

*Patti Tamara Lenard replies*

Is the revocation of citizenship—a policy increasingly adopted by democratic states<sup>1</sup>—a violation of democratic principles? In an article published in the Spring 2016 issue of this journal, I argued that it is. A true commitment to the best understanding of democratic citizenship does not permit the revocation of some citizens' status by others. David Miller and Ben Herzog are unconvinced. Elizabeth Cohen agrees that revocation is a violation of democratic principle, but argues that my defense of this claim leaves room for it nevertheless. These thoughtful critiques raise two questions to which I would like to respond: (1) What is the nature of citizenship in democratic states? (2) What can legitimately be done by democracies to protect themselves?

The logic of democratic citizenship is inclusive and equal. All citizens are entitled to know that their status, and the equal basic package of rights to which this status entitles them, is secure. It goes almost without saying that historically democracies have not interpreted citizenship in this way, and indeed not all present-day democracies protect citizenship in this way. Citizens of ancient Athens were supported by a slave population, and metics—most famously, Aristotle—were denied the status of citizen. Present-day democracies frequently deny equal packages of rights to their citizens; for example, in some U.S. states convicted felons are permanently disenfranchised. To the extent that these democracies protect a citizenship that is exclusive and unequal, the citizenship they protect is not truly democratic.

It is within this ideal understanding of democratic citizenship's logic—of inclusivity and equality—that I maintain that revocation laws are incompatible with democratic citizenship. A state that adopts the power to revoke adopts the unilateral power to deny the obligations it has to its citizens to protect their rights, inclusively and equally. Miller notes, correctly, that “it is not always discriminatory (in the invidious sense) to take the situation of the person convicted into account.” He proposes that we assess whether certain crimes merit expelling members of a community, and then assess whether the act of expelling violates fundamental

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rights. He writes, “we might then end up treating the single-citizenship person more favorably” (because failing to do so would violate their fundamental right to citizenship), that is, we might think of single-citizenship as a mitigating circumstance that effectively reduces one’s punishment. But it is odd that a punishment in a democratic state would be one to which the vast majority of citizens cannot be subject. To my mind, this unusual circumstance arises because a punishment for which only a small minority of citizens is eligible—on the basis of nationality—is invidiously discriminatory.

Nationality is not, as some other factors might be, a mitigating circumstance; rather, punishment that takes account of a second nationality is discrimination on the basis of a morally arbitrary characteristic. In their most common form, revocation laws discriminate between citizens, by subjecting only some of them to the possibility of revocation and the consequent deportation that such revocation entails. In a less common form—indeed, a form that is illegal according to international law—revocation laws can be written so as to subject all citizens to revocation, even those who would be thereby rendered stateless. Cohen objects that a critique of revocation laws on the grounds of discrimination leaves room for these types of law. But it only does so if one does not accept a prior principle on which my argument depends, that is, the basic and fundamental right to citizenship. The anti-revocation argument I offer relies on two premises: (1) that the status of citizen is one to which everyone is entitled, and (2) that the package of rights to which all citizens are entitled is *prima facie* equal. Revocation laws that target dual citizens violate the second of these principles; revocation laws that target all citizens violate the first. Together, these premises produce an absolute ban on the power to revoke citizenship in democratic states.

Herzog proposes that revocation laws are best understood as an attempt to protect the national logic that continues to undergird a global order structured into discrete nation-states, including democratic ones. The power to revoke is a symbolic tool, deployed to reinforce the national identity of citizens by highlighting that the absence of this identity can be punished by expulsion in some cases. He concedes that the punishment is not progressive, or even justifiable, but he says it is a tool that permits nation-states to “reinforce the national world order.” Democracies are not exempt from this logic; their survival also depends on strong, shared, national identities. Revocation is therefore compatible with democratic citizenship, in his view.

Yet, in making this argument, Herzog conflates procedural and substantive principles by which revocation laws, or any law, can be said to be compatible

with democracy. As a matter of democratic procedure, it is of course possible to see that revocation is consistent with democracy: democratic publics can engage in the decision-making institutions that govern their collective lives and produce policies (like the power to revoke) that are substantively undemocratic, on the grounds that they violate the underlying commitment that democratic citizenship embodies.

Miller likewise defends revocation as a tool to safeguard democracy, the importance of which he believes I do not adequately acknowledge. He points to the ancient Athenian practice of ostracism as evidence, suggesting that historically democratic states have forcibly excluded individuals whose presence was thought to threaten democratic practice. Yet this practice was not typically accompanied by the revocation of citizenship; rather, expelled individuals were generally permitted to return to their full set of rights, including the property they left behind, after ten years.<sup>2</sup> In other words, revocation of citizenship was not understood as essential to protecting the stability of democratic states. Miller offers no reason to think that revocation is better suited to protect us from the “enemies of democracy” than the range of existing criminal laws I described in my original article.

It is ultimately impossible to divorce revocation laws from the context in which they are implemented. They are adopted among many tools to fight the threat of terrorism, but it is hard to ignore that they foster the belief that some (read Muslim) citizens are potentially disloyal. The impact of revocation laws will undoubtedly be felt unequally among citizens, and this alone is reason to resist them. But the objective of my original article is to offer a substantive argument for the incompatibility of revocation with democratic citizenship as a matter of principle.

#### NOTES

<sup>1</sup> However, the recently elected Liberal government in Canada tabled legislation in February 2016 to overturn legislation permitting revocation, and France announced in late March 2016 that it would abandon its attempts to adopt such a power. See Tom Parry, “Liberals Move to Overhaul Rules on Revoking, Granting Citizenship,” *CBC News*, February 26, 2016, [www.cbc.ca/news/politics/john-mccallum-citizenship-act-repeal-bill-1.3463471](http://www.cbc.ca/news/politics/john-mccallum-citizenship-act-repeal-bill-1.3463471) and Kim Willsher, “Hollande Drops Plan to Revoke Citizenship of Dual-National Terrorists,” *Guardian*, March 30, 2016, [www.theguardian.com/world/2016/mar/30/francois-hollande-drops-plan-to-revoke-citizenship-of-dual-national-terrorists](http://www.theguardian.com/world/2016/mar/30/francois-hollande-drops-plan-to-revoke-citizenship-of-dual-national-terrorists).

<sup>2</sup> Benjamin Gray, “From Exile of Citizens to Deportation of Non-Citizens: Ancient Greece as a Mirror to Illuminate a Modern Transition,” *Citizenship Studies* 15, no. 5 (2011), pp. 565–82, p. 570.