

Cultural Relativism and the Right to Citizenship

النسبية الثقافية و الحق في الجنسية

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ABSTRACT

Citizenship is a global yet misunderstood and contested concept. Citizenship, in its most simple context, directly refers to the state where an individual holds his or her passport. However, the concept is much deeper and signifies crucial dimensions that have profound effects on human lives. International law has created certain standards for citizenship, which have been criticized for being influenced by Western ideals with lack of acknowledgment to other vital factors that influence citizenship in other non-Western communities. This paper argues that international standards for citizenship fail to consider states' historical and traditional factors, which are important in shaping the concept of citizenship and identity in these communities.

The concept of citizenship differs in its nature, practice, language, and meaning between political communities depending on political, cultural, and historical factors. The features and struggles of citizenship are characterized by the historical, cultural, and political environments where citizenship is practiced. Citizenship can only be defined within this context.

This paper tackles the issue through the application of the cultural relativism theory, which is the notion that the beliefs, values, and practices of a person should be understood depending on that person's culture instead of applying standardized judgments on people equally. This dissertation essentially argues that even though international law dictates that states cannot use cultural justifications to dodge obligations under international law, however, citizenship should be treated differently. This is due to the distinctive nature of the right to citizenship and its inevitable connection to culture and tradition. It is difficult to divide or isolate citizenship from its historical and traditional roots.

This paper uses qualitative, interpretive method to look at perceptions about rights to citizenship among kinship societies. The findings show how strongly citizens of kinship based communities feel about belonging and the importance of their identity in shaping the meaning of belonging. Hence, determining citizenship criteria based on kinship considerations is vital in these communities.

ملخص البحث

تعد الجنسية او المواطنة مفهومًا من المفاهيم العالمية التي يساء فهمها ويتنازع عليها، إذ تشير الجنسية او المواطنة في سياقها البسيط إشارة مباشرة إلى الحالة التي يحمل فيها الفرد جوازًا للسفر، إلا أن مدلول هذا المفهوم أعمق بكثير من ذلك حيث يشير إلى أبعاد مصيرية لها آثار عميقة على حياة الإنسان. فقد وضع القانون الدولي معايير معينة للجنسية و المواطنة تعرضت للنقد بسبب تأثيرها بالمثل الغربية مع عدم الاعتراف بالعوامل الحيوية الأخرى التي تؤثر على الجنسية و المواطنة في المجتمعات الأخرى غير الغربية. تبحث هذه الورقة في مسألة فشل المعايير الدولية للمواطنة في الأخذ بالعوامل التاريخية والتقليدية للدول، والتي تعد مهمة في تشكيل مفهوم المواطنة والهوية في هذه المجتمعات.

يختلف مفهوم الجنسية و المواطنة في طبيعته وممارسته ولغته ودلالته بين المجتمعات السياسية اعتمادًا على العوامل السياسية والثقافية والتاريخية. إذ تتصف معالم المواطنة ونضالاتها بالبيئات التاريخية والثقافية والسياسية التي تمارس فيها، فلا يمكن تحديد معنى او تعريف للجنسية و المواطنة إلا في هذا السياق.

تتناول هذه الورقة القضية من خلال تطبيق نظرية النسبية الثقافية، وهي نظرية مفادها أنه ينبغي فهم معتقدات الشخص وقيمه وممارساته اعتماداً على ثقافته بدلاً من تطبيق أحكام موحدة على كافة الأشخاص على حدٍ سواء، إذ تبحث هذه الرسالة بصفة أساسية مسألة أنه على الرغم من أن القانون الدولي ينص على عدم إمكانية الدول اللجوء إلى التبريرات الثقافية لتفادي الالتزامات بموجب القانون الدولي إلا أنه يجب معاملة الجنسية و المواطنة معاملة مختلفة بسبب الطبيعة المميزة لحق المواطنة وارتباطها ارتباطاً حتمياً بالثقافة والتقاليد. فمن الصعب تقسيم المواطنة أو عزلها عن جذورها التاريخية والتقليدية.

وترتكز هذه الورقة على النهج النوعي والتفسيري للنظر في التصورات المرتبطة بحقوق المواطنة بين المجتمعات المتقاربة من بعضها البعض. وتوضح النتائج مدى شعور المواطنين في هذه المجتمعات بالانتماء وأهمية هويتهم في تشكيل معنى هذا الانتماء حيث أن تحديد معايير المواطنة القائمة على اعتبارات القرابة يعد أمراً حيويًا في هذه المجتمعات.

INTRDOCUTION

i. Citizenship: Meaning and Significance

Citizenship is a global yet misunderstood and contested concept.⁽¹⁾ Citizenship, in its most simple context, directly refers to the state where an individual holds his or her passport. However, the concept is much deeper and signifies crucial dimensions that have profound effects on human lives. Citizenship is both a legal and a political bond between individuals and the state where they share a genuine link. It is legally defined (the law determines acquisition and governs the relationship between the state and citizens),⁽²⁾ and socially practiced (concerned with the social bonds that connect citizens to the state and to each other).⁽³⁾ Citizenship is also politically recognized (other states respect the state's sovereign right to regulate its citizens).⁽⁴⁾

There are different methods to acquire citizenship and establish a genuine connection with the state, as mandated by international law.⁽⁵⁾ The most common ways are *jus soli* (right of soil), which is also referred to as birthright citizenship because it is determined by the place of birth, and *jus sanguine* (right of blood), which is the right to citizenship based on the citizenship of one's parents.⁽⁶⁾ The acquisition of citizenship is determined according to each state's domestic law and is considered a practice of state sovereignty,⁽⁷⁾ nonetheless, the implications of citizenship

(1) See WALTER GALLIE, ESSENTIALLY CONTESTED CONCEPT 8 (1956).

(2) RUTH LISTER, CITIZENSHIP: FEMINIST PERSPECTIVES 15 (2003).

(3) J.M. Barbalet, Citizenship, Class Inequality, and Resentment, in CITIZENSHIP AND SOCIAL THEORY 36, 45 (Bryan S. Turner ed., 1993).

(4) See Alexandra Dobrowolsky & Evangelia Tastsoglou, Crossing Boundaries and Making Connections, in WOMEN, MIGRATION AND CITIZENSHIP: MAKING LOCAL, NATIONAL AND TRANSNATIONAL CONNECTIONS 12 (Evangelia Tastsoglou & Alexandra Dobrowolsky eds., 2006).

(5) BRIAN MILNE, THE HISTORY AND THEORY OF CHILDREN'S CITIZENSHIP IN CONTEMPORARY SOCIETIES 23 (2013).

(6) *Id.*

(7) According to The Hague Convention on Certain Questions Relating to the Conflict

extend beyond state borders.⁽¹⁾ The study of citizenship is part of private international law, which is a set of legal rules that regulate issues where a foreign element is present, such as disputes between citizens of different states and conflicts of law between states.⁽²⁾

Citizenship is considered a multidisciplinary concept with many dimensions (political, legal, and social)⁽³⁾ and various definitions for citizenship depending on the angle from which the concept is viewed.⁽⁴⁾ However, a common definition in international law comes from the International Court of Justice's (ICJ) definition in the 1955 *Nottebohm* decision, which recognized that “[c]itizenship is a legal bond having on its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.”⁽⁵⁾ Accordingly, the three pillars of citizenship are: (1) a legal bond, which results in (2) a social and genuine connection, providing (3) mutual rights and responsibilities between the individual and state.

Theoretically, the words “citizenship” and “nationality” connote two slightly different meanings, however, they are often synonymous within the legal literature.⁽⁶⁾ Citizenship

of Nationality Laws of 1930, states have the right to decide their nationality laws without intervention from the international community. Article 1 of the Convention states, “It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality.” Convention on Certain Questions Relating to the Conflict of Nationality Law, supra note 1, art. 1.

(1) HELEN IRVING, CITIZENSHIP, ALIENAGE, AND THE MODERN CONSTITUTIONAL STATE: A GENDERED HISTORY 99 (2016).

(2) AHMAD SALAMA, ALQANOON ALDAWLI ALKHAS ALSAUDI DERASA MUQARANA [SAUDI PRIVATE INTERNATIONAL LAW: A COMPARISON STUDY] 9 (2014).

(3) IRVING, supra note 1, at 238. See also LISTER, supra note 2, at 14.

(4) IRVING, supra note 1, at 238. See also LISTER, supra note 2, at 14.

(5) *Nottebohm Case (Liech. v. Guat.)*, Judgment, 1955 I.C.J. Rep. 4 (Apr. 6).

(6) Van Waas, supra note 7, at 26.

refers to the relationship between an individual and a political association; it is related to the domestic or municipal level of the relationship (political bond).⁽¹⁾ Nationality on the other hand, is related to membership of a nation in the sense of a particular cultural, ethnic, or historic community (cultural bond).⁽²⁾ Being part of a nation is not the result of legal norms but of either cultural unity, race, or common language.⁽³⁾ Nationality shows an emotional connection from the members to the society.⁽⁴⁾ States sometimes distinguish between the two terms.⁽⁵⁾ For the most part the two terms are used interchangeably to denote membership status for an individual in international law.⁽⁶⁾

Citizenship is essential in two ways: it is “the right to have rights,” as it is often a prerequisite for an individual’s full access to a state’s goods and resources,⁽⁷⁾ and it is an important component in shaping individual identity.⁽⁸⁾ In the last century, the right to citizenship or nationality was also

(1) Alfred Boll, *Nationality and Obligations of Loyalty in International and Municipal Law*, 24 *AUSTL. Y. B. INT’L L.* 37 (2003).

(2) Van Waas, *supra* note 7, at 26.

(3) *Id.*

(4) *Id.*

(5) For example, the United States differentiates between citizens and nationals. According to the Immigration and Nationality Act § 101(a) (22), 8 U.S.C. §12 (1965), all U.S. citizens are at the same time U.S. nationals but people born in the American Samoa or Swains Island are U.S. nationals without being U.S. citizens. See Daniel Naujoks, *Citizenship and Nationality, Concept and Notion*, Nottebohm, ICJ, MIGRATION RECHT NET, <http://www.migrationsrecht.net/european-immigration-migration-law/citizenship-and-nationality-concept-and-notion-nottebohm-icj.html> (last visited Jan. 31, 2017).

(6) U.N. DEP’T OF ECON. & SOC. AFFAIRS, *WOMEN2000 AND BEYOND: WOMEN, NATIONALITY AND CITIZENSHIP 2* (2003), <http://www.un.org/womenwatch/daw/public/jun03e.pdf>.

(7) *CITIZENSHIP AND THE STATE IN THE MIDDLE EAST: APPROACHES AND APPLICATIONS XI* (Nils Butenschon et al. eds., 2000). See also Laura Van Waas, *Nationality and Rights*, in *STATELESSNESS AND CITIZENSHIP: A COMPARATIVE STUDY ON THE BENEFITS OF NATIONALITY 26* (Brad K. Blitz & Maureen Lynch eds., 2011) (discussing the use of human rights as an alternative for nationality to access rights, and concluding that human rights instruments sometimes fail to protect some individuals due to some limitations in international law—such as state sovereignty and the lack of enforcement mechanisms associated with human rights instruments—thus, nationality is the only legitimate source that guarantees access to rights).

(8) AMIN MAALOUF, *ALHAWIYAT AL QATILA [KILLER IDENTITIES]* 10 (2015).

recognized as a human right in international treaties.⁽¹⁾

The significance of citizenship and its effect on human lives is tremendous.⁽²⁾ The bond of citizenship signifies belonging, sentimental feelings of attachment, history, identity, and above all security and shelter for individuals.⁽³⁾ Individuals who lack citizenship (stateless persons) acknowledge its importance the most and understand the harshness of lacking one.⁽⁴⁾ The access to rights and the protection citizenship entitles its holder makes citizenship a vital status.⁽⁵⁾

The absence of citizenship is referred to as “statelessness”. This status affects the enjoyments of rights provided by governments to citizens only. All human rights instruments provides for the right to a nationality, and there are two international agreements that address the situation of statelessness directly. There are many reasons that could lead to statelessness, the most important ones are: state succession, conflicts of laws and other technical or administrative matters, discrimination against certain racial or ethnic minority groups, and gender-based discrimination in nationality laws.⁽⁶⁾

(1) See Universal Declaration of Human Rights, art. 15 G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948); Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117; Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; Convention on the Rights of the Child art. 7, Nov. 20, 1989, 1577 U.N.T.S. 3; Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 175; Convention on the Nationality of Married Women, Jan. 29, 1957, 309 U.N.T.S. 65; Convention on the Elimination of All Forms of Discrimination against Women art. 9, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]; Convention on the Avoidance of Statelessness in Relation to State Succession, Mar. 15, 2006, C.E.T.S. No. 200; Convention on Certain Questions Relating to the Conflict of Nationality Law, Apr. 12, 1930, 179 L.N.T.S. 4137.

(2) EDIBERTO ROMÁN, CITIZENSHIP AND ITS EXCLUSIONS: A CLASSICAL, CONSTITUTIONAL, AND CRITICAL RACE CRITIQUE 5 (2012).

(3) MICHAEL WALZER, SPHERES OF JUSTICE 5 (1983).

(4) Nils A. Butenschon, State, Power, and Citizenship in the Middle East: A Theoretical Introduction, in CITIZENSHIP AND THE STATE IN THE MIDDLE EAST: APPROACHES AND APPLICATIONS 5 (Nils Butenschon et al. eds., 2000).

(5) Van Waas, supra note 7, at 26.

(6) UN High Commissioner for Refugees (UNHCR), Mapping Statelessness in The United Kingdom, 22 November 2011, available at:

Statelessness is considered a violation of human rights.⁽¹⁾ Individuals suffering from this status are among the most vulnerable in the world and are a burden on the international community.⁽²⁾ Stateless persons are deprived of the bond connecting them to the state, which offers protection and security along with necessary documentation for crossing borders.⁽³⁾ Statelessness is considered a problematic status that international law strives to prevent.⁽⁴⁾ The United Nations attempts to protect individuals from statelessness by developing international treaties to ensure that all individuals hold a nationality of the state where he/she shares a genuine link.⁽⁵⁾

There are two kinds of stateless people, first is de jure which was defined in the 1954 Statelessness Convention – “a person who is not considered a national by any State under operation of its law”⁽⁶⁾ this is the category in which states that are parties to the convention are obligated towards. However, the other kind de facto stateless, which are people who are not de jure stateless (not belonging to any state) however, they have no effective nationality and enjoy no protection from the state. This means they do have a nationality but for many different reasons cannot enjoy the

<http://www.refworld.org/docid/4ecb6a192.html> [accessed 26 October 2015]

(1) A stateless person does not hold the nationality of any state. See Convention Relating to the Status of Stateless Persons at art.1. See also Brad K. Biltz & Maureen Lynch, *Statelessness and the Deprivation of Nationality*, in *STATELESSNESS AND CITIZENSHIP: A COMPARATIVE STUDY ON THE BENEFITS OF NATIONALITY 1* (Brad K. Biltz & Maureen Lynch eds., 2011).

(2) Biltz & Lynch, *supra* note 1, at 1.

(3) *WOMEN2000 AND BEYOND* at 2.

(4) Biltz & Lynch, *supra* note 1, at 1.

(5) See Convention Relating to the Status of Stateless Persons, *supra* note 8; Convention Relating to the Status of Refugees, *supra* note 8; Convention on the Rights of the Child at art. 7; Convention on the Reduction of Statelessness, *supra* note 8; Convention on the Nationality of Married Women, *supra* note 8; CEDAW at art. 9; Convention on the Avoidance of Statelessness in Relation to State Succession; Convention on Certain Questions Relating to the Conflict of Nationality Law.

(6) UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <http://www.refworld.org/docid/3ae6b3840.html> [accessed 26 October 2015]

privileges the nationality offer to the citizens. Statelessness has a negative consequence on individuals, families, and communities.

Citizenship is a very complex concept. It is globally recognized, yet misunderstood by many. The right to citizenship is well enshrined in Article fifteen of the Universal Declaration of Human Rights (UDHR), which spells out that “everyone has the right to a nationality” and that “no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”⁽¹⁾ Other international human rights as well consider citizenship as a human right and obligates states to take appropriate measures to ensure equality standards in treating citizens. However, the cultural bond of citizenship is often neglected when applying these international standards strictly. This is a matter of concern, especially in states or communities where culture plays a vital role in determining who belongs, which is the case in kinship based societies. Kinship ties are an important glue that keep the people together and help to build cohesion and stability in these states. This is why it was and still is important to grant kinship ties priority in determining who belongs.

Culture and tradition play an important role in setting the citizenship criteria in kinship societies. Essentially, who belonged to certain kinship groups or tribes were historically given the citizenship of the newly formed states in the region in the last century. Hence, kinship is vital to the individuals' identity.

ii. Significance of the Study

This study was important in highlighting the need to relook at the concept of citizenship. Cultural and ethnic values of the kinship societies should be excluded from the

(1) See Universal Declaration of Human Rights, art. 15 G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948).

universality of human rights due to the extreme connection between citizenship and culture. Additionally, this study is important in understanding the importance of not isolating citizenship from the factors that influences its existence. Furthermore, the right to self-determination in international law also supports the approach of granting states' more space and rights in deciding the criteria for belonging without being held accountable or seen as violating human rights.

iii. Methodology

This paper uses qualitative, interpretive method to look at perceptions about rights to citizenship among kinship societies.

A. Case Study Method

This paper uses case study design to document a close-up reality of subjects' experiences, thoughts and feelings on the rights of citizenship and its link to their cultural values. Also, a case study provided subjective and impartial data. As Yin proposes, a case study must be substantial, complex and engaging, and include alternate perspectives and satisfactory evidence. Likewise, case study method was suited to this study that is time and action based. According to Yin, it is imperative for case studies to be aware of and agree that there are many variables working in single case, and, thus, to document the inferences of these variables more than one tool for data collection and many sources of data are required. In particular, this paper is interested in exploring the following two variables: the right to citizenship in kinship societies in Middle East nations, and the impact of culture in understanding the turmoil brought about by global citizenship concepts. The data from this case study, with its detailed description of the societal context, facilitated the development of patterns within specific conditions and specific cases, which provided a substantial understanding of the phenomena.

B. Interpretivist Approach, Qualitative

The choice for the interpretivist study was chosen because it focus on individuals' meaning thus suitable for investigating concepts such as individual perspective, personal ideas and negotiated values. The paper draws upon the cultural relativism theory as a pointer to look at the subjects' interpretations of rights to citizenship in their context. The data gathered from the study disclosed the themes and concepts being investigated. The goal of this study was to gather data about participants' perceptions about right to citizenship and analyze those through cultural relativism inquiry. Since one of the features of a qualitative approach is to "advocate how to turn suggestion into practice." The results can contribute to prevailing knowledge in order to advance knowledge on how to approach the concept of citizenship in kinship societies where cultural values are not neglected.

C. The Research Instruments

As Yin pointed out, the main focus in case study research is the collection of information. Scientific research usually depend on multiple data sources to enhance the validity and reliability of the study. In this research study, secondary data source were suitable because getting data from different source has the capacity to provide triangulation. Triangulation is important especially in its attempts to provide a better off account of human behavior, from different positions, and is predominantly useful in case studies.

D. Data Analysis

The data collected were cleaned, grouped and categorized into themes to get patterns and for the researcher to better understand and present the findings in a more organized manner. Interpretivist approach was employed in the analysis of the data where the researcher

examined the situations from the viewpoint/ or the eye of the participants, and employed detailed description to present the data. Great caution was undertaken for the researcher to be able to say more about the data collected than individuals. To clearly present the data, the researcher sorted units of meaning, characterized these units of meaning, then interpreted them by re-counting the findings, and generated notions that resonated with the participants' responses.

E. Ethical Considerations

To ensure confidentiality, the researcher ensured that there were no identification marks, names or addresses of the participants or their family members, on the semi-structured questionnaire. Pseudonyms and in some instances codes were used to conceal identity and to ensure confidentiality of the participants. Further, pseudonyms for pinpointing participants and password-protected data files were stored in a secure laptop that was, and is accessible only to me alone.

iv. Analysis Findings

From the findings (Table 1) clarifies the means and standard deviations for the items of cultural ties), the total mean for the questionnaire items for the extent of their understanding of the cultural ties was high (over 4). This means that overall understanding of the concept of cultural ties is high. Further, it can be seen that the citizen's awareness of the place of cultural ties in the cohesiveness of their society is good. Therefore, the participants' dimension of citizenship and cultural ties which reflect their deep rooted kinship ties and knowledge of the culture achieved high level.

Results of the items in this dimension were as follows:

The item (Families can have ties outside the region or state) achieved the highest ranking with a mean of 4.41 and a standard deviation of 1.20, whereas the item (Allowing the

concepts global citizenship leads to lose of identity of the local citizens) was ranked second scoring a mean of 4.40 with a standard deviation of 0.86. The item (International treaties can erode cultural values and isolate people in the society) came third with a mean of 4.39 and a standard deviation of 0.93. The rank that followed was of the item (Cultural ties includes solutions for all of our current complications) with a mean of 4.36 and a standard deviation of 1.17. Another item (I don't accept any discussion related to issues of culture) came in fifth position with a mean of 4.22 with a standard deviation of 1.29. Another item (A person's loyalty should be focused towards his society) and (Bearing in mind cultural values is a requirement for humans right advancement in the state/nation) came in sixth and seventh position with mean of 4.17 and 4.02 with standard deviation of 1.12 and 1.03 respectively. All these seven items fell in the category of higher level ranking and can be considered as the true representation of the people's understanding of the place of culture in their achievement of citizenship rights. Other items (The current global revolution represents a mess and pollution of the cultural ties and concepts) and (If government publishes something against my culture, I oppose it) had higher means 3.80 and 3.67 with standard deviations of 1.41 and 1.14 respectively. However, the level indicated that the item did not elicit the most pressing issues and thus is not the direct representation of the masses in that region. Other items (It is normal to feel annoyed when your cultural philosophies or principles are condemned) and (Most of the Western views are damaging and interfere with our cultural society) scored mean of 3.43 and 3.10 with standard deviation of 1.35 and 1.44 respectively. This indicated a medium level threshold of knowledge of the cultural ties link to citizenship rights. Of these items, the item (I feel angered with those who persecute the people because of their culture and religious

affiliations) was ranked last with a mean of 2.10 and a standard deviation of 1.21. This showed that although participants are against the inhuman treatment of the people by the government due to their cultural affiliations, they are not open to criticize these acts in public because of the fear of the reaction from the government.

Table (1)
Means & SDs for the Dimension of Cultural Ties Among the Participants

Item	Mean	SD	Level
Families can have ties outside the region or state.	4.41	1.20	High
Allowing the concepts global citizenship leads to lose of identity of the local citizens.	4.40	0.86	High
International treaties can erode cultural values and isolate people in the society	4.39	0.93	High
Cultural ties includes solutions for all of our current complications.	4.36	1.17	High
I don't accept any discussion related to issues of culture	4.22	1.29	High
A person's loyalty should be focused towards his society.	4.17	1.12	High
Bearing in mind cultural values is a requirement for humans right advancement in the state/ nation	4.02	1.03	High
The current global revolution represents a mess and pollution of the cultural ties and concepts	3.80	1.41	High
If government publishes something against my culture, I oppose it.	3.67	1.14	High
It is normal to feel annoyed when your cultural philosophies or principles are condemned.	3.43	1.35	Medium
Most of the Western views are damaging and interfere with our cultural society.	3.10	1.44	Medium
I feel angered with those who persecute the people because of their culture and religious affiliations.	2.10	1.21	Medium

This results are a reflection of the openness of the kinship societies in Middle East and the individual's general awareness particularly, where the participants became aware of the negative views and realized the positive concepts of cultural ties its benefit to individuals' citizenship. Consequently, these attributes are reflected upon their uniqueness so they benefit positively from this sincerity

while avoiding the undesirable effects on their individuality and citizenship in general.

Concerning the Aspect of Belonging & Citizenship in Kinship Based Societies:

From the findings also it was clear that the overall mean for the investigation item belonging and citizenship in kinship society was high (3.86), with a standard deviation of 1.26. This indicates that the overall degree of the participant's knowledge of impact of belonging and citizenship in kinship society was high. This implies that the participants are aware of the crucial role that culture plays in their achievement of citizenship rights as well as cohesiveness. This consequently reflects that participants value their belonging in a kinship society and enjoy the close ties of family members which enable them to strengthen their belonging and attainment of citizenship rights.

To understand the participants' knowledge of the importance of belonging and citizenship in a kinship society, this dimension scored high in most of the items studied. The item (Cultural neglect and violence threaten citizenship rights especially in kinship society, and offend the people) achieved the highest score with a mean of 4.73 with a standard deviation of 0.84, whereas the item (Each community members should display their best in order to foster unity and prosperity of the country) had a mean of 4.68 with a standard deviation of 0.91 thus coming in second and demonstrating that the participants' understand and value their role in the society as full citizens. The item (Citizenship rights are benefits of state honoring the human rights as well as allow citizens take part in public affairs) came third with a mean of 4.59 and a standard deviation of 0.76. another high score was the item (Peace, stability and

feeling of security help foster cultural values and identity with a mean of 4.40 and a standard deviation of 1.34. On the other hand, the item (Understanding the impact of culture on citizenship and belonging is a new concept in fostering loyalty with a mean of 2.89 and a standard deviation of 1.81 was second last while the item (I don't feel the efforts made by the government in enhancing citizenship rights and loyalty in the state) which had a mean of 2.73 and standard deviation was 1.90 was ranked last by the participants.

The explanation of these findings could be that the awareness of the role of the citizens, who have good understanding of the linkage between culture and their roles in the society is beneficial. The understanding of the roles of the community members affects the local people's idea of belonging and citizenship. Therefore, the community member's awareness of their rights is associated with their knowledge of their place in the society. When the people know the role that culture plays in the society and citizenship rights, they are able to support the interests of the nation as they continue to perform their roles. However, a nation that do not protect their citizens and see the culture of the people as an impediment to their global alignment, they place themselves in a precarious position of falling out with the native community and thus lack loyalty from the people. Hence, while the individuals are tasked with the role of playing an integral part of showing a sense of loyalty to the state, the state on their part are supposed to protect the people and provide them with opportunities to enjoy their rights, for them to feel a sense of belonging and citizenship rights in kinship society.

v. Discussion on Citizenship Rights

The researcher used the following questions to understand the dynamics of citizenship rights in the region and the concept of cultural relativism:

- i. Are citizens comfortable with the way the government approaches the issue of kinship ties?
- ii. Is the government keen on improving the welfare of the local communities, especially those that have strong cultural ties with members from outside the nation?
- iii. Do the people enjoy the benefits of being a citizen of a sovereign state/country?
- iv. How the people rate their understanding of the concept of citizenship?

vi. Citizenship in International Treaties

Most basic human rights instruments discuss nationality as a right that should be granted to everyone equally.⁽¹⁾ The right to nationality had been given this focus on the international level because of its effect on individuals allowing access to other human rights and resources, as well as the conflict between the right to nationality and other states interests (right to self-determination) resulting in the tragic phenomenon of statelessness. Citizenship entitles an individual to other human rights, such as the freedom of movement or diplomatic protection, which are only offered by a state to its citizens.⁽²⁾ This recognition is embodied in many international treaties,⁽³⁾ however, the Universal Declaration of Human Rights (UDHR) of 1948 contains the

(1) International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter ICERD]; International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; CEDAW; Convention on the Rights of the Child, supra note 8; Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3.

(2) WOMEN2000 AND BEYOND at 2.

(3) To mention a few: Convention Relating to the Status of Stateless Persons, supra note 8; Convention Relating to the Status of Refugees, supra note 8; Convention on the Rights of the Child at art. 7; Convention on the Reduction of Statelessness, supra note 8; Convention on the Nationality of Married Women CEDAW at art. 9; Convention on the Avoidance of Statelessness in Relation to State Succession; Convention on Certain Questions Relating to the Conflict of Nationality Law,

most explicit language. Article 15 of the UDHR states “(1) Everyone has the right to a nationality; (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”⁽¹⁾

Nonetheless, while the language of this article is obvious, it still fails to protect all individuals.⁽²⁾ The UDHR does not specify which state is responsible for granting an individual that right to nationality. This is because states’ have a right of self-determination⁽³⁾ and sovereignty,⁽⁴⁾ which allows states to decide their own nationality laws without foreign intervention.⁽⁵⁾ Although the right to self-determination is arguably, limited to compliance with human rights norms and international conventions to which a state is a member,⁽⁶⁾ in practice, the right to sovereignty and self-determination supersede an individual’s ability to claim a particular citizenship.⁽⁷⁾

The criticism, however, is essentially that international human rights is a Western creation, hence, it fails to acknowledge⁽⁸⁾ and consider other non-Western cultures where kinship ties and customs play a major role in determining nationality regulations.⁽⁹⁾

(1) Universal Declaration of Human Rights at art. 15.

(2) Van Waas at 26.

(3) Self-Determination is a fundamental norm in modern Public International Law and is considered a jus cogens rule. Jus Cogens rules are certain norms and principles of international law that are accepted and practiced by the international community, in which no states oppose or violate even though there is not any kind of obligating agreement. Examples are torture and the prohibition of genocide. See generally Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514 (XV), U.N. Doc. A/4684 (Dec. 14, 1960) (affirming states’ right to exercise sovereignty).

(4) See generally U.N. Charter art. 2, 1 (explaining state right to sovereignty).

(5) Convention on Certain Questions Relating to the Conflict of Nationality Law art. 1, Apr. 12, 1930, 179 L.N.T.S. 4137 (granting states the right of deciding nationality laws according to their best interests without intervention from the international community).

(6) SALAMA at 85.

(7) Van Waas at 26.

(8) ANN ELIZABETH MAYER, ISLAM AND HUMAN RIGHTS: TRADITION AND POLITICS 2 (2006).

(9) U.N. Dep’t of Econ. & Soc. Affairs, Women2000 And Beyond: Women, Nationality and Citizenship1 (2003), <http://www.un.org/womenwatch/daw/public/jun03e.pdf>. See also Eva Brema, Enemies or Allies? Feminism and Cultural Relativism as Dissident Voices in Human Rights Discourse, 19 HUM. RTS. Q. 136, 143 (1997).

Even though international law dictates that states cannot use cultural justifications to dodge obligations under international law, however, this paper argues that citizenship should be treated differently. This is due to the distinctive nature of the right to citizenship and its inevitable connection to culture and tradition. It is *difficult* to divide or isolate citizenship from its historical and traditional roots.

The concept of citizenship differs in its nature, practice, language, and meaning between political communities depending on political, cultural, and historical factors. The features and struggles of citizenship are characterized by the historical, cultural, and political environments where citizenship is practiced.⁽¹⁾ Citizenship can only be defined within this context.⁽²⁾ Due to that, the concept of citizenship is largely influenced by the factors that define it, thus, it is crucial to allow states and give them space in regulating their citizenship standards without having them accountable for violating the human rights for citizenship.

The history, culture, tradition, and the process of nation-building are all important components that shape the meaning and practice of citizenship in any community. Recognizing the influence of these factors on citizenship, as well as comprehending states' right of self-determination, raises some serious questions regarding the so called violations to international human rights standards on citizenship by these countries who are expressing their identity.

(1) TOM HALL & HOWARD WILLIAMSON, CITIZENSHIP AND COMMUNITY 2 (1999).

(2) Id.

What complicates the situation is that states often sign international treaties without expressing concern to such issues. The problem is that states do not acknowledge they have a problem. International law has pushed to make the concept of citizenship a global concept and apply it equally in all places in the world. However, the *disconnect* between the international standards of the concept and citizenship as practiced in some political communities is causing dilemma, tension and confusion. This is evident when states practice and regulate citizenship differently than what international treaties dictate, they are viewed as if they are violating standards of international law, while they are given the right to self-determine their criteria for belonging. The approach of allowing states and giving them space in regulating citizenship according to their culture and tradition acknowledges the power and influence of the factors that shape citizenship and what it means to belong in a specific nation.

To understand the construction of inclusion and exclusion of citizenship, one should not focus solely on the legal framework or social criteria for it.⁽¹⁾ Rather, one should go beyond the laws and regulations to understand the politics behind them.⁽²⁾ The emergence of states influence the practice and legal framework of citizenship in any community.⁽³⁾ Thus, the discrimination and exclusion of citizenship laws often have social/political roots that relate to the historical/ political process of the state.

(1) Nils A. Butenshon, State, power, and Citizenship in the Middle East: a Theoretical Introduction, in *CITIZENSHIP AND THE STATE IN THE MIDDLE EAST: APPROACHES AND APPLICATIONS*, 6 (Nils Butenshon, ed., 2000).

(2) *Id.*

(3) *Id.*

This issue can be tackled through the application of the cultural relativism theory. Cultural relativism is the notion that the beliefs, values, and practices of a person should be understood depending on that person's culture instead of applying standardized judgements on people equally. The idea is based on the importance of acknowledging the *context* where the law is being applied. This idea or notion was first introduced by Franz Boas in the beginning of the twentieth century and was later developed in many fields. The international human rights field is an area that has been criticized by many advocates of cultural relativism. International human rights norms conflict with the essence of cultural relativism theory, as these norms reflect a Western idea of what rights should look like.

vii. Belonging in Kinship based societies

Citizenship and kinship are intersected concepts. Kinship refers to the relationship between people with a genuine belief that they are connected through an apical ancestor.⁽¹⁾ It consists of two main elements.⁽²⁾ First, it is a group of people who have a mutual belief or connection, through a shared mutual ancestor.⁽³⁾ Second, there must be an acknowledgment of this connection from the society in which they reside.⁽⁴⁾ The kinship group is an extended family network while the tribe is the larger collection of kinship groups. Descent is patrilineal and members of one tribe all trace back to the same paternal ancestor.

(1) Charles F. Swagman, *Tribe and Politics: An Example from Highland Yemen*, 44 J. ANTHROPOLOGICAL RES. 255 (1988).

(2) Scott J. Weiner, *Kinship Politics in the Gulf Arab States* (ARAB GULF STATES INST. WASH.) at 2, July 22, 2016.

(3) *Id.*

(4) *Id.*

To understand the connection between citizenship and kinship, it is beneficial to examine how kinship functions. Fukuyama explains that kinship groups are comprised of large numbers and members of each group subscribe to the principle of “all for one and one for all.”⁽¹⁾ All of them are willing to sacrifice everything for just one. Even if this person is wrong, support is still offered.⁽²⁾ Loyalty, honesty, and collaboration are sacred principles to members of kinship groups.⁽³⁾

Kinship norms are significant in shaping both the social and political spheres in kinship based states for three reasons:⁽⁴⁾ First, kinship groups were influential in the process of state formation for these states.⁽⁵⁾ Second, most of these states’ societal structures are still kin-based, where the social structure is divided according to kinship.⁽⁶⁾ Third, kinship norms largely determine who *belongs* in these states and largely influences their nationality laws and the criteria of belonging. The multiple-function role of kinship norms explains how the patrilineal structure of the kinship groups developed and transferred in the citizenship context. The people who belong to certain kinship groups belong to these states.

Kinship groups’ conceptions of “belonging” by sharing one ancestor and features of honesty, collaboration, and loyalty survived in the newly established idea of “belonging”

(1) FRANCIS FUKUYAMA, THE ORIGINS OF POLITICAL ORDER 58 (2011).

(2) Weiner at 9.

(3) Id. at 9.

(4) SAMIN, at 5, 14 (2015).

(5) Weiner, at 5.

(6) Mounira Maya Charrad, Unequal Citizenship Issues of Gender Justice in the Middle East and North Africa, in GENDER JUSTICE, CITIZENSHIP AND DEVELOPMENT 243 (Maitrayee Mukhopadhyay & Navsharan Singh eds., 2007).

to the state as a citizen. The emergence of the modern state did not affect the existing kinship-based political and social organization. To the contrary, the model of “belonging” was transferred to the bigger picture of modern citizenship.

Historically, kinship was important due to natural causes.⁽¹⁾ In order to survive the harshness of the desert, the extreme weather conditions, and the constant violence between tribes over power, the kin group had to come together in solidarity and learn survival features, such as sharing goods and collaborating with one another.⁽²⁾ Today, despite the irrelevance of these original circumstances, kinship continues to influence the politics of modern states even at the highest levels.⁽³⁾

Kinship cannot be restricted to its anthropological dimension alone—and that’s predominantly true for non-Western societies. In fact, much of Islamic history would not have been possible in the first place were it not for the ability of dominant “kin groups” to extend their kinship relations far beyond what their real blood-ties would have initially permitted.⁽⁴⁾ Thus, individuals associate with a dominant group, assume its beliefs, manners, and language, even though genealogically they are from the separate lineage. In fact, prevailing empires in Islamic history in Middle East nations were by description never “pure” since, in order to endure, they had to integrate

(1) Id. at 3.

(2) Id.

(3) Id. at 1, 3.

(4) BEYOND KINSHIP: SOCIAL AND MATERIAL REPRODUCTION IN HOUSE SOCIETIES 13 (Joyce, R.A. and Gillespie, S.D. eds., 2000).

elements from outside.⁽¹⁾ The lineage thus had a much broader base than its slimmer pure blood-ties.⁽²⁾

Origins of Kinship based patrilineal lineage:

Lineage refers to persons who share the same ancestor.⁽³⁾ There were originally two forms of lineages, the unilineal and the cognatic.⁽⁴⁾ Unilineal form traces lineage through the father only (patrilineal) or the mother only (matrilineal).⁽⁵⁾ Under the cognatic form, descent can be either patrilineal or matrilineal.

In the Middle East, kinship group's application of the patronymic theory successfully transferred to the newly formed states of the region. Tribal societies there historically followed the agnatio structure of descent, which is a form of paternal unilineal descent, and, according to Fukuyama, is referred to by anthropologists as "agnation."⁽⁶⁾

In sixth century pre-Islamic Arabia, the cognatic form was the prevalent form of descent (both matrilineal and patrilineal forms of descent existed).⁽⁷⁾ In tribes who followed the matrilineal descent, after a woman was married she stayed with her tribe and transmitted descent to her children.⁽⁸⁾ The children belonged to the mother's tribe.⁽⁹⁾ The husband either stayed with his wife and joined the tribe, or visited when he pleased.⁽¹⁰⁾ However, matrilineal is different than matriarchy, where women have the power

(1) LAPIDUS, I.M., A HISTORY OF ISLAMIC SOCIETIES (2002).

(2) Id.

(3) FUKUYAMA, supra note , at 56.

(4) Id.

(5) Id.

(6) Id.

(7) AHMED, supra note , at 41.

(8) W. Montgomery Watt, Women in the Earliest Islam, 40 STUDIA MISSIONALIA 162, 173 (1991).

(9) AHMED, supra note, at 41.

(10) FUKUYAMA, supra note, at 53.

and authority.⁽¹⁾ This system did not mean women held more power; men still held the power in society, but it was the men from the mother's tribe and not the husband.⁽²⁾ Still, this reveals that "belonging" through the mother was practiced and even accepted in this patriarchal society of the Arabian Peninsula.

Nevertheless, around the time Islam emerged in Makkah, patrilineal had become the more common form and eventually exceeded the matrilineal form, due to factors such as the patriarchal nature of the society and the development of the trade movement.⁽³⁾ Men wanted to secure their wealth by transferring it to their children and keeping it in the family, thus, patrilineal became the norm and prevailed in Arabia.⁽⁴⁾

Kinship groups in Makah during the emergence of Islam, consisted of members who shared one religious belief and one blood (common descent). These groups were evolving to become patrilineal, and they followed a system referred to as "the patronymic system."⁽⁵⁾ The patronymic system relied on two conditions: first, all members of a tribe were considered one blood who shared a common male ancestor;⁽⁶⁾ second, a child's blood was the father's blood.⁽⁷⁾ The key purpose of the kinship system is to uphold men's relationships with their children.⁽⁸⁾ Through this system, the tribe expanded and supported the main theory of a common

(1) Id.

(2) ELMAN ROGERS SERVICE, PRIMITIVE SOCIAL ORGANIZATION: AN EVOLUTIONARY PERSPECTIVE 115 (1971) (explaining the social organization that prevailed during sixth century pre-Islamic Arabia where the mother-daughter, sister-brother bonds were more cherished than husband-wife, father-son bonds, demonstrating the prevalence of the matrilineal form of descent).

(3) AHMED, supra note, at 43.

(4) Id.

(5) SMITH, supra note, at 3, 25.

(6) Id. at 30.

(7) Bronislaw Malinowski, Parenthood, in NEW GENERATION: THE INTIMATE PROBLEMS OF MODERN PARENTS AND CHILDREN 137 (V.F. Calverton ed., 1930). See also JACQUELINE STEVENS, REPRODUCING THE STATE 210 (1999).

(8) STEVENS, supra note 7, at 223.

male ancestor.⁽¹⁾ The belief that the male line of the ancestor should continue, along with the patriarchal nature of these tribes, was the major reason behind the prevalence of this lineage system in Arabia.⁽²⁾

Islam promoted the prevailing patrilineal form in Arabia, which explains its continued popularity in modern Middle Eastern countries. Islam focused on preventing the mixing of lineages if children belonged to the mother, which could lead to a case of unknown fathers (since identifying the mother was not an issue). Therefore, belonging to the father's tribe (patrilineal) prevailed.⁽³⁾

In the Middle East, kinship group's application of the patronymic theory successfully transferred to the newly formed states of the region. Tribal societies there historically followed the agnatio structure of descent, which is a form of paternal unilineal descent, and, according to Fukuyama, is referred to by anthropologists as "agnation."⁽⁴⁾ In this system, historically, if a woman marries outside her immediate group, she automatically loses the tie with her group but does not automatically become a member of her husband's group. She only becomes a member of her husband's group when she bears him a male child, symbolizing her effort to continue her husband's lineage.⁽⁵⁾ This excludes women from both groups for a certain period of time until she bears the male child, or she is excluded, her entire life if she cannot have a son.⁽⁶⁾

(1) SMITH, supra note ,at 28.

(2) Id. at 30.

(3) AHMED, supra note ,at 45.

(4) FUKUYAMA, supra note, at 56.

(5) Id. at 57.

(6) Id.

viii. Citizenship and Cultural Relativism

Cultural relativism has gained popularity as a theory in explaining the need for rulers to understand that culture play a critical role in ensuring that societies are healthy and people enjoy their citizenship rights. Abu-Lughod pointed out that in a rapidly changing world society, that is increasingly bringing individuals of various cultures in closer collaboration with each other need to be accommodating to people from diverse cultures and origin.⁽¹⁾ This relations can be constructive or negative subject to the level of understanding and respect individuals have for other ethnic groups. These two types of actions are connected to the significant concept of cultural relativism. For instance, Binder observed that undesirable approaches towards other cultures and/or ethnic groups arise out of ethnocentrism, while constructive outlooks are the result of a traditionally relativist approach.⁽²⁾ As Harris-Short puts it, if individuals are to be successful in the current diverse society, that is characterized by enhanced information age and world civilization, they will be required to cultivate a culturally thoughtful frame of orientation and manner of action.⁽³⁾

One of the most controversial challenges to the study of citizenship rights is linked to the organizational approach of the collective disciplines called, cultural relativism.⁽⁴⁾

(1) Abu-Lughod, L, Do Muslim Women Really Need Saving? Anthropological Reflections On Cultural Relativism And Its Others. *AMERICAN ANTHROPOLOGIST* 783-790 (2002).

(2) Binder, G., Cultural Relativism And Cultural Imperialism In Human Rights Law. *BUFF. HUM. RTS. L. REV.*, 211 (1999).

(3) Harris-Short, S., International Human Rights Law: Imperialist, Inept And Ineffective? Cultural Relativism And The UN Convention On The Rights of The Child. *HUMAN RIGHTS QUARTERLY* 130-181 (2003).

(4) Id.

According to Donnelly cultural relativism is in principle an approach to the problem of citizenship rights and role of values in culture.⁽¹⁾ In this sense, when the cultural values are mutually shared ideals they give rise to beliefs and norms of conduct on which individuals or community group collectively engage in their life and goals.⁽²⁾ Cultural relativism asserts that these principles are comparative to the ethnic environment out of which they arise.⁽³⁾ Due to this, puritans trust that the ideals of cultural relativism threatens the discipline of morals since, if standards are comparative to a certain culture than it must portray that there lack worldwide moral principles by which the deeds of people can be adjudicated.

Anthropologist Healy declares that the concept of culture, just like any other piece of information, can be mistreated and misunderstood.⁽⁴⁾ According to Eriksen some individuals fear that the theory of cultural relativity will erode morality in the sense that what the society think is true is held to be so.⁽⁵⁾ However Cmiel has pointed out that the principle of cultural relativity is not bad or destructive because it allow people to behave in a certain way that is acceptable and thus their values and rights to citizenship are respected.⁽⁶⁾

(1) Donnelly, J, The Relative Universality of Human Rights, HUMAN RIGHTS QUARTERLY 281-306 (2007).

(2) Afshari, R, Human Rights in Iran: The Abuse of Cultural Relativism. University of Pennsylvania Press (2011).

(3) Id.

(4) Healy, L.M., Universalism And Cultural Relativism In Social Work Ethics, INTERNATIONAL SOCIAL WORK 11-26 (2007).

(5) Eriksen, T.H., Between Universalism and Relativism: A Critique of the UNESCO Concept of Culture, CULTURE AND RIGHTS: ANTHROPOLOGICAL PERSPECTIVES 127-148 (2001).

(6) Cmiel, K., The Recent History of Human Rights. THE AMERICAN HISTORICAL REVIEW, 117-135 (2004).

The response of the American Anthropological Association (AAA) to the Universal Declaration of Human Rights in 1974 is a good illustration of cultural relativism stating:

How can the proposed Declaration be applicable to all human beings and not a statement of rights conceived only in terms of the values prevalent in the countries in Western Europe and America?...Standards and values are relative to the culture from which they derive so that any attempts to formulate postulates that grow out of the beliefs or moral codes of one culture must to that extent detract from the applicability of any Declaration of Human Rights to mankind as whole.

Cultural relativism in the field of international law is also apparent in the reservations to human rights treaties especially the convention on the eliminations of all forms of discrimination against women (CEDAW) where many countries based their positions on the contradiction to culture and religion.

Intrinsic limitations permit state parties to exercise discretion in implementation and promote compatibility with existing domestic law or Islamic law interpretations. The use of such justifications, however, is not permissible under international law⁽¹⁾ as this promotes government incorporation of human rights obligations only to the extent it serves the interest of the government, raising skepticism regarding the creation of these instruments.

(1) See Reservations to CEDAW, U.N. WOMEN:
<http://www.un.org/womenwatch/daw/cedaw/reservations.htm>.

ix. Conclusion

Citizenship should be omitted from the universality of human rights due to the extreme connection between citizenship and culture. Citizenship may not be isolated from the factors that influences its existence. The right to autonomy in global law also supports the approach of granting states' more space and rights in deciding the criteria for belonging without being held accountable or seen as violating human rights.

Kinship based societies in Middle East continue to be seen as they are in violation of citizenship rights and are accused of adopting discriminatory policies due to the incompatibility to international and Western standards that refuse to acknowledge the difference and discrepancy in the concept of citizenship. This situation places these states in a bad position while in fact they are freely expressing their own heritage, rights, culture, and sovereignty. Adopting the cultural relativism concept when looking at the issue can go a long way in protecting the local community from the effects of global citizenship that entails upholding universality when determining the moral compass of the society.

It is very important in order to ensure that native communities are protected, that citizenship is excluded from the universality of human rights due to the extreme connection between citizenship and culture. The globalization of citizenship and the application of one standardized version of citizenship should be must be challenged and addressed. Governments and policy makers should have the right to design laws and strategies that do not overshadow the rules and regulations of the peoples. This surely means granting kinship, culture, and tradition a priority when defining citizenship rights for their citizens, and when setting international obligations.

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