

# Legal Civic Orders and Equitable Lived Citizenships

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**M**ost modern Western political theories embrace equal citizenship as a normative ideal. Many scholars, however, focus on “legal citizenship” and conceive of equal citizenship as uniformity of legal rights and duties. Others focus on experiences of “lived citizenship” and conceive of equal citizenship as achieving sufficient economic, political, and social standing for persons to be seen as civic equals. Using the United States as its example, this article offers a unifying framework for mapping the relationship of legal citizenship to lived citizenship. It illustrates the value of this framework by using it to show why realistic efforts to achieve equal citizenship must aim for not uniform legal rights and duties but instead equity in the possession of economic resources, political representation, and social recognition among different categories of citizens.

## INTRODUCTION

**C**itizenship is a core concept of Western political thought. Modern political theories display an “overlapping consensus” that citizens should be treated as “free and equal persons” entitled to roughly equal forms of citizenship (Alejandro 1993, 223; Rawls 1985, 227; Watson and Hartley 2018, 1–3; Wilson 2019, 23–25).

There is much less agreement over what constitutes “equal citizenship” and how to achieve it. Many scholars define citizenship as a “legal status with associated rights and duties of those who are full members of a community”—with civic equality defined chiefly by whether citizens all formally “enjoy the same rights” (Heater 1999, 82–83; Kallio, Wood, and Häkli 2020, 713). Others think that legal citizenship rules often overstate or understate the meaningful possession of rights, the senses of belonging, and the practical agency of many residents, so they are unreliable indicators of true civic equality (e.g., Dalton 2014, 26; Jašina-Schäfer and Cheskin 2020, 95–97). They focus on the “lived citizenship” of persons as “it is experienced and enacted in various real-life contexts,” and gauge civic equality by whether persons experience “economic, political, and social esteem,” or equal civic “standing,” in their everyday lives (Kallio, Wood, and Häkli 2020, 713; Shklar 1989). Here “equality” does not imply identical wealth, political influence, or social prestige. It means what many call “equity”: secure possession of enough of those things for persons to be widely seen as, and to feel themselves to be, civic equals.


Most scholars of “lived citizenship” concede, however, that while many cultural and economic factors shape citizenship experiences, citizenship laws “have a profound effect” on the “political, economic, and moral resources” of citizens (Kallio, Wood, and Häkli 2020, 714, 724). Most analysts of civic legal provisions agree, in turn, that laws should aid, not impede, equitable

forms of lived citizenship. Discerning whether citizenship laws foster unjust inequalities requires both specific knowledge of legal provisions and empirical assessments of civic experiences. It thus makes sense to unite these two views of citizenship within a shared theoretical framework. A useful framework must include, first, a conceptualization of a society’s legal structuring of citizenship and, second, criteria for ascertaining whether lived citizenships are equitable.

Using the example of the United States, this paper lays out such a framework. It conceptualizes how a society legally structures citizenship by designating the entirety of the national, state, and local citizenship laws that exist at any one time as that society’s “civic order.” Pertinent laws include those governing the acquisition and relinquishing of citizenships and, following T. H. Marshall, those establishing civil, political, and social rights (which Marshall hoped might counterbalance inequalities arising from capitalist property rights) (Marshall 1950).

Constitutions of federated societies like the US also grant state and local governments significant discretion in making some citizenship laws. The resulting variations in state and local citizenships are constitutive features of those nations’ federated civic orders (cf. Colbern and Ramakrishnan 2021, 53–54).

Legal civic orders are thus complex. Their effects are often disputed or misapprehended. How can we assess, both empirically and normatively, how far they help people to achieve equitable “economic, political, and social esteem” in lived citizenships? The framework draws on Nancy Fraser’s argument that analysts should examine equality along three dimensions: material resource distributions, political representation, and social recognition (Fraser 2009). Similarly, the framework suggests three criteria for judging whether a civic order contributes to equitable lived citizenships. First, for representation, whether those occupying distinct legal categories of citizenship have had appropriate opportunities for political voice in creating those categories, or exiting from them. Second, for resource distribution, whether civil and social rights, however varied, combine to aid all citizens to gain needed material resources. Third, for recognition, whether a state has acknowledged the effect of its past and present coercive policies on distinct categories of persons by

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providing them with appropriate forms of aid and accommodations.

To show the value of this theoretical framework, the paper deploys it to make two arguments on major questions of citizenship.

First, addressing normative debates over the propriety of “differentiated citizenships,” the framework demonstrates why societies like the US should not aspire to create civic orders that assign identical bundles of legal rights and duties to most persons (Young 1990, 25; cf. Barry 2000, 9–13). The complexities of civic orders show that only citizenship laws that place differently situated persons into appropriately differentiated categories can hope to foster lived experiences of civic equality. Normative analyses should focus on the demonstrable consequences of civic differentiations, not abstract ideals of uniformity.

Second, social scientists disagree on the concepts and methods suitable for assessing such consequences. The framework supports those who argue for intersectional analyses of human experiences, and for plural, quantitative and qualitative methods of inquiry. Because civic orders like that of the US use categories of race, sex, occupation, religion, age, and more to define the varying rights and duties of different sets of citizens, studies of their effects must consider the effects of multiple intersecting categories. Because experiences of lived citizenships have both subjective and objective dimensions, observational and interpretive research must accompany studies of formal rights and quantitative measures of material conditions. By aiding multi-method inquiries into how intersecting civic provisions contribute to distinct lived citizenships, the framework can help scholars identify both existing and emergent sources of civic inequality, as well as policy changes needed for civic progress.

## THE COMPONENTS OF A CIVIC ORDER

Building on multidisciplinary studies of “institutional orders,” this paper argues that every modern political society has a set of laws governing citizenship that can be seen as that society’s “civic order” (cf. Scott 2014). Its components are crafted by competing political coalitions at different levels of governance in order to advance their agendas. Consequently, civic orders often embody conflicting ideas of citizenship, complicating the effects of particular rules and of a civic order as a whole. Even so, in part because states seek to render their populations legible, civic orders generally provide three types of formal legal structuring for their citizenships:

1. Legal modes of *acquiring* and *terminating* citizenship.
2. Legally defined *duties* and *rights* of citizenship, civil, political, and social.
3. Legally defined *relationships of citizenship in one political community to citizenships in others within and beyond its bounds*, as in the multilevel relationships among city, state or province, and national

citizenships; dual national citizenships; and memberships in international regulatory bodies.

Though states seek ease of administration, legal modes of acquisition and loss of citizenship are often numerous and rights and duties of citizenship vary greatly among the different categories of citizenship that laws enact and across the interrelated political communities to which persons belong. Legal rules governing citizenship are also frequently contested, and modifications often emerge from compromises among proponents of partly shared, partly contrasting ideas. Sometimes citizenship rules are legacies from past eras that current actors do not favor but cannot agree to alter. Moreover, groups seeking to shape citizenship laws may have as their chief motives economic, partisan, racial, gendered, religious, or other concerns, not the structuring of citizenship per se. So the civic order that a nation has in place rarely reflects the ideal of equal citizenship of any one group or political party. Civic orders are usually elaborate, internally inconsistent, difficult to see whole, and subject to change. That may be why scholars have not taken them as units of analysis.

Nonetheless, we can always identify the past and present legal structuring of citizenship, the civic order, that governing institutions have formally established. Analyses of the effects of both a civic order as a whole and its component provisions are vital for exploring major sources of people’s widely varying lived experiences of citizenship. To be sure, those experiences have other sources, and scholars may reasonably choose to focus particular studies on one citizenship law, level of government, or aspect of lived citizenship. Such studies can benefit, however, from knowing how other elements of the civic order may shape citizenship experiences in diverging ways. The example of the United States shows how many consequential civic provisions may otherwise go unrecognized.

## The Twenty-First Century American Civic Order

America’s founders were the first to confront the tasks of constructing citizenship in a large state that was defining itself as a federated republic. They also claimed authority to govern imperially many contiguous and, eventually, overseas peoples and territories. They did so with a sometimes reluctant, too often fervent embrace of existing hierarchical structures of class, race, gender, sexuality, and religion that involved systemic subordinations, exploitation, and exclusions, including inegalitarian structures of citizenship. Many groups contested those hierarchies in the name of equal citizenship from the nation’s start, and the original inegalitarian civic structures have since been altered, though never eradicated. As a result, Americans have inherited elaborate legal specifications of their civic order that they have never ceased to modify.

What different categories of citizens do these provisions governing its legal acquisition and termination create? What are their consequences for lived citizenships?

**TABLE 1A. Components of America's Civic Order: Acquisition and Termination of U.S. Citizenship**(1). Modes of *acquisition* of U.S. citizenship:

- (i). *Birth in a U.S. state or an "incorporated" territory* that Congress placed on the path to statehood, established by the 14th Amendment, alterable only by constitutional amendment.<sup>1</sup>
- (ii). *Birth in an "unincorporated" territory*, established by congressional statutes, alterable, at least prospectively, by congressional statutes.<sup>2</sup>
- (iii). *Birth abroad to an American citizen or national parent*, established by congressional statutes, alterable, at least prospectively, by congressional statutes.<sup>3</sup>
- (iv). *Entry into the U.S. as a precondition to naturalization for immigrants, refugees and asylum seekers, and commercial and social visitors*, regulated by congressional statutes and executive policies.<sup>4</sup>
- (v). *Naturalization via individual voluntary compliance* with congressional naturalization statutes.<sup>5</sup>
- (vi). *Automatic naturalization of children born overseas and admitted to permanent residence*, regardless of the children's preferences, established and alterable, at least prospectively, by congressional statutes.<sup>6</sup>
- (vii). *Naturalization of groups via treaties* (e.g., Treaty of Dancing Creek with Choctaws, 1831, Treaty of Guadalupe Hidalgo with Mexico 1848), usual with options for individuals to reject naturalization, ratified and alterable, at least prospectively, by congressional actions.<sup>7</sup>
- (viii). *Naturalization of conquered groups via congressional statutes*, regardless of group or individual member preferences (e.g., 1924 Indian Citizenship Act; 1941 Act extending citizenship to Eskimo, Aleutian, and other remaining aboriginal tribes).<sup>8</sup>

(Continued)

The Census Bureau's American Community Survey estimates that in 2018, the residential population of the United States was 327,167,439. As shown in Table 1B, more than 93.2% of those residents, 305,068,455

persons, were citizens, joined by 22,098,984 noncitizen residents, just over 6.7%. Native-born Americans were over 86% of total residents (282,438,718), though a bit under 2% of these native-born citizens (5,318,810) were born outside the US to at least one citizen parent. Another 22,629,737 persons, 7.4% of all citizens, instead gained their citizenships via naturalization (data.census.gov).

Tax data on for-profit and nonprofit corporations suggest that in 2018 the US also had roughly 11.5 million business corporations and 1.6 million nonprofits eligible to be jurisdictional citizens (Duffy 2019; Internal Revenue Service 2019). No one contends that the jurisdictional citizenship of corporations is or should be identical to human legal citizenships. Still, the civic rights and powers granted to corporations matter greatly for many persons' lived citizenships (Pistor 2014). Many corporations have more wealth, more political voice, and more social standing than most individuals, who feel their citizenships diminished in comparison.

The different modes through which people acquire citizenship have major consequences. Citizens born in the territories and indigenous tribes have statutory-based citizenships that can be altered more easily than those based on the 14th Amendment, a fact that can render their lived citizenships less secure. Both naturalized citizens and those born to citizen parents outside the US face still greater vulnerabilities. Although naturalized citizens possess most of the same opportunities as birthright citizens, they are constitutionally ineligible for the Presidency, and the eligibility of persons born to citizen parents outside the US is uncertain. For most, this disadvantage is symbolic;

<sup>1</sup> Current legally established forms of birthright citizenship are summarized in U.S.C. Title 8, Ch. 12, Subchapter III, §1401 and elaborated in later provisions. Children born into indigenous tribes, to foreign diplomats, and on foreign military ships in U.S. internal waters or airspace are not included, nor would be children born to aliens on U.S. territory occupied by hostile forces.

<sup>2</sup> The governing authority for denying birthright citizenship to those born in unincorporated territories is *Downes v. Bidwell*, 182 U.S. 244, 322–323 (1901). The statutes governing citizenship and nationality in Puerto Rico, the Virgin Islands, and Guam are codified as U.S.C. Title 8, Chapter 12, Subchapter III §§1402, 1406, and 1407. §1408 enables Congress to legislate that unincorporated territory inhabitants are U.S. nationals, not citizens.

<sup>3</sup> Codified in U.S.C. Title 8, Ch. 12, subchapter III, §1401 and §1409. §1403 governs persons born to citizen parents in Panama after 1904. §§1404–1405 govern persons born in Alaska and Hawaii prior to statehood. Congress granted U.S. citizenship to the residents of the Northern Mariana Islands in 1976 by approving the Covenant Establishing a Commonwealth of the Mariana Islands, U.S.C. Title 48, Chapter 17, subchapter 1§1801.

<sup>4</sup> Most current federal laws concerning immigration, refugee and asylum policies, and visitors are codified in U.S.C. Title 8, Chapter 6 Subchapters I–III, §100–239. Title 8, Chapter 12, Subchapter IV, §§1521–1524 includes provisions on refugees. Subchapter V, §§1531–1537 provides for removal of alien terrorists. Title 8, Chapter 13 formerly structured the Immigration and Naturalization Service, but in 2002 Congress transferred its main functions to various agencies now codified in Title 6, "Domestic Security," Chapters 1–5. Title 8, Chapter 14 codifies restrictions on welfare and public benefits for aliens since 1996, thereby discouraging immigration. Title 8, Chapter 15 codifies enhanced border security and stricter visa entry requirements since 2001.

<sup>5</sup> Codified in U.S.C. Title 8, Chapter 12, subchapter III, Pt. 2, §1421–§1458.

<sup>6</sup> U.S.C. Title 8, Chapter 12, subchapter III, Pt. 2 §1431 provides as a form of "naturalization" automatic citizenship for children born outside the U.S. and admitted to permanent residence, with certain conditions.

<sup>7</sup> Title 8, Chapter 12, Subchapter 3, Pt. 1 recognizes a power of "collective naturalization."

<sup>8</sup> Title 8, Chapter 12, Pt. III §1401 codifies the law imposing citizenship in this fashion.



**TABLE 1A. (Continued)**

- (ix). *Presumption of citizenship*, granted to children below the age of 5 born to unknown parents, if no proof of foreign birth is established before the child reaches age 21; established by congressional statutes, alterable, at least prospectively, by congressional statutes.<sup>9</sup>
- (x). *Honorary United States citizenship*, conferring no rights, established and alterable by congressional statutes.<sup>10</sup>
- (xi). *Incorporation of a profit or nonprofit entity as a state or national citizen for jurisdictional purposes only*, established by Article III of the Constitution, court decisions, and state and congressional statutes.<sup>11</sup>

## (2). The modes of loss of U.S. Citizenship:

- (i). *Voluntary individual expatriation*, via modes established by congressional statutes, constrained by court decisions.<sup>12</sup>
- (ii). *Individual denaturalization via evidence of fraudulent naturalization or birth certification*, governed by congressional statutes and court decisions.<sup>13</sup>
- (iii). *Exile*, via executive decisions to revoke passports of dual citizens deemed undesirable if they are outside the US, or to prosecute if they do not leave the US.<sup>14</sup>
- (iv). *Legal termination of a for-profit or nonprofit organization's existence within the US*, by corporate decision or by state or national governmental actions.<sup>15</sup>

but it fueled the Obama “birther” controversy and kept Arnold Schwarzenegger and others from pursuing the nation’s highest office. More significantly, if the government finds even accidental errors in the documents through which citizens obtained naturalizations or in their certificates of birth to a citizen parent abroad, they can lose their citizenship. That danger increased when the Trump Justice Department created a Denaturalization Section to use such powers aggressively (Benner 2020).

The U.S. Constitution and many public policies confer rights and benefits on persons, not just citizens. Some may deem such rights and benefits not to be part of the legal civic order. They do mean that even loss of

**TABLE 1B. U.S. Citizens and Residents by Mode of Acquisition**

Total U.S. citizens	305,068,455 (93.2%)
Noncitizen residents	22,098,984 (6.7%)
Native-born citizens	282,438,718 (86%)
Native-born citizens born outside the US	5,318,810 (1.7%)
Naturalized citizens	22,629,737 (7.4%)
Business corporations with jurisdictional citizenship	~ 11,500,000
Nonprofit corporations with jurisdictional citizenship	~ 1,600,000

legal citizenship is not always decisive for experiences of lived citizenship. Yet whether or not legal rights and benefits are restricted to citizens, provisions that burden or aid some categories of persons more than others, such as variations in eligibility for health care, often burden or aid some legal citizens more than others. Many feel such policies render their legal citizenships “second-class” (Chen 2020, 125–126).

Especially since 1996, moreover, many federal programs that provide social benefits have confined eligibility to citizens or to citizens and permanent residents.<sup>16</sup> Those restrictions have heightened the importance of loss of citizenship, since it can mean loss of vital health and welfare aid as well as voting rights. Contemporary theorists and policy advocates differ sharply over the legitimacy of these policies (Voss, Silva, and Bloemraad 2019). In 2018, the number of U.S. citizens bearing these vulnerabilities, 27,948,547, was 9.16% of the citizenry.

At the same time, many naturalized citizens and citizens born abroad to American parents are eligible to hold dual or multiple national citizenships. By inheritance, many of their U.S.-born children can do so as

<sup>9</sup> U.S. Code, Title 8, Chapter 12, Subchapter III, Pt. 1 §1401(f).

<sup>10</sup> Provisions governing honorary U.S. citizenship are contained in the U.S. State Department’s Foreign Affairs Manual at 8 FAM 306.1-1 and 806.1-2. Only eight persons have received honorary U.S. citizenship.

<sup>11</sup> Codified in U.S.C. Title 28, Pt. IV, Chapter 85, §1332(c).

<sup>12</sup> Voluntary expatriation provisions are in U.S.C. Title 8, Chapter 12, subchapter III, Pt. 3 §§1481–1483, 1488.

<sup>13</sup> Provisions for revocations of naturalizations for fraud are in U.S.C. Title 8, Chapter 12, subchapter III, Pt. 3 §1451 and §1453.

<sup>14</sup> U.S.C. Title 22, Chapter 38, §2714a authorizes the State Department to revoke or deny passports and thereby prevent dual citizens abroad from reentering the United States. Though state and local governments cannot deprive persons of U.S. citizenship, they can effectively exile certain U.S. citizens from their communities. Local laws requiring vagrants and other “undesirables” to “get out of town” have been common in U.S. history (Goluboff 2016, 122). The U.S. Supreme Court sharply limited those policies in *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972), but it ruled in *Zemel v. Rusk*, 381 U.S. 1, 15 (1965) that areas “ravaged by flood, fire, or pestilence” could be “quarantined” for the safety and welfare of the area, limiting entry and exit. Courts have also upheld local exclusionary zones denying residence to registered sex offenders (U.S. Department of Justice 2008, <https://www.ncjrs.gov/pdffiles1/nij/222759.pdf>).

<sup>15</sup> Congress can revoke its laws and charters that create corporations and federal courts can impose civil and criminal penalties for misconduct that may compel corporations to terminate their legal existence. The federal government currently has no statutory authority to revoke state-granted corporate charters (Noonan 2012).

<sup>16</sup> Examples include U.S.C. Title 7, Chapter 35, subchapter II, Pt. A, §§1308–3, providing agricultural loans, and Title 8, Chapter 14, Subchapter 1, §§1611, 1612, 1615, 1621, and 1642, providing welfare, housing, and health benefits.

**TABLE 2A. Duties and Rights of U.S. Citizenship****(1). Duties:<sup>17</sup>**

- (i). *Obedience to laws*, required by congressional, state, and local statutes, *with some exemptions* from some generally applicable laws.<sup>18</sup>
- (ii). *Education*, required by state statutes, *with some exemptions*, and subject to state and federal constitutional restrictions and statutory policies.<sup>19</sup>
- (iii). *Taxpaying*, required by federal and state statutes, *with many exemptions*.<sup>20</sup>
- (iv). *Jury service*, required by federal and state statutes, *with some exemptions and exclusions*.<sup>21</sup>
- (v). *Willingness to do military service* regardless of eligibility, required by congressional naturalization and selective service statutes, *with some exemptions and exclusions*.<sup>22</sup>
- (vi). *Census participation*, required by congressional statutes, at times requiring statements of citizenship status.<sup>23</sup>

**(2). Rights:<sup>24</sup>**

- (i). *Civil rights*, defined by constitutional provisions, national, state, and local statutes, executive policies, and judicial decisions, including rights to protection against physical harms; against invidious discrimination; to contract for or otherwise buy, use, and dispose of property; to protection and participation in civil and criminal legal systems; to travel and to assemble and associate for civil purposes; rights of employers, employees, and consumers; of marriage, parental, and family statuses; of religious free exercise and of social, cultural, scientific, and artistic inquiry, and expression.<sup>25</sup>
- (ii). *Political rights*, defined by constitutional provisions, national, state, and local statutes, executive policies, and judicial decisions, including rights of political expression; rights to assemble and associate for political purposes; voting rights; and eligibility for public offices.<sup>26</sup>
- (iii). *Social rights*, defined by congressional, state, and local statutes and some state constitutions, and subject to U.S. constitutional restraints. These include social programs such as unemployment compensation, old age insurance and pensions, health and disability insurance and aid, nutrition support, economic aid to children and the indigent, and public education.<sup>27</sup>

well. The U.S. does not count how many citizens hold dual citizenships, but tens of millions have the potential to do so. On rare occasions, the U.S. government has threatened to revoke the passports of dual citizens who have gone abroad, or to prosecute them if they return, effectively exiling them. More often, analysts criticize dual citizenships for conferring what they call unfair

advantages. They contend that dual citizens, especially those who gained naturalization with the aid of wealth or special skills, have opportunities others lack to shift nations and to shirk duties like military and jury service and, less often, taxes—making their citizenships more than equal (Caldwell 2020; Tanasoca 2018).

Turning to laws that embody Marshall's typology of civil, political, and social rights and duties, [Table 2A](#)

<sup>17</sup> All these duties except jury service are also imposed on noncitizen residents of the United States, but usually with some variations.

<sup>18</sup> Most federal crimes are codified in U.S.C. Title 18, Pt. 1, Chapter 12 §§231–233 focuses on civil disorders and Chapter 13 §§231–249 focuses on civil rights.

<sup>19</sup> Many federal regulations of state educational systems are codified in U.S.C. Title 20 and affect state and local provision of mandatory education systems. As examples, Chapter 33, §1403 abrogates state sovereign immunity to mandate compliance with the Individuals with Disabilities Education Act. Chapter 37, §§1651–1652 bans the use of federal funds to transport students for purposes of racial balance, but Chapter 39, §1703 requires states not to deny equal educational opportunities on the basis of race, color, sex, or national origin.

<sup>20</sup> Most federal tax provisions are codified in U.S.C. Title 26, Subtitles A–K.

<sup>21</sup> Mandates for jury service are not elaborated in the U.S. Code, but many provisions presume such legal requirements. E.g., Title 2, Chapter 2, §30 exempts members of Congress from jury service otherwise required by “Federal, state, or local law.” Title 10, Subtitle A, Pt. II, Chapter 49, §982 exempts members of the military on active duty from serving on a “State and local jury” if the Secretary of Defense determines that this service would have adverse consequences.

<sup>22</sup> Article 1, Sec. 8 of the Constitution authorizes Congress to “raise and support Armies” and to “provide and maintain a Navy.” The Supreme Court upheld the use of this power to require military service in the *Selective Draft Law Cases* (*Arver v. United States*), 245 U.S. 366 (1918). Current selective service policies are codified in U.S.C. Title 50, Chapter 49, §§3801–3820.

<sup>23</sup> Duties and penalties in regards to responding to the Census are codified in U.S.C. Title 13, Chapter 7, subchapter II, §§221–225.

<sup>24</sup> Though many of these rights are also available to noncitizen permanent residents, there are some variations in eligibility.

<sup>25</sup> Pertinent constitutional provisions include Art. I, secs. 8–10; Article III; Art. IV, sec. 2; and Amendments 1–11, 13, 14, 16, and 21. The elements of the U.S. Code that structure aspects of civil rights are too numerous to cite. As noted above, U.S.C. Title 18, Pt. 1, Chapter 13, §§231–249 focuses on civil rights. Title 42, Chapter 21, §§1981–2000h6 includes extensive further provisions for the equal protection of civil rights, including for institutionalized persons, participants in federally assisted programs, and in regard to employment and education.

<sup>26</sup> Pertinent constitutional provisions include Art. I sec. 4, Art. II, sec. 1, and Article VI, and Amendments 14, 15, 17, 19, 20, 22, 23, 24, and 26. Federal statutory provisions affecting voting rights are codified in Title 52, Subtitle I §§101–107, Subtitle II §§201–209, and Subtitle III §301.

<sup>27</sup> Courts generally interpret the U.S. Constitution as not providing social rights. Federal statutes establishing such rights and regulating state and local social programs appear in many parts of the U.S. Code. The primary location is Title 42, Chapters 1–160. Title 42, Chapter 7, §§301–1397mm includes old age, survivors, disability insurance, grants to states for unemployment compensation, temporary aid to needy families and child welfare services, maternal and child health care and child health insurance programs, veterans aid programs, the coronavirus relief fund, Medicare and Medicaid, and more.

**TABLE 2B. Population Categories with Varying Civil, Political, and Social Rights**

Under 18	71,503,164 (22%)
65 and over	52,423,114 (16%)
Women	166,049,288 (50.8%)
White	236,173,020 (74.7%)
Hispanic	59,763,631 (19%)
African American	41,617,764 (13.2%)
Asian American	18,415,198 (5.8%)
Native American	2,801,587 (1%)
Native Hawaiian and other Pacific Islanders	626,054 (0.2%)
More than one race	11,280,031 (3.4%)
Institutionalized	4,917,954 (1.5%)
Noninstitutionalized with disabilities	40,637,764 (12.6%)
Veterans	17,960,000 (7%)

shows that legal variations among citizens abound. U.S. laws delineate rights and categories of rights bearers far more elaborately than they do civic duties. However, even legal duties are subject to exceptions that create major differences in lived citizenships. As seen in Table 2B, age differentiations are broadly effective. In 2018, just under a quarter of U.S. residents (71,503,164) were under 18 and too young to vote in national elections or do military or jury service. Although this differentiation is one most citizens live to overcome, it still can foster feelings of frustrating inequality, especially during national elections and wartimes. The appropriate age for disfranchising younger citizens has long been disputed, with the age lowered to 18 in 1971. Today some theorists argue for further extending youth voting, though others hold that current legal structures render the lived citizenships of children appropriately different but equal (Peebles 2019; Rehfeld 2011, 158–159; cf. Kallio, Wood, and Häkli 2020, 718–719).

In 2018, just over 16% of the total residential population, 52,423,114 persons, were 65 years or older. Historically, many senior citizens in America suffered physical and economic hardships that gave them sharply inferior experiences of citizenship. Especially since the New Deal, however, American public policies have granted seniors rights that other categories of citizens do not possess, improving their economic conditions and social standing, and heightening their political participation (Campbell 2005). America's civic order assigns seniors lesser tax liabilities and makes them eligible for health and welfare benefits and free or reduced-price public services that are not available to those younger, and seniors receive military and, at times, jury service exemptions.<sup>28</sup> Though most see these privileges as equitable, earned by contributions

<sup>28</sup> Examples of tax provisions based on age include U.S.C. Title 26, Subtitle A, Chapter 1, subchapter A, Pt. Iv, Subpart C, §32 (limiting eligibility of those over 65 for earned income tax credits) and Title 26, Subtitle A, Chapter 1, Subpart B, Pt. I, §63, providing tax benefits. Health and welfare benefits tied to age include Title 42, Chapter 7, Subchapter II, §402 (eligibility reduced from 65 to

seniors have made over many years, analysts do contest, for example, why wealthy seniors should receive Social Security benefits, partly subsidized by general taxes (Butler 2016). Counting both younger and older residents, roughly 38% of the 2018 population had civil, political, and/or social rights and duties that varied from those of others based on age categories alone.

The U.S. civic order includes many other differentiators in civil, political, and social rights that are far more controversial, though many are efforts to help citizens to whom American governments have long denied equitable opportunities. The Census Bureau collects data using two “sex” categories, biologically male or female, and six “racial” categories—white, Black or African American, Asian, American Indian and Alaska Native, Native Hawaiian and other Pacific Islander, and other, with the option of indicating multiple races, as well as two “ethnic” categories—“Hispanic or Latino” and “Not Hispanic or Latino.” The Bureau expressly says it does so because government agencies use these data to structure social rights of citizenship, including education, employment, and health care (U.S. Census Bureau 2017). Those policies seek to provide all citizens with economic, health, and educational resources they need to offset disadvantages, especially those fostered by capitalist dynamics and by discriminatory practices. Because American inequalities are massive, the resulting variations in the rights that different categories of citizens possess are substantial.

For example, the Census Bureau identified 50.8% of all adult Americans in 2018 as women, 166,049,288, and their sex alone made them legally eligible for special treatment through affirmative action programs, often for public-sector jobs confined to citizens, as well as for various social rights.<sup>29</sup> Women were also not required to register for military service.<sup>30</sup> Of the 96.6% of American residents who identified themselves as having one race (315,887,408), 19%, or 59,763,631, classified as Hispanic or Latino; 13.2%, or 41,617,764, as African American; just under 1%, or 2,801,587, as Native American; and 0.2%, or 626,054, as Native Hawaiian or other Pacific Islanders. All of these groups had federal civil rights, including affirmative action eligibility and in some case property and political rights, distinct from those of the 74.7% of Americans who identified as white (236,173,020), and many, though not all, of the 5.8% who identified as Asian Americans (18,415,198).<sup>31</sup> Another 3.4% of Americans, 11,280,031, saw themselves

62 or 60 for various old age insurance programs) and Title 42, Chapter 7, Subchapter II, §426a (hospital insurance benefits).

<sup>29</sup> See e.g., U.S.C. Title 12, Chapter 6A, Subchapter 1, §635; Chapter 16, §1833e; Chapter 46, Subchapter 1, Pt. A, §4520; Title 42, Chapter 21, Subchapter VI, §2000e-4; and others.

<sup>30</sup> U.S.C. Title 50, Chapter 49, §3802.

<sup>31</sup> Provisions in the U.S. Code establishing racial and ethnic affirmative action initiatives in employment, social policies, transportation, and other areas include Title 5, Part III, Subpart F, Chapter 72, Subchapter 1 §720; Title 15, Chapter 15c, §7190; Title 22, Chapter 52, Subtitle I, §3901; Title 42, Chapter 21, Subchapter II, §§2000d, 2000e, 2000e-4, 2000e-5, 2000e-16; and Title 49, Subtitle VII, Part B, Chapter 471, Subchapter 1, §47123.



as belonging to two or more races, raising ambiguities in their eligibility for employment, education, and health and welfare programs. Debates over the propriety of assigning any benefits or burdens to citizens based on race, ethnicity, or gender have long been fierce (Urofsky 2020). Most turn on claims about the effect of these policies on lived citizenships, with advocates contending these measures help overcome disadvantages often imposed by public policies and critics insisting that such measures transform nonbeneficiaries into victimized second-class citizens.

Several other differentiators are notable for their legal recognition in America's civic order. In 2018, 4,917,954 persons were institutionalized in American federal, state, or local correctional, health, or long-term care facilities (data.census.gov). Their civil rights were protected by the Constitution, by the Civil Rights of Institutionalized Persons Act of 1980, and other statutes, but they were still legally subject to many punitive and health-related restrictions (U.S. Department of Justice). Moreover, out of a total civilian noninstitutionalized population of 322,249,485 in 2018 (98.5% of the total population), 40,637,764 persons (12.6%) had physical or cognitive disabilities (data.census.gov). Many federal laws provide these persons with rights against discrimination as well as special medical, educational, housing, and insurance assistance to combat their long-standing experiences of legally disadvantaged and stigmatized citizenship.<sup>32</sup> The forms of aid include accommodations in public education and employment that other citizens cannot claim, so again they sometimes face controversies over whether these "special rights" violate equal citizenship (Simplican 2015).

In 2018, just under 18 million Americans (7%) were military veterans (data.census.gov). They and often their families were eligible for numerous special benefits including life and health insurance and health care, educational, vocational training, and housing assistance, financial and legal counseling, and priority in public employment (U.S. Department of Veteran Affairs 2020). Many Americans see these benefits as appropriate rewards for public service and often as necessary to overcome disadvantages and disabilities incurred during service contributions. Veterans' benefits have, however, sometimes been controversial, particularly when denials of opportunities for military service have compounded the inequalities in employment and educational opportunities experienced by African Americans, LGBTQ+ Americans, and women or when military benefits have been provided unequally on the basis of sex, policies that the Supreme Court has held unconstitutional (*Frontiero v Richardson*, 411 U.S. 685 [1973]).

<sup>32</sup> Federal programs to aid the disabled are numerous. Major laws mandating nondiscrimination, accommodations and exemptions include U.S.C. Title 20, Chapter 33, Subchapters I–IV, encompassing the Individuals with Disabilities Education Act, and Title 42, Chapter 126 §§12101–12103 and Subchapters I–IV, the Americans with Disabilities Act.

**TABLE 2C. Members of Groups Eligible for Legal Religious Benefits**

Evangelical protestant	25.4%
Mainline protestant	14.7%
Black protestant	6.5%
Catholic	20.8%
Jewish	1.9%
LDS (Mormon) church	1.6%
Muslim	0.9%
Jehovah's witnesses	0.8%
Buddhist	0.7%
Hindu	0.7%
Christian orthodox	0.5%
Other faiths	1.8%

The Census Bureau does not collect data on two other major differentiators, sexuality and religiosity, though the 2020 Census enabled persons to indicate they are in same-sex relationships. The Gallup Poll estimates that 4.5% of Americans are lesbian, gay, bisexual, or transgender, but many believe the percentage is higher (McCarthy 2019). Through much of American history, the lived citizenship of persons with nonconforming sexualities was highly unequal, marked by felt necessities to remain in the closet or face brutal discrimination (Canaday 2009). In recent years, the Supreme Court has upheld constitutional rights to same-sex intimacy and same-sex marriages and the applicability of Title VII of the 1964 Civil Rights to LGBTQ persons, protecting against much employment discrimination. However, states vary in other protections against antigay discrimination, with only 21 states having laws covering housing as well as employment and 20 including places of public accommodation (Steinmetz 2019). Though public opinion has shifted in favor of gay rights, antidiscrimination bans remain hotly contested, especially by religious conservatives (Koppelman 2020).

As shown in Table 2C, the Pew Research Center's Religious Landscape Study estimates that 70.6% of American residents identify as Christians, with 25.4% Evangelical Protestants of different sorts, 14.7% identifying with different Mainline Protestant denominations, 6.5% with historically Black Protestant groups, 20.8% as Catholic, 1.6% Mormon, 0.8% Jehovah's Witnesses, and 0.5% Orthodox Christians. About 5.9% of Americans espouse other faiths. Jews comprise 1.9%, Muslims 0.9%, Buddhists 0.7%, Hindus 0.7%, and 1.8% other world religions or other faiths (Pew Research Center 2020).

Recognizing how central religions are to millions of people, America's civic order has long provided such religious groups with many exemptions and accommodations under federal, state, and local laws. Supreme Court decisions also insist that public policies must not make any persons feel like they are not "full members of the community" because of their religious views (*Lynch v. Donnelly*, 465 U.S. 688 [1984]). Different religious groups claim different forms of special treatment. Some seek exemptions from military service,

**TABLE 3A. Rules Governing Relationships of U.S. citizenship with other Citizenships**

- (i). *State and local citizenships* in relation to U.S. citizenship, established by multiple provisions of the Constitution alterable only by constitutional amendment, and by alterable local, state and national statutes, court decisions, and executive policies.<sup>34</sup>
- (ii). *Territorial citizenships* in relation to U.S. citizenship, established and governed by congressional statutes under multiple provisions of the U.S. Constitution, and by court decisions, executive policies, and territorial authorities.<sup>35</sup>
- (iii). *Tribal citizenships* in relation to U.S. citizenship, governed by congressional powers over tribes and naturalization under Art. I, sec. 8, and by federal court decisions and tribal authorities.<sup>36</sup>
- (iv). *District of Columbia citizenship* in relation to U.S. citizenship, governed by constitutional provisions, national statutes, and municipal ordinances.<sup>37</sup>
- (v). *Dual or multiple citizenships, in both nation-states and transnational organizations* established and alterable, at least prospectively, by treaties, congressional statutes, the State Department, the Attorney General, and other executive agencies.<sup>38</sup>

others from public education. Many want tax-exempt bond financing and rights to receive tax-deductible contributions, and some, exemptions from paying Social Security taxes. Most want exemptions from bans on religious discrimination in employment and from copyright laws in religious performances. Some seek exceptions in regulations governing animal slaughtering and food preparation. All these exemptions and accommodations represent civil rights not shared by nonreligious citizens.<sup>33</sup> Many spur disputes about

whether they help achieve equitable lived citizenships for religious adherents disadvantaged by public policies reflecting different moral traditions or whether they unduly privilege religious believers (Gill 2019).

American governments do not legally assign people to different jobs. Social rights have, however, often been differentially distributed by occupation: agricultural and domestic workers were originally excluded from Social Security programs, exacerbating racial, gender, and economic inequalities in lived citizenships (Lieberman 2001; Mettler 1998). Many economic actors have long fought for public aid to gain resources needed for civic standing. Policy makers have particularly seen farmers as facing special economic challenges that justify subsidies, loans, and crop insurance—measures that some praise as appropriate forms of social welfare and others denounce as inefficient, unjust privileges (Bakst 2018).

Similarly, though criminal justice laws apply to persons, not citizens per se, they do affect citizens' civil, political, and social rights, both during and after incarceration. Because the Constitution largely leaves qualifications for voting to the states, federal laws do not directly disfranchise those subject to federal, state, and local criminal justice systems, and the Census Bureau does not track the limits on citizenship rights that state and local policies impose. The Sentencing Project estimates, however, that in 2020, 5.17 million American citizens were disfranchised due to a felony conviction, roughly 2.3% of the voting population, with African Americans disfranchised at more than three times the rate of non-African Americans (Uggen et al. 2020). Most states also deny convicted felons the right to serve on juries; they are ineligible for, or compete poorly for, many public and private jobs; if on probation, they face other restrictions; and they may be ineligible for various federal and state grants, public housing aids, and social benefits including SSI, food stamps, and more (Spengler 2020). The number of Americans with felony convictions is hard to estimate, but the major recent study placed it at roughly 8% of the total

<sup>33</sup> Examples of such provisions in the U.S. Code include Title 7, Chapter 48, §1906 (ritual slaughtering), Title 10, Subtitle A, Part II, Chapter 31, §503 (military recruiting), Title 15, Chapter 2A, Subchapter 1, §77c (regulation of securities), Title 17, Chapter 1, §110 (copyright exemptions), Title 26, Subtitle A, Chapter 1, Subchapter B, Part II, §170 (tax deductible contributions), Title 26, Subtitle A, Chapter 42, §1402 (clerical tax exemptions), Title 26, Subtitle C, Chapter 21, Subchapter C, §3127 (exemptions from Social Security taxes), Title 42, Chapter 6A, Subchapter III-A, Part J, §290kk-1 (eligibility for federal program participation despite exemptions), Title 42, Chapter 21, Subchapter VI, §2000e-1 (accommodation of religious discrimination in employment). Broad protections are also provided by Title 42, Chapter 21B, the "Religious Freedom Restoration Act," and Title 42, Chapter 21c, the "Protection of Religious Exercise in Land Use and for Institutionalized Persons" Act.

<sup>34</sup> Constitutional provisions giving the U.S. broad but unspecific oversight authority over state and local citizenships include Art. I, secs. 9 and 10, the Art. IV Sec. 2 privileges and immunities clause and Sec. 4 republican government clause, and the 14th Amendment's citizenship clause and privileges and immunities clause, qualified by the 10th Amendment and norms of "cooperative federalism." U.S.C. Title 4, Chapter 4, §§101–126 contains provisions governing relationship of the U.S. government to the states, chiefly in regard to taxation, telecommunications regulation, and the requirement for state officials to take oaths to support the U.S. Constitution.

<sup>35</sup> Art. I, sec. 8 and Art. IV sec. 3, establish broad congressional powers over the territories; Art. III, sec. 2 defines the judiciary's jurisdictions, with all powers also defined through court decisions.

<sup>36</sup> Federal laws structuring relationships with native tribes are in U.S.C. Title 25, Chapters 1–48. Chapter 6 elaborates provisions on governance of reservations. Chapter 15 defines constitutional rights that tribes must uphold.

<sup>37</sup> Art. I, sec. 8 authorizes Congress to create and govern a district as the seat of the national government. The 23d Amendment gives the District voting representation in the Electoral College, though not Congress. In 1973, Congress passed a Home Rule Act that gave a DC-elected council and mayor more authority for self-governance, still subject to congressional plenary powers.

<sup>38</sup> Though not explicitly provided for in the U.S. Code, dual citizenship is recognized in, e.g., Title 26, Subtitle F, Chapter 79, §7701(a)50 (B).



**TABLE 3B. Political Communities within and beyond U.S. Citizenship**

State governments	50
Counties or county equivalents	3,242
Incorporated cities, towns, villages	19,495
Election administrative units	~10,000
Public school districts	130,930
Federally recognized tribes	574
Native american reservations	326
Populated overseas territories and District of Columbia	6
U.S. memberships in international organizations	75

population, or over 26 million people (Shannon et al. 2017). Deservedly or not, most of those with felony records experience highly stigmatized lived citizenships along economic, political, and social dimensions.

In sum, the civil, political, and social rights in America's civic order have profound effects on lived experiences of citizenship that vary greatly according to the legal categories that differently situated citizens occupy.

These variations are further multiplied because the American civic order also creates "multilevel" forms of citizenship (Maas 2017). It recognizes persons as simultaneously citizens of local governments—towns, cities, school districts, and counties; as citizens of states or territories or indigenous tribes; and as citizens of the United States, which in turn has placed its citizens under the limited governance of some international organizations and which now accepts dual national citizenships. Governed by the U.S. Constitution, all these intersecting citizenships form parts of the American civic order, but their diversity further contributes to staggering variances in lived citizenship.

As shown in Table 3B, in 2018, U.S. citizens lived in 50 states; 3,242 counties or county equivalents; 19,495 incorporated cities, towns, and villages; about 10,000 election administration units; 130,930 public school districts; 574 federally recognized Indian tribes, located in 36 states; 326 Indian reservations; and 5 overseas territories, along with the District of Columbia (U.S. Census 2020; World Population Review 2020). The US also participates in over 75 international organizations, some of whom, like the World Trade Organization and the Agreement of the US, Mexico, and Canada (USMCA), include dispute resolution bodies that the US usually treats as having binding governing powers. These organizations form limited but significant transnational political communities to which U.S. citizens belong.

These intertwined political communities vary enormously. In 2018, state populations ranged from 39,557,045 for California to 577,737 for Wyoming. States range in size from the 94,743 square miles of Alaska to the 191.3 square miles of West Virginia. Differences abound in their geographies, economies, demographics, historical traditions, and their modern partisanships. Differences within many states are almost as immense. Of the incorporated localities,

14,768 had populations below 5,000. About 40% of U.S. residents lived in cities of 50,000 or more. Of those, 310 cities had populations of 100,000 or more and 10 cities had populations above 1,000,000 (World Population Review 2020).

Under the Constitution and federal statutes, states and local governments have wide discretion over the provision of civil, political, and social rights to their residents. Their policies often do more to shape those residents' everyday civic experiences than national ones, especially since some U.S. cities have issued "municipal identification cards" that help locals get access to a range of institutions and services, including libraries, schools, banks, and supermarket and pharmacy discounts regardless of their national citizenship status (Hirschl 2020, 166–167). As a result, bearers of municipal IDs can feel they have real local "economic, political, and social esteem" even when they are not legal citizens.

Analysts of American citizenship must therefore explore how state and local governments structure many rights—including voting rights and educational, financial, nutritional, housing, and medical programs—in startlingly different ways. Although the federal government provides roughly 65% of the funds for public welfare expenditures, state and local decisions shape whether and which citizens get these funds and how much. In 2017, for example, Massachusetts spent the most per low-income resident on welfare programs, \$14,346, while Georgia spent the least, \$3,310. Under the Affordable Care Act, 36 states and the District of Columbia accepted Medicaid expansion, but 14 states did not, acting as veto points on this national health initiative, as on many other policies (Buettgens 2020). There are also 130,930 public school districts in the US that structure civic education in markedly different ways (Riser-Kositsky 2020). Educational funding levels, sources, and formulas vary sharply. New York has the highest per-pupil expenditures, more than \$12,400 greater than Idaho, the lowest (Baker, Farrie, and Sciarra 2018, iv).

Differences are just as great with respect to political rights. There are over 10,000 "election administrative units" in the US, usually counties but sometimes cities or townships, often led by elected partisan officials (National Conference of State Legislatures 2020). They authorize registration rules, polling locations and hours, voting equipment, and vote counting, with limited state or federal oversight, even in national elections. Citizens in one county can fail to get votes cast and counted that would be recorded in another (Hale, Montjoy, and Brown 2015, 38–43). Again, every state except Maine and Vermont restricts felon voting, leaving between five and six million U.S. citizens disenfranchised (Hale, Montjoy, and Brown 2015, 161–6). Requirements for jury service also differ widely, as do state and municipal tax policies. Corporate jurisdictional citizens cannot vote but have standing to litigate and rights of political expression.

Variations are even more extensive for citizens who live in the District of Columbia or America's overseas territories, or who belong to indigenous tribes. DC

citizens can vote for president and vice president but have no voting representation in Congress. Territorial citizens cannot vote for any national office; they have distinctive tax, trade, and civil rights and duties, and they vary in their eligibility for federal social programs. Treaty provisions can give Native American tribes special rights to natural resources, business opportunities, social benefits, and self-governing powers, but like the District and the territories, they are more subject to congressional governance than the 50 states (Aleinikoff 2002). All these variances greatly affect persons' lived citizenships, including many that seem inconsistent with civic equality (Stahl 2020). Recently, litigation efforts have intensified to persuade courts to overturn what territorial advocates denounce as the "second-class status" of citizens of "so-called unincorporated territories like Puerto Rico, Guam, and the U.S. Virgin Islands," as well as American Samoa and the Northern Mariana Islands (*Fitisemanu v. US.*, U.S. D.Ct. Utah, 1:18-cv-36 [2019]; Knight 2019).

## CRITERIA FOR APPROPRIATE DIFFERENTIATIONS

The effect of some citizenship provisions, like racial and gender categories, on equal lived citizenships have long been disputed. The effects of others, like disability disqualifications and corporate jurisdictional citizenships, have often been overlooked. To advance understanding, analysts need some general criteria to guide empirical investigations and normative judgments of when citizenships are unduly unequal. Existing legal and political theories suggest partial answers, but the realities of civic orders show more is needed. The preeminent U.S. legal requirements for equality are the equal protection clause of the 14th Amendment and the equal protection component the Supreme Court discerns in the due process clause of the 5th Amendment. Constitutional equal protection applies to both citizens and persons, but it does not demand that all be treated identically. Instead, Section 5 of the 14th Amendment empowers Congress to enforce equal protection through "appropriate legislation."

### Current Approaches to Legal Equality

Public law scholarship displays a sharp clash over how to decide what legal differentiations are "appropriate" (Hutchinson 2017). The two main camps are, first, "antidiscrimination" or "anticlassification" approaches, which focus on whether officials have intentionally used legal classifications that make invidious distinctions between groups (Dworkin 1986, 381–97). Examples include the use of racial, sex, or religious classifications to restrict, especially, rights deemed fundamental. The rival camp is "antibsubordination" or "antidomination" approaches, which focus on whether officials have acted in ways that perpetuate, rather than alleviate, unjust hierarchies, whatever their intentions or the classifications used (Coker 1986). Examples include employment and criminal justice policies that disproportionately

disadvantage people of color, whether or not they are meant to do so.

Both these approaches are valuable, but they are not sufficient to answer all questions of when and why differentiated citizenship categories are appropriate. Antidiscrimination advocates are right to reject the intentional use of legal classifications to create second-class citizenships. Antibsubordination advocates are right that this rejection is not enough to reform many policies and practices that have severe inegalitarian effects, purposeful or not, on the lived citizenships of many persons.

Antidiscrimination theorists focus, however, on those legal differentiations in citizenship they suspect are intentionally invidious. Antibsubordination theorists focus on those that operate either to reinforce or to resist systems of subordination and domination. Civic orders contain many legal differentiations whose objectives and effects are not captured by either focus. They are instead efforts to further individual and social goals widely seen as legitimate. Small children are exempt from jury duty chiefly because they would impede the civic work to be done. Seniors receive discounts out of regard for the civic contributions they are thought to have made. Religious pacifists are relieved of military service due to respect for morally conscientious lives. The granting of citizenship for jurisdictional purposes to nonprofit corporations like children's theaters partly reflects desires to foster socially valuable activities. Variations in county election systems often arise from experiments with new technologies for convenient, accurate elections, not partisan ploys.

More broadly, American federalism generates many differences, especially in social rights to programs like Medicaid, which make many feel they have "second-class citizenship" (Michener 2018, 3). Analysts of civic orders must question how desirable federal systems are from the standpoint of equitable lived citizenships. Yet variations in state and local social policies can arise from legitimately diverse democratic decisions in different communities. However, even when differentiated rights and duties do not reflect invidious intentions, even when they are not parts of systems of subordination, even when they target salutary goals, we must still ask whether they are ineffective or costly in ways that impede equitable citizenships for all.

To do so, empirical and normative inquiries must focus on whether a civic order's civil, political, and social rights, as structured and constrained by laws governing acquisition and loss of citizenship and multiple intersecting citizenships, provide real opportunities for all citizens to gain the "political, economic, and moral resources" that scholars of lived citizenship rightly deem essential to "economic, political, and social esteem." Fraser's typology of equality's dimensions as "redistribution, recognition, and representation" is a useful starting point, but a grasp of civic orders suggests further specifications of how to assess whether these goals are being met for different categories of citizens (Fraser 2009, 6, 104–5). As examples:

(i). *Representation: Voice and Exit.* Political representation via participation in elections and office holding is crucial for full citizenship. Awareness of how civic orders place groups of citizens in distinct categories indicates, however, that people need opportunities for what Albert Hirschman termed voice or exit not only within state institutions but also within all groups and associations that claim to represent them in debates over citizenship policies (Hirschman 1970).

Ascertaining whether people have real opportunities for voice is essential both when policies subject a category of citizens to special treatment that most in the category do not desire, as in the case of rules allowing denaturalizations with limited due process, and when policies deny sought-after special treatment to a category of citizens, as when religious groups seek to use controlled substances in religious ceremonies. If all persons affected have had genuine chances to be heard in state policy making and adjudication processes and within groups seeking special treatment, then complaints about differentiated treatment lose some (not all) weight. Most people, however, justly feel demeaned by legal citizenship rules when they have had no practical options in their groups or in state processes to shape policies to which they object.

Consequently, the first step in assessing the political-representation dimension of lived citizenships is to discern whether different categories of citizens have, in law and in practice, opportunities for voice in pertinent decision-making processes. Formal rights to voice are vital but not determinative (Wilson 2019, 96–171). Analysts have shown how systems of representation can pose almost insuperable barriers to effective voice, especially for minority and poorer voters (Castiglione and Pollak 2018). Citizens of color, for example, can rightly claim not to experience equal political esteem when legislatures chosen through electoral systems that overrepresent white voters then adopt policies reinforcing those voters' advantages. It is equally important to ask whether all within a group whose leaders seek special legal treatment have had opportunities to influence the positions advanced by those who claim to speak for them. Privileged members of advocacy organizations and cultural communities too often suppress the concerns of "minorities within minorities" (Okun 2004; Strolovitch 2007).

Because people can shape their personal choices more readily than collective ones, exit options sometimes do more than voice to enable people to have the lived citizenships they seek. It therefore matters whether citizens have practical opportunities to exit from a city, state, or nation when those in power ignore their voices. It sometimes matters more whether dissenters have means to exit from churches, ethnic communities, or employers that advance civic demands, such as exemptions from antidiscrimination laws, they oppose (Kukathas 2003). Exit options are, however, often not what dissidents desire. Many want more responsiveness from their communities to their concerns. In any case, the costs of exit are often too high to make a formal option meaningful (Shachar 2001; Weinstock 2004). That is why empirical assessments of the

realities of opportunities for both voice and exit are needed to judge whether a civic order's formal rights of representation are advancing experiences of equal lived citizenships.

(ii). *Resources and Redistribution.* Though political rights help secure all rights, most people's everyday lived citizenships are most shaped by their access to material resources and opportunities. Assessments of whether people have "appropriate" resources form part of deep disputes over whether capitalist inequities simply cannot be overcome, so that collectivist systems of worker or social ownership are needed, or whether people can benefit enough from redistributive policies to make citizenships in capitalist societies equitable, or whether aid policies intended to combat inequalities only generate "moral hazards," incentivizing unproductive conduct that limits resources for all (Forbath 1999; Hacker and Pierson 2020). Views on many civil rights, including economic liberties and social rights to financial aid, education, health, and more often rest on contrasting economic ideologies.

Precisely because civic orders as well as other policies structure access to material resources needed for respectable standing, governments committed to goals of equitable lived citizenships must accept responsibility for empirically assessing the economic consequences of alternative policies, at both the micro and the macro levels. At the micro level, for example, they have a duty to determine whether or not a person's hearing disability impedes completing a state employment exam in the standard time and whether special accommodations might make job opportunities more equal. At the macro level, they must monitor how near or far the employment, income, health, and wealth conditions of different categories of citizens are to a society's medians and whether inequalities are heightening (e.g., Piketty 2017). Such data must inform debates over whether material inequalities are so great as to contribute to unduly unequal lived citizenships. Large-*n* studies must be joined with qualitative analyses to determine whether people experience resource policies as enabling material well-being and civic respectability.

As economies change, moreover, constant attention must be paid to empirical evidence of how both particular provisions and the civic order as a whole are affecting people's economic experiences. When they spur escalating material inequalities, the case for new civic rights and institutions strengthens. These might include forms of special political representation for poorer citizens, as class-conscious theorists urge, in order to insure that inequalities are redressed (e.g., Green 2016; McCormick 2011).

(iii). *Recognition and Special Treatment.* The subjective perceptions of people that they are being denied equal civic recognition and esteem by the officials and institutions of their society may be hardest to assess. Public policies receive wildly different interpretations, and benefits to some can be seen as harms to others. Still, perceptions of unequal recognition are usually greatest on the part of groups whom a state's coercively enforced policies have harmed, whether intentionally



or through indifference and neglect. Public acknowledgment of those harms and adoption of policies that are directed at alleviating them may help all such citizens to feel they are now being seen and treated appropriately.

Consequently, hard choices on citizenship laws should often be resolved by prioritizing those whom states have hindered, purposefully or not. Some argue that persons acquire claims to citizenship itself because they deserve voice in policies that a state coercively enforces against them (Honohan 2018, 148–150; Smith 2015, 219–246). Similarly, it is appropriate to consider whether categories of citizens whom governments have subjected to coercively enforced policies have claims to distinctive forms of recognition that may include targeted aid and special political rights. Long-subjected indigenous tribes, for example, have claims to broad rights of self-governance and to control of land and other resources vital to their tribal existences. Racial and ethnic minorities, women, and LGBTQ+ citizens long denied access to many forms of public employment, education, and political office have claims to special opportunities for publicly funded positions for which they qualify. When governments have financed public transportation and communication systems designed only for citizens with conventional abilities, disabled citizens have a claim to suitable modifications, such as making mass transit vehicles wheelchair accessible and providing Braille instructions, so that the lived citizenships of all are more equal.

Claims for special treatment of those disadvantaged by past and present state policies should not automatically trump all other considerations. Targeted measures may prove insufficient or unnecessary to address inequities. They may impose costs that outweigh their benefits. Governing officials should also not ignore those who face difficulties not directly traceable to state policies, such as, perhaps, workers laid off because their skills have become obsolete. Yet given the long history of inequalitarian American policies, the priorities of decision makers should reflect awareness that measures tailored to aid those thus harmed may be required to make all feel they are truly recognized as equal citizens.

## LESSONS OF CIVIC ORDERS: UNIFORMITY OR DIFFERENTIATION?

The first lesson implied by this framework for mapping and assessing “civic orders” is that it is not fruitful to argue over whether the rights and duties of citizenship should be, in general, uniform or not. Once we discern the 29 provisions of the American civic order listed in Tables 1–3, the often bitter debate over whether categories of citizens should ever have differentiated rights and responsibilities becomes starkly one-sided. Differentiation is, always has been, and always will be the rule, not the exception. Indeed, unless two individuals share the same mode of acquiring U.S. citizenship; the same dual-citizenship eligibility; the same local residency; the same biological sex, gender identity, and sexuality; the same age group; the same disabilities; the same race and ethnicity; the same religion; the same

criminal and military records; the same employments; and the same stock ownerships, their legal citizenships vary in ways that greatly affect their lived citizenships.

The intense disputes over some variations create the impression that departures from civic uniformity are always suspect. Yet many differentiations, including many age distinctions, disability and veteran benefits, and some religious exemptions, have long been incorporated into citizenship laws with little controversy. Although much American political discourse has professed to reject variations in legal citizenship, as in the slogan of “Equal Rights to All and Special Privileges to None” advanced by Populists, Jacksonians, and Jeffersonians, those rejections have addressed only a few sets of rights and privilege, while their proponents have happily accepted many others (Beeby 2001, 161–162).

The serious questions for citizenship theorists, activists, and policy makers concern what forms of legal differentiation help to contribute to more equal experiences of lived citizenship for all and what forms instead make lived citizenships more inequitable, often by contributing to unjust forms of discrimination, subordination, and exploitation. Civic differentiations should not be presumed illegitimate. Instead, differentiated provisions must be studied to see whether evidence shows them to be forms of “targeted universalism”: measures that help meet “the needs of both dominant and marginalized groups,” with “particular attention” to the often-unequal lived citizenships of the marginalized (Powell 2012, 24). Those examinations must be recurrent, because changing material conditions and values may diminish some forms of marginalization, such as discrimination against Catholics in America, while distinctions long taken for granted may be increasingly seen as invidious, as has been true of sexuality and disability.

## Intersectionality and Methodological Pluralism

These imperatives raise the issue of how best to discern the effects of legal civic orders on experiences of lived citizenship. Mapping legal rights is necessary but not sufficient. Multimethod empirical studies of how citizenship laws affect civic experiences are vital. Impacts on employment, income and wealth, housing, education, and health, as well as electoral participation and office holding, require large-*n* data analyses. Because experiences of lived citizenship cannot be deemed equitable if people do not see them as such, people’s perceptions must also be explored. Surveys can help, but in-depth interviews and observational research are also needed. It is otherwise hard to discover how and why many of those whom the law provides with formal citizenship rights still feel they suffer denials of the esteem and material opportunities accorded to civic equals. It is also hard to see the many kinds of meaningful, sometimes counterbalancing civic agency that persons can exercise even absent legal citizenship status (Alejandro 1993; Isin and Nielsen 2013).

It is vital, moreover, to examine both the effect of particular laws and the synergistic effects of a civic

order taken as a whole. The key insight of intersectional scholarship, that persons' experiences reflect their positioning within multiple social structures, including those of class, race, gender, and sexuality, must guide investigations on how civic orders, which reflect and affect all these evolving structures, shape experiences of lived citizenship (Crenshaw 1989). Intersectional analyses can, in turn, gain force by documenting the inegalitarian effect of interacting provisions of civic orders. As examples, jurisdictional citizenship rules that enable corporations to limit taxes by venue shopping can add to the tax burdens of low-paid workers and limit public resources for social rights. Denaturalizations for minor errors can place less educated Muslim young men in special jeopardy. Religious accommodations for medical providers may particularly bar poorer trans persons from health services. Once we accept that civic orders inevitably create differentiated categories of citizenship, we must accept that the resulting different experiences of lived citizenships have to be assessed through multiple methods that recognize the many intersectional positions that laws partly create.

## CONCLUSION

Neither attention to legal civic orders nor to persons' lived experiences of citizenship can alone enable normative theorists, empirical analysts, activists, and policy makers to see how equal citizenship can best be pursued. A framework that maps the complexities of a society's civic order and uses them to guide empirical and normative assessments of the relationship of that order to lived citizenships is required. If we know better how the laws that structure the acquisition and loss of citizenship, the rights and duties of citizenship, and the interconnections of civic communities affect persons' access to political representation, material resources, and social recognition, we can better discover what effects both uniform and differentiated civic laws have had and whether different laws might better advance more equitable lived citizenships for all.

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## CONFLICT OF INTEREST

The author declares no ethical issues or conflicts of interest in this research.

## ETHICAL STANDARDS

The author affirms this research did not involve human subjects.

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