

BOOK REVIEW SYMPOSIUM

INTRODUCTION

THE PEOPLE IN QUESTION? CONSTITUTIONAL CITIZENSHIP AND ITS IMPACT ON STATELESSNESS AND CITIZENSHIP STUDIES

BARBARA VON RÜTTE*

Jo Shaw is well-known in the field of citizenship studies. Over the last twenty years, Shaw has widely researched EU citizenship and membership in a supranational legal order, citizens' rights — particularly political rights — democracy and constitutions. Her most recent book, *The People in Question* reads like a culmination of this work, elegantly weaving together these different strands of research while clearly expanding beyond them.¹ In *The People in Question*, Shaw sets out to explore the importance of citizenship in relation to constitutions and constitutional law in order

to identify and to articulate a clear understanding of the frequently contested nature and significance of constitutional citizenship, and its relationship to contemporary pressures and tensions within and across states in the modern world.²

She not only examines the many details of such 'constitutional citizenship' in one specific domestic context, but assumes a broad view covering multiple jurisdictions and layers of national and international governance based on an impressive empirical dataset, and critically asks what happens if constitutional citizenship is put under pressure by processes of populism and deterritorialisation caused by globalisation.³

Shaw builds on the common assumption that constitutions and citizenship are closely related in modern states through a long and straightforward history.⁴ But her analysis shows that the relationship is more complex. In fact, constitutions rarely regulate citizenship explicitly.⁵ Rather, 'the constitutional substance of citizenship so often reveals itself in ways that are indirect or that present a fragmented picture'.⁶ Shaw skilfully puts together the pieces of this fragmented

* Barbara von Rütte is a Postdoctoral Research Fellow at the Max Planck Institute for the Study of Religious and Ethnic Diversity in Göttingen. She convened this Book Review Symposium in her function as the Book Review Editor of the *Statelessness & Citizenship Review*. The Symposium was developed in close collaboration with Johanna Hase and Liav Orgad of the WZB Berlin Social Science Center where Jo Shaw's new book was discussed in a virtual event on 8 October 2020. More information and a recording of the event can be found here: <<https://www.wzb.eu/en/node/68516>>.

1 Jo Shaw, *The People in Question: Citizens and Constitutions in Uncertain Times* (Bristol University Press 2020).

2 *ibid* 33.

3 *ibid*.

4 *ibid* 253.

5 *ibid* 8.

6 *ibid* 253.

picture to show how constitutions implicitly establish subtle but powerful links between our conceptions of peoplehood, statehood and democracy. She shows that while ‘constitutional citizenship’ — which she defines as ‘those aspects of the membership relation that go the very heart of a polity and some of the conditions for its existence’⁷ — might remain an abstract notion; ‘the constitutional citizen is a central figure for understanding the many dimensions of and tensions within modern citizenship as well as for understanding modern constitution-based polities’.⁸

Shaw resists the temptation to lay out her own normative idea of

what citizenship ought to encompass and how it should be dealt with by constitutions, about who ought to belong and who ought not, or about who should determine the answers to questions such as these.⁹

Instead, she provides readers with an analytical framework for reflecting how national citizenship remains a ‘remarkably resilient’¹⁰ tool for states to define the ‘people in question’. *The People in Question* also forces us to decipher the Rorschach test of peoplehood, to recognise non-citizenship and statelessness as ‘citizenship’s constant shadow’, which remains outside the picture of constitutional citizenship, though omnipresent. Shaw shows how closely constitutional citizenship is linked to the principles of dignity and equality and how it is often used to limit the scope of these principle. She rightly criticises that citizenship studies have often had an overtly Western focus, failing to account for the colonial and post-colonial legacies of constitutional citizenship and non-western approaches to peoplehood and belonging. And finally, she cautions us not to rely naively on classical and doctrinal legal approaches or the promise of a human right to citizenship, and reminds us that equal access to citizenship ‘must be struggled for at specific times and in specific places’.¹¹

The complexity and the different facets of *The People in Question* is reflected in the four different contributions to this Symposium. Each of the authors looks at the question of constitutional citizenship from a different perspective and disciplinary background. Johanna Hase opens the discussion by highlighting how the figure of the constitutional citizen contributes to narratives of peoplehood. She reconstructs Shaw’s narrative of constitutional citizenship and shows that the book refrains from familiar plots, simple lessons and easy answers in favour of a more nuanced story. She then examines how Shaw’s notion of constitutional citizenship can be used to analyse the relationship between constitutional discourse and constitutional citizenship, as well as its limits. Regarding the examples of the *Basic Law Israel — The Nation-State of the Jewish People* and the German debate about the reflection of diversity and/or cultural identity in the *Basic Law for the Federal Republic of Germany*, Hase shows how debates around the imaginary constitutional citizen not only transform the narrative of peoplehood, but have ‘implications for the meaning of membership in a [people] without directly

7 ibid 57.

8 ibid 44.

9 ibid 254.

10 ibid 55.

11 ibid 30.

addressing citizenship regimes'.¹² Shaw's book, she argues, opens a new way to capture and analyse this relation.

The contribution by Natalie Baird shifts the focus to 'the shadow of statelessness', which 'lurks throughout the book without being its central focus'.¹³ She discusses how constitutions regulate (or fail to regulate) statelessness, arguing that it does not come as a surprise that most constitutions remain silent on those excluded from 'the people'. She finds, however, that whenever constitutional provisions on statelessness actually exist, they can provide 'a constitutional bulwark' useful for protecting the rights of stateless persons.¹⁴ Baird underlines Shaw's insistence on the profound impact of discrimination on both citizenship and statelessness.¹⁵ Finally, drawing on Shaw's analysis of a fragmented governance of citizenship across different levels, she suggests that the emerging international framework on citizenship can offer innovative and creative ways to strengthen the framing of citizenship and statelessness in rights terms.

Julija Sardelić's contribution keeps the focus on those at the margins of constitutional citizenship and asks what Shaw's contemplation on the relations between the concepts of citizenship, constitutions and the people could mean for marginalised minorities.¹⁶ Sardelić uses the case of Romani minorities claiming access to water rights in Slovenia and the resistance of the settler-colonial states Australia, New Zealand, Canada and the United States to the *United Nations Declaration on the Rights of Indigenous Peoples*¹⁷ as examples to illustrate how majority citizens strategically use the notion of the constitutional to exclude minority populations and how these minorities, in turn, struggle to secure their constitutional rights as citizens on an equal basis. She thereby aptly illustrates the ambivalences enshrined in Shaw's concept of constitutional citizenship. She highlights the close connections between race, discrimination and exclusion that underpin Shaw's analysis of constitutional citizenship. Sardelić's contribution shows how important Shaw's concept of constitutional citizenship is for finally recognising marginalised minorities and indigenous populations in the definition of 'the people'.

Kriszta Kovács' contribution finally zooms in on the populist challenge to constitutional citizenship identified by Shaw as one of the developments that puts constitutional citizenship under pressure.¹⁸ Kovács first reflects on the definition of populism in Shaw's book and compares it to other theoretical accounts of populism. On that basis she discusses how ethnonational populists strategically reinterpret the concepts of the people and sovereignty for their political goals. She illustrates how a populist understanding of 'the people' differs from constitutionalist approaches and how this allows popular sovereignty to be reframed as national sovereignty and be established as an ethnic vision of 'we the

¹² Johanna Hase, 'The Constitutional Citizen in Narratives of Peoplehood' (2020) 2(2) *Statelessness & Citizenship Review* 372, 375.

¹³ Shaw (n 1) 59.

¹⁴ Natalie Baird, 'Constitutions, Citizenship and the Shadow of Statelessness' (2020) 2(2) *Statelessness & Citizenship Review* 377, 379.

¹⁵ *ibid* 379–80.

¹⁶ Julija Sardelić, 'Citizenship, Constitutions and People on the Margins' (2020) 2(2) *Statelessness & Citizenship Review* 384.

¹⁷ *United Nations Declaration on the Rights of Indigenous Peoples*, UN Doc A/RES/61/295 (2 October 2007) ('*UNDRIP*').

¹⁸ Kriszta Kovács, 'People, Sovereignty and Citizenship: The Ethnonational Populists' Constitutional Vocabulary' (2020) 2(2) *Statelessness & Citizenship Review* 389.

people'. With the example of Viktor Orbán's Hungary, Kovács' shows how ethnonationalist populist governments use external ethnic citizenship and preferential naturalisation regimes to 'reinterpret the concept of citizenship and make non-residential ethnic citizenship central to their citizenship politics'.¹⁹ She thereby convincingly underlines Shaw's argument that populism constitutes a serious challenge to the idea of constitutional citizenship.

All four contributions highlight how Shaw's analysis of constitutional citizenship adds to the ongoing debates and challenges in the fields of citizenship and statelessness studies. The questions Shaw raises in *The People in Question* will certainly inform future discussions about the definition of membership, the formation of statehood, the ideas of peoplehood and the exclusions from these concepts in the form of non-citizenship and statelessness.

¹⁹ *ibid* 394.