On the extra-territoriality of citizenship rights and obligations (a very first draft)

Patti Tamara Lenard, Graduate School of Public and International Affairs, University of Ottawa

Comments are always more than welcome and encouraged, at plenard@uottawa.ca

When do the rights you have a citizen of your state follow *you*, as you travel? When are these rights protected only so long as you are physically present on your state's territory? My (long-term) goal in this paper is to offer a coherent account of when citizenship rights and responsibilities attach to territory, and when they attach to the citizen. In other words, I want eventually to account for the personal and the territorial dimensions of citizenship rights and responsibilities. My goal is to do this by defending a revised view of the associativist account of political obligation; the associativist view will, I believe, prove best at offering us guidance in determining when citizenship rights and responsibilities are personal and when they are territorial. This incarnation of the paper only gestures at this objective, however. I will begin by offering some examples of the kind of cases that have prompted me to think about how, at least as political theorists, we should be thinking about when these rights and responsibilities are tied to territory, and when they are not. I will then make three observations about the ways in which we have, historically, thought of the relationship between citizenship rights and territorial jurisdiction. I will then offer an account of the associativist justification for political obligation (in comparison to alternative accounts), and gesture towards how it needs to be rethought to offer us guidance in the cases that motivate me here. I shall then revisit the cases with which I begin, to suggest how the associativist view offers us guidance in understanding them.

Three motivating cases –

Case 1: In 2006, Israel and Lebanon were at war for 34 days, during which the Israel army dropped bombs on Lebanese territory. At the time, many dual citizens of Lebanon and Canada were residing in the area Israel was attacking, and asked that the Canadian government take responsibility for their safety by enabling them to return to Canada. The Canadian government did so, and at considerable public expense. Many Canadians were enraged, accusing those who demanded rescue of being "citizens of convenience", individuals who keep their Canadian citizenship merely as an "insurance policy," when in fact their real loyalty lies elsewhere (in this

case, with Lebanon). These are Canadian citizens, but Canadians who do not reside in Canada and have no intention to do so in the future. According to (some angry, residential) Canadians, the resident Canadian taxpayer should not be required to foot the bill for protecting dual citizens living abroad. In spite of the frustration expressed in this situation, it is widely agreed that one right we have as citizens is the right to be protected, by our government, from unanticipated danger abroad.

Case 2: For many months, a female Canadian citizen, married to a Saudi Arabian-Canadian dual citizen, has been effectively trapped in Saudi Arabia. She willingly left Canada with her husband, but then found that she could not leave Saudi Arabia without her husband's permission, which he would not grant. She has been pleading with the Canadian government to come to her aid, but the Canadian government insists that the relevant jurisdictional authority in this case is the Saudi state. Although the Canadian government has made some vague public pronouncements indicating a preference for permitting the woman to return home, it is willing to do little to come to her substantive aid. The government is not moved by her statements that she is being subject to considerable abuse in Saudi Arabia.

Case 3: By law, Norwegian citizens are banned from prostitution, at home *and* abroad. The Norwegian authorities, in explaining their justification for holding Norwegian citizens responsible for actions inside and outside of Norwegian borders, explained that they aimed to reduce the incidence of sex tourism, especially sex tourism that targets children (Sweden and Finland already have similar laws). Norway's legal authorities are permitted wide discretion in seeking evidence to back up accusations of sex tourism. Norwegian citizens are thus now accountable to Norwegian authorities for actions that are illegal in Norway, but not necessarily on the territory on which they are committed.

It is worth noting, for now, that the first two examples suggest controversy with respect to when citizens' *rights* cross borders, and that the third suggests controversy with respect to when citizens' *responsibilities* cross borders.

Three observations –

The three observations below pertain to the ways in which we have witnessed shifts in our understanding of state sovereignty and its connection to territory.

Observation 1: State sovereignty and territorial jurisdiction

First, as David Miller has observed, "if we consider the range of functions that modern states perform, it quickly becomes obvious that these functions cannot be carried out effectively unless the state has authority over a determinate territory."[1] At least traditionally, state sovereignty has been taken to include jurisdictional authority over a specific territory; in general terms, since the treaty of Westphalia, "legal jurisdiction is [taken to be] congruent with sovereign territorial borders."[2] On this view, a citizen's responsibilities, and a state's obligation to protect citizens' rights, are bound by territory; the state is obligated to protect the citizen only when she is physically present on the relevant territory. When she crosses borders, she immediately becomes subject to the jurisdictional authority of another state. According to this view of "legal spatiality", then, "the physical location of an individual determines the legal rules applicable and the legal rights that individual possesses….the scope and reach of the law is connected to territory, and therefore, spatial location determines the operative legal regime. More plainly, where you sit determines what rules you sit under."[3]

Of course, it doesn't take much thinking to point to examples where this account proves inadequate. Militaries operating overseas as well as consular officials are subject to the authority of their sending state, for example (in some cases, but not all, this is achieved by demarcating overseas territory as belonging to another state for legal purposes – this "sleight of hand" enabled a Dutch Princess born in Canada during World War 2 to be born in the Netherlands for official purposes; the Canadian government designated one room of the hospital in which she was born as Dutch territory). These exceptions, though, have been taken as just that: exceptions to a general rule, which holds that we are subject to the authority that operates in the territory in which we find ourselves, whether that is the state that has granted us our citizenship, or not.

More recent challenges to this way of thinking about territory and jurisdictional authority have emerged as a result of migration across borders. As Rainer Baubock has observed, "international

[1] David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), p. 214.
[2] Kal Raustiala, 'The Geography of Justice', *Fordham Law Review* 73 (2005), p. 2509.
[3] Ibid., p. 2506.

migration has this effect of creating a mismatch between territorial and personal boundaries of polities."[4]

Observation 2: Migration and territorial jurisdiction (and postnationalism)

One (multi-decade) challenge has emerged as a result of the increasing number of migrants who live in states as non-citizen residents. Many philosophers have expressed considerable anxiety – perhaps Michael Walzer and Rainer Baubock are best-known among them, though their responses to this situation differ considerably – with respect to the rights to which these individuals are entitled. For those with this concern, the objection to "pure" accounts of state sovereignty, according to which states have jurisdiction over a specific territory and those who reside on this territory, is that only some residents have a voice in influencing the nature of coercive authority to which they are subject. In a well-known account of the political injustice to which guest workers are subject, for example, Walzer argues that the ways in which guest workers are so often denied a voice relegates them to a second-class citizenship status, for which he can find no moral justification.[5] Here, then, traditional accounts of state sovereignty over territory are forced to offer justifications for their authority, and (perhaps less successfully) for the ways in which this authority can be justified to those (at least, those adults) who have no voice.

A second challenge might be said to emerge from the first, and this is the challenge posed by those who argue for what is sometimes termed "postnational" views of citizenship. On this account, the fact of international migration has eroded the value provided by traditional conceptions of citizenship, which are typically thought to be tied to membership in a state that is confined to a territory. So many rights, argue postnationalists, are in fact *human rights*, i.e., rights to which we are entitled not because we are members of a state, but rights to which we are entitled simply in virtue of our humanity.[6] As critics of this view, observe, however, this attempt to dissociate our rights entirely from state-centric models of citizenship fail to acknowledge adequately that, whatever the source of our rights, one *particular* state takes special

[4] Rainer Baubock, 'Towards a Political Theory of Transnationalism', *International Migration Review* 37, 3 (2003), p. 702.
[5] Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983), chapter 3.
[6] Yasemin Nuhoğlu Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: University of Chicago Press, 1994).

responsibility (or ought to take special responsibility) for protecting these rights. Moreover, say those who do not find the postnational view persuasive, there are particular rights that in fact do appear to derive specifically from membership in a state, namely, democratic/political rights.

Observation 3: External citizenship

Historically, we might have thought of migrants (whether tourists, or students, or guest workers, etc.) as entitled to two rights in virtue of crossing borders, the right to return and the (limited) right to diplomatic protection. One important effect of engaging with the postnational perspective, however, is increased attention on something Rainer Baubock (and doubtless, others as well) has termed "external citizenship", one source of which is the desire, on the part of some states, to maintain strong connections with its emigrants.

Increasingly, many millions of migrants have displayed a desire, especially as technology has improved the relevant options, to keep "in touch" with their originating country. As a result, we have seen two related responses: for one thing, states have begun to recognize the benefits they can reap (especially economically and politically developing nations) from sustaining relationships with their ex-patriots. Migrants send remittances, and can often be counted on to offer political support of various kinds (sometimes in the direction of more democracy, and other times, not). One way in which states have sought to sustain these relationships is by offering "external citizenship" rights to emigrants, in particular, the right to vote in elections from abroad, and the right to pass on citizenship to children born abroad.

The move to extending "external citizenship" rights thus confirms two different relationships between citizenship rights, and responsibilities, and territory: on the one hand, citizens and non-citizens alike claim rights attached to their territorial location, and on the other, they claim extra-territorial rights that do not appear to be directly connected to territory. The expansion of external citizenship rights, however, does not tell us much about when we should expect a state to protect the rights of citizens abroad, nor when citizens sustain responsibilities towards states they have left (when they have not abandoned citizenship of that state).

Political obligations and territory –

An essential question in political theory concerns the source of our political obligations, and there are many competing attempts to account for them. I take there to be five main views: efficiency, or consequentialist, views, fair play and mutual benefit views, consent views, coercion views, and associativist views. My intention here is not so much to defend the associativist view, although I do believe that it is the most plausible of the views we have available. Instead, my intention is to draw attention to the absence of discussions of territory in these views (by pointing to it, as I have now done), and then to suggest that each of the views struggles to account for when rights and responsibilities are personal and when they are territorial or jurisdictional. I shall suggest, by and large, that the political obligations views do not contain internal principles to guide us in making this distinction. In the section that follows, I will gesture towards some reasons for thinking that the associativist view is best placed to guide us in making this distinction, in large part because it already contains the resources necessary to do so.

Efficiency views

According to some views, we are enmeshed in relations of political obligations with certain, specific, others, for reasons of efficiency. We begin with a presumption that we all owe general duties to everyone. Then, the best way to ensure that these duties are discharged is to divide the world population into territorially-defined states, and to assign each state responsibility for respecting the rights of those inside its borders.[7] In principle this view can justify *any* efficient distribution of responsibility, whether territorially defined or otherwise. It offers us no additional guidance, beyond efficiency considerations, in determining how we should answer questions about when citizens' rights and responsibilities cross borders and when they do not.

Consent views

According to consent views – whether real or tacit – we agree to our political obligations, either by actually agreeing to them, or by engaging in some act that can be interpreted as agreeing to them. Consent views are riddled with difficulties in determining the actual conditions of legitimate consent, as well as in determining to what precisely we consent, even when we can be described as having consented. These same difficulties make it such that the view cannot

[7] Robert Goodin, 'What Is So Special About Our Fellow Countrymen?' *Ethics* 98, 4 (1988).

adequately guide us in determining which of the rights and responsibilities we have cross borders and which do not; put differently, it is tacitly assumed that we are consenting to undertake certain responsibilities within our borders, but the view has no internal resources by which to explain when we can expect these responsibilities to cross borders, or when we have reason to believe that our rights will be protected, by our own state, when we cross borders.

Fair play or mutual benefit views

According to fair play views, we owe political obligations in virtue of our participation in cooperative enterprises, in which we benefit from the sacrifices of others, others who are then entitled to expect our sacrifices in turn. Our failure to contribute our "fair share" to any given cooperative venture constitutes free-riding. There is no particular reason to believe that the mutual benefit society that is produced as a result of our collective sacrifices, and thus our collective gains, is territorially bounded or otherwise. We can, without too much stretching of our imaginations, imagine religious communities as mutual benefits societies that are not territorially delimited. But, the view doesn't appear to provide us the resources we need to explain when the rights and responsibilities that are typically thought to be territorially bounded cross borders, and when they do not.

Coercion views

I believe that coercion views may be the second-best option we have to determine when rights and responsibilities of citizenship are territorially delimited. According to coercion views, political rights and responsibilities are justified in terms of our common participation in coercive institutions; since "we" are coerced by shared institutions, "we" are owed compensation for the autonomy-reduction we experience as a result of this coercion; this compensation comes in the form of rights protection proffered by opportunities to participate in the relevant political institutions.[8] Accounts of the coercion view are intended specifically to delimit a population *territorially*, and therefore to explain why certain people located in certain spaces have special duties towards those who are similarly placed. At least in the abstract, we can say that so long as these institutions have some coercive force on my actions extra-territorially, I continue to have the rights and responsibilities that attend this coercion. Then, we would seek additional

[8] Michael Blake defends this view.

principles to explain the diminution of coercion, and therefore the diminution of rights protection (and responsibilities) to which we are entitled (or owe), as we travel across borders. The problem with this view, I think, is that it fails to explain why it would be that citizens can and should expect their governments to come to their aid when they have crossed borders. If we believe, as I do, that the Canadian woman in Saudi Arabia, and the Lebanese-Canadians, have a right to expect their government to come to their (immediate) aid, the coercion explanation doesn't tell us why that would be. I suppose a response here might posit that the violation of rights and responsibilities abroad constitutes an unjustified coercion, for which the relevant state is morally required to remedy in some way. I'm not sure whether this will be adequate to save the coercion view, however.

Associativist views and extra-territorial citizenship rights and obligations –

At least for now, I do not wish to defend the associativist account of political obligations as most plausible (though I believe it is the most plausible morally, and moreover that it is an accurate picture of how moral obligations are perceived in general). Rather, what I would like to suggest for now is simply this: the associativist view can, with some tweaking, offer us answers to questions concerning when rights and responsibilities are personal and when they are territorial. I will not be giving much away in advance by alerting you to the preliminary, and sketchy, nature of what follows.

First, let me state what I take to be the central claims of those who advocate broadly associativist, or special duties, views of political obligation. Associativist views tell us that our relationships are the source of our obligations. We have special obligations – political, in this case – to those with whom we are engaged in meaningful relationships. In particular, many defenders of associative obligations believe that some work is being done by notions of *value*, i.e., that *valuable* relationships give rise to obligations; so long as political associations can be shown to be valuable in some (even minimal) way, therefore, they are communities that can give rise to political obligations.[9] An emphasis on value allows us to argue that value-less relationships do not give rise to obligations, even when those who are participating in them believe otherwise (of course it is complicated to determine what constitutes value, and according

[9] John Horton, 'In Defence of Associative Political Obligations: Part Two', *Political Studies* 55, 1 (2007).

to whom relationships must be valuable). Typically, as John Horton explains, the associative view has two sides: one objective, which emphasizes that the obligations connected to being a member of a political community are simply "assumed in accordance with established conventions", and which "does not depend upon the sentiments, emotions, attitudes or point of view of the members," and another subjective, which emphasizes that members must at least possess "a minimal sense of belonging to, or identification with, the polity." [10]

Now this outline of the associativist view does not say anything about how the view relates to territorial jurisdiction, or the rights and responsibilities citizens may take with them when they live the relevant territory. Indeed, as we have all doubtless noticed given our collective interest in territory, theories of political obligation are more or less silent on issues of territory. In John Horton's recent, and thorough, defense of associative obligations, he comes close by observing that people's identification may be with a polity in which they are not members, from an objective standpoint – he then considers this mismatch between objective and subjective elements of association to indicate political difficulties of the kind that may in time motivate secessionist movements.[11]

David Miller's recent work on territory is perhaps the best account we have that tries to account for *both* a) the source of political obligation, which he locates in national political communities, and for b) its connection to territory, to which he believes that nations are necessarily tied (and with moral justification).[12] In other words, the view explains why we are obligated to the nation, and to co-nationals, and it explains why the nation is connected to a given territory (it is an internally consistent view, in other words); however, it does not explain when the obligations we have (and the rights to which we are entitled) are exclusively or mainly territorial, and when they are exclusively or mainly personal (indeed, he points to feudal Europe, where jurisdiction was nearly entirely personal, to illustrate why it ought to be conceived as mainly territorial).

In order to accomplish this latter task, we need to square a circle, in some sense: we need to offer an account of political obligation that is connected to, but not limited to, a given territory. The

[10] Ibid., p. 12.
[11] Ibid., p. 14.
[12] Miller, *National Responsibility and Global Justice*, chapter 8.

special relations view is able to accomplish this task, but will require some filling in, in order to do so. Let me begin this task, now.

The special relations view of political obligation is not inherently connected to territory. The obligations themselves derive from the relationships among people, who have some reason to value them. According to the special relations view, insofar as the relationships are valuable to those involved, they give rise to obligations among parties to these relationships. The view itself does not speak to territory in particular; indeed, the view can, and does, easily accommodate relationships that are not territorially bounded. Parents have obligation-generating relationships with their children, independently of territorial location, for example (even if the relative location of parents and children shift the obligations involved). In the shift to explaining specifically *political* obligation, the special relations view equally makes no explicit reference to the territorial dimension of these obligations. The connection to territory is merely contingent, in other words, and thus an additional story must be told with respect to the ways in which these special relations interact with territory in some way. That political communities are typically defined in part by their territorial location, or their relationship to a specific territory (whether actual or aspirational), requires additional explanation of some kind (in order to explain whether the community defined by special *political* relations is entitled to a given territory, and under what conditions). It is in part the focus on relationships, rather than location, which will enable the special relations view to make sense of extra-territorial citizenship rights. In other words, it is not *territorial* location that determines the scope of rights and obligations.

Thus, the emphasis on *relations* suggests that territory will be unrelated to the question of when they give rise to rights and obligations, or what the content of these rights and obligations might be. It suggests as well a relatively vague explanation for when citizens' rights demand respect, both within and outside a given territory: when the integrity of the relation demands that a given right (or obligation) be respected, the relevant party must respect this right (or carry out the obligation) in order to sustain it. To a considerable extent, then, the content of the relationships, in terms of the rights and obligations to which they give rise, will be contextually determined. For example, when Barack Obama added a Yemeni cleric, with American citizenship, to the list of those targeted for assassination (because of an alleged connection to, and support for, terrorist activities against the United States), it was legitimately claimed that among the rights to which

one is entitled as an American is the right to a judicial process that determines guilt and innocence; the administration's implication was that this right was less protected because the citizen in question wasn't residing on American territory. The objection to this decision came from those who argued that the right to a fair trial applied to Americans independently of their territorial location. Rights of due process are thought to be protected for *all* Americans, *by* Americans, even when they do not reside on American territory. Other cases are, of course, harder.

Hard cases –

Let me revisit the cases with which I began.

In the first case, the case of Lebanese-Canadians residing in Lebanon, during a declared state of emergency: the special relations view suggests, I believe, that the Canadian government was obligated to rescue the stranded Canadians, as part of its obligations to Canadian citizens in danger abroad (in this case, through no fault of their own). Their status as dual-citizens is morally irrelevant here; not only was the Lebanese government rendered unable to protect its own citizens, the status of dual citizenship is not such that it mitigates one of the state's responsibilities towards its citizens. One might suggest we consider the moral relevance of time away from Canada, in this case, rather than their citizenship status directly; it may be that citizens who reside abroad for an extended period of time can legitimately find their rights attenuated as a result. However, insofar as this attenuation is legitimate, it cannot be said to exist in cases of emergency.

In the second case, the case of the Canadian woman requesting aid to exit Saudi Arabia: the special relations view suggests, I believe, that the Canadian government is obligated to do its best to offer its aid. Among the extra-territorial rights to which citizens are normally entitled is the right to return home, which is being violated here. In refusing to aid the Canadian in this case, the Canadian government refuses to act on the obligations that are generated by the special relations that obtain between citizen and government. This case suggests that multiple different considerations are at stake of course – it may be that in refusing to step in to help the Canadian woman, the Canadian government is balancing a conflict between two territorial claims: the territorial jurisdiction of the Saudi government, and the extra-territorial rights of one of its

citizens who is on this territory. (And so there may be real-politick reasons to refrain from intervening.) From the perspective of normative obligations, however, the Canadian government appears to be failing to do its part in protecting the value that is ascribed to the relations between citizens and governments.

In the third case, the case of Norwegian citizens who are bound by apparently territorially defined laws even when they travel beyond their national borders: the special relations view again appears to support the legitimacy of holding citizens responsible to nationally-determined legislation even when travelling abroad, and for the same reason as above. The *relations* are not territorially-bound, and therefore the requirement that citizens respect laws that themselves are not limited territorially (as paying property tax may be, for example) seems plausibly explained by a special relations account. It may be that we, as with the first case (of dual citizens), shall have to consider the impact of time – we may like to ask whether Norwegians who reside abroad will be bound by Norwegian sex-tourism laws indefinitely, or whether their obligation to respect this law lapses over time, since the value of the relation itself lapses over time. This is a question for another iteration of this paper, however.

Conclusions –

This paper has been suggestive and explorative, rather than conclusive. I have attempted to delineate some of the questions and concerns we may have in accounting for the scope of citizenship rights and obligations. I have argued that it is mistaken to think of them as territorially delimited: so many of the rights and obligations we have are personal rather than territorial. I have argued, moreover, that it is the special relations view of political obligation that best explains why it is – and when it is – that these rights travel across borders as do the citizens who hold them.

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