogenic socio-environment by ensuring that there are footpaths to walk on, lanes to cycle in, and parks to stroll in. No parent, no matter how well resourced, can see to it that their child enjoys healthy public spaces. And of course, only the parent is in a position to provide affection in the context of an on-going intimate and loving relationship.

At this stage, one might interject that the intimacy and disposition for caring that we find abundant in the family is also there in high-quality state-run orphanages. The thought here is that I might have proved too much and that the state *alone* can see to it that children's lives go well.[16]

This concern gets things partly right. For it is certainly true that carers in orphanages have many of the obligations that parents have and are charged with promoting many of the interests that can only be promoted in the context of an intimate relationship. However, this does not mean that we are thereby allowed to toss a coin between families and orphanages when it comes to deciding which of these institution should, alongside the state, see to it that children's lives go well. After all, children have

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[15] It is true that in some rare cases bystanders would be permitted (but not required) to act so as to further a child's interest if they could do so without setting back her other interests and imposing unreasonable costs on others. It is also true that some extended family members would develop such intimate loving relationships with children that they too would be uniquely capable of advancing their good. This raises the problem of parental proliferation. Although I lack the space to engage with it here, let me gesture towards two potential responses that are compatible with the other claims of the paper. One response is to argue that there are thresholds of loving dispositions, competency and intimacy, such that any one who reaches them, becomes a parent. This would of course lead to radical implications for the institution of the family. Another response is to argue for an additional principle such that the first parent or parents have a right to decide who else can parent. This response is intuitive, but there is an important challenge in explaining why being first matters.

[16] For the challenge that the family poses for justice, see Munoz-Dardé 1999.

an instrumental interest in having their interests promoted and protected in a *reliable* manner (Ferracioli 2014).[17] And the trouble with workers in an orphanage is that no matter how well resourced and well-trained they are, the intimate relationship they enjoy with the child is not as robust across time and alternative circumstances as the relationship children typically enjoy with their parents. For one, orphanage workers are not typically disposed to take on cost and make sacrifice for the good of a child under their care, since the relationship they enjoy with the child is primarily motivated by professional and financial rewards, not parental love.[18] Moreover, the relationship between orphanage workers and children is not itself as resilient across time. Orphanage workers can leave the profession, take another job elsewhere, have their own child, and so on and so forth (Ibid).

Citizenship as Jus Paternus

In the previous section, I have argued that children not only have a claim to have their basic human rights promoted and protected, but also to be subjected to the sort of effective paternalism that ensures that their lives go well. I have argued that parents and the state are uniquely positioned to engage in effective paternalism towards children, and that this unique capacity grounds their obligation to paternalize children, and determines the content of their duties towards them. But how does citizenship fit into this story?

As I see it, citizenship is the functional equivalent of the family under current socio-political conditions. In the same way that the family provides for the most robust protection and promotion of those interests of the child that are best advanced within the context of an intimate relationship, citizenship provides the most robust protection and promotion of those interests of the child that are best advanced by the coercive apparatus of the state.

Consider first the interests which are tied to citizenship and which are relevant for children. Only citizens have a robust right against deportation, as well as a right to invite family members to join them as new members of the political community. This means that children who hold citizenship in a state enjoy more reliable access to their moral right of occupancy and family life. Consider now important rights such as the right

[17] For the notion of a modally demanding value, see Pettit 2015.
[18] This has important implications for children with special needs who can only lead good lives when their care givers make sacrifices that go well beyond the demands of morality (Ferracioli 2014).

to health care and education. In some states, a lack of citizenship translates into higher insurance premiums as well as higher fees for schooling and health care services.[19] This means that denizen children are typically in a worse position than citizen children with regard to their interests in health and education. And of course, some important rights are now available to denizen children but they might not be in the future. Citizenship thereby guarantees access to *all* the rights and benefits that can be relevant for the state to act in the best interests of children, and to do so irrespective of the current political climate.[20] In what follows, I refer to this principle of citizenship allocation as *jus paternus*.

But why think that important welfare rights which are no longer part and parcel of citizenship could become attached to citizenship in the future? The answer here boils down to the nature of politics in the face of high levels of immigration. Indeed, empirical evidence tells us that the disaggregation between important rights and citizenship is usually accompanied by more restrictive immigration policies. If the political climate changes, and the state decides to implement less restrictive immigration policies, they may well do so by re-entangling citizenship and important rights and benefits (Morris 2002; Joppke 2007). Such a political turn would have bad results for children in a position of denizenship. Citizenship therefore protects the right of resident children to be the recipient of effective paternalism by the state in a *reliable* way. Again, I have not denied that liberal states can do a good enough job of protecting the human rights of children in a position of denizenship. The point is simply that children are owed much more than the protection of their basic human rights as a matter of social justice.

Now, it is certainly true that even citizen children can lose important rights that create the conditions for their lives to go well. For instance, a liberal state with a very generous package of citizenship rights might regress and end up with a more modest package of citizenship rights, which will in effect mean that children and adults who possess citizenship in that state will have fewer rights than they did previously. The important point to appreciate here is that no matter how generous or meagre the package is, citizen children will get the best package available in that state, whereas denizen children will not. But if we think that the liberal state should have the best interests of children at heart, then we should care about all children who reside in the territory getting the best package of rights available in that society.

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[19] For a discussion on the relationship between citizenship and welfare rights, see Carens 2013: Ch5.

[20] This means that citizenship would be compulsory for children. For a defence of compulsory citizenship for adults, see Ypi and de Shutter 2015. For a critique, see Oberman 2017.

There is, however, an important step missing here, which is the question of whether newborns have a right to be present within the territory of a state in the first place. For the question of who is entitled to citizenship is different from the question of who is entitled to reside in the territory. And if that is right, why think that children who find themselves in the territory of a liberal state have a right to on-going residency in that state, which will trigger their right to citizenship? Or, to put it another way: why can't self-determining political communities deport children born in the territory immediately after birth so that they don't thereby acquire a moral obligation to act in their best interests and so provide them with citizenship?

Here, again, the similarities between the duties of parents and state are striking. Consider first the conditions under which we think it is permissible for biological parents to transfer their presumptive parental responsibilities to others. We think it is permissible for parents to put their biological child up for adoption when they are incapable or unwilling of adequately looking after them. However, we do not believe that biological parents are morally permitted to transfer their parental responsibility simply because it would be convenient for them or when it would make the child worse-off (although again, we might think that the legal norms should err on the side of over-inclusiveness and that parents should be legally allowed to transfer their parental responsibilities even when they act wrongly in so doing). This means that, at the time of birth, biological parents have a *presumptive* moral responsibility that others lack but that can be permissibly transferred under some strict conditions.

The same is true of states. The fact that a child is born in the territory of a state means that the state acquires a presumptive obligation to be *the state* that exercises effective paternalism in her life.[21] This is because the state enjoys a special relationship with its resident children, a relationship that the state lacks with children residing abroad—although it is true that states, *qua* members of the international community, have secondary responsibilities for protecting the basic human rights of non-members residing abroad, be they children or adults.

But like many important presumptive responsibilities, there could be conditions under which transferal would be morally permissible. One can easily conceive of cases where it would be in the child's best interests to reside in another state after birth, and in

[21] This obligation does not apply to children who are temporary visitors since in such cases children only have a claim that they have their human rights protected and promoted. However, such a claim does affect children who are temporary residents in the state. (I leave open how long children should reside in a state for a claim of inclusion to arise, but I think that around 12 months would be reasonable).

such cases, the transferal of responsibility to another state would be permissible. Think here of children born in a poor liberal state who lack familial ties. If it would be in their best interest to move abroad, then it would be permissible for their state of birth to transfer its paternalistic obligations to another state before a right to citizenship is triggered. It is worth noting that even a presumptive duty of paternalism requires that the duty bearer acts in the child's best interests when transferring that responsibility to another party.

It is important to emphasize that the reason states are the primary duty bearer with regard to children born in their territory is not due to the fact of birth per se. Rather, it is the fact of on-going residence which triggers a duty on the part of the state to exercise effective paternalism in the lives of resident children, and grant them citizenship. This becomes clear by pointing out that *jus paternus* does not justify citizenship when children emigrate immediately after birth with their parents. Indeed, both legal principles of *jus soli* and *jus sanguinis* fail to capture the most basic grounds for inclusion on the part of children. What justifies the right to citizenship on the part of a resident child is not that she was born in the territory, nor that she has some family ties there, but rather that by being a resident of that state, *she has a right against that state in particular that it acts so as to reliably advance many of her interests*.[22] The fact that newcomers by birth have a right to be granted citizenship, due to their more general right to be subjected to reliable effective paternalism by their state of residence, is what ultimately overrides the state's *prima facie* right to exclude.

IV – Objections

At this stage in the discussion, a critic might make the following two observations: *jus paternus* might not overgeneralize so as to include newcomers by immigration, but it certainly overgeneralizes so as to include all children who are residents in the territory, or all children who reside in states that fail to engage in effective paternalism towards them. So although statism might be well-equipped to uphold a meaningful *prima facie* right to

[22] One implication of my argument is that children who move around the world and spend years at each state will have multiple citizenships. I remain agnostic on whether adults can automatically keep their multiple citizenships, or whether they need to show that there is still a "relevant" connection between them and the state. It is important to emphasise that *jus* paternus does not justify a form of 'kindership' whereby children can only keep their citizenship until the age of majority since this would fail to advance those interests of the child that require stability and long-term planning.

exclude when it comes to prospective adult immigrants, it is not so well-equipped to exclude prospective immigrant children, be they in the territory already or residing abroad.

Only the first observation holds. Consider first refugee and immigrant children who have settled in a liberal state. The mere fact that they were not born in the territory does not seem to make their claim for effective paternalism on the part of the state any weaker than the claim of children who were born there. Once they enter the territory and reside there, they develop a special moral relationship with that state, which is then charged with protecting a number of their specific interests via reliable effective paternalism. This entails granting children secure access to all the rights and entitlements of citizenship irrespective of their place of birth and existing family ties.

How about children of unauthorized immigrants? Why think that the state should go as far as to give them citizenship if many think that they should instead be deported alongside their parents? As I see it, liberal theory stands no chance of doing justice to children if it does not treat them as having *equal* moral status to adults and *independent* moral status from their parents. The fact that unauthorised adult immigrants lack a right to be in the territory of the liberal state says nothing about the claim that *their children* have to be included there if the political community can do so without incurring unreasonable costs. It is certainly a consequence of my theory that children of unauthorised immigrants have a claim against the state to be subjected to effective paternalism that is just as weighty as the claim of children who were born (and will reside) in the territory. It is also a consequence of my theory that these children will have a claim 'to sponsor' their (competent) parents so as to be subjected to effective paternalism by both the state and the parents themselves—although in some extreme cases, the costs of including many such families would be too high, thereby putting liberal states in a position such that they would be excused from failing to extend citizenship to the parents, and might be required instead to provide them with residency rights until the child reaches the age of majority.[23]

Consider now the claims of children residing abroad. Do children who either reside in a persecutory state or a state that fails to engage in effective paternalism towards them acquire a right to citizenship by virtue of the abuses and failures of their state of

[23] It is also important to recognize that *jus paternus* will, at times, give rise to perverse incentives in the form of parents using their child to acquire residency or citizenship rights in a liberal state. The point to stress is that although the demands of justice can at times give rise to regrettable outcomes, we must try and address such outcomes without turning our back on justice.

origin? The answer is no. Children who count as refugees due to human rights violations on the part of their state of citizenship will certainly have a right to immigrate, but they only acquire a right to citizenship after immigration has taken place. As for children who are citizens of states that are not persecutory but still fail to act in the child's best interests, their claim to be subjected to effective paternalism will still fall on their state of citizenship. I therefore follow other statists in adopting a human rights conception of asylum for both adults and children, although broader conceptions of asylum for children are compatible with the claims I make in this essay.[24]

Let me now move to a second concern, which is that many adults seem to have a strong claim to become citizens of their state of long-term residence. But if citizenship is grounded on a right to be subjected to effective paternalism, then adults lack a claim to become citizens of a state after immigrating there.

First, it is worth noting that any theory that accepts that children and adults have different justice claims against the state will be compatible with the assumption that the value of citizenship can be different for both adults and children. Statists who want to deny that the value of citizenship is distinct for adults and children need to present an argument that applies to children in the territory without overgeneralizing so as to include prospective immigrants. Or else, they might deny that the content of duties of justice can be different for adults and children. This move will in effect deny that paternalism is appropriate in the case of children, or typically inappropriate in the case of adults. Statists therefore have good reasons to agree with me about what gives *children* a right to citizenship while having a further debate about the citizenship claims of adults.[25]

Conclusion

In this essay I have argued that statism does not pave the way to statelessness and denizenship on the part of children. If I have succeeded in my defence, then I will have rescued statism from two quite unpalatable positions. The first would be to hold that both newcomers by immigration and newcomers by birth should be included so as to prevent children from being excluded. This move would amount to giving up on the state's *prima facie* right to exclude. Another strategy would to be hold on to a form of

[24] This means that someone could disagree with me about which children have a right to immigrate, whilst still agreeing with me that it is the paternalistic relationship between child and state that grounds the child's right to citizenship.

[25] For adult-focused proposals, see Baubock 2006; Shachar 2009; Carens 2013.

statism that allows for the exclusion of newcomers by birth. This move would be unacceptable to anyone who thinks that the liberal state has special and stringent obligations to act in the best interests of their resident children. Instead I hope I have been able to explain why newcomers by birth are owed citizenship as a matter of justice without denying that states have a meaningful *prima facie* right to exclude. This, in turn, allows statism to provide the philosophical basis for citizenship arrangements that do justice to children, as well as remain a serious contender in the flourishing debate on the ethics of immigration.

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