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Is there a Scottish approach to citizenship? Rights, Participation and Belonging in Scotland

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ABSTRACT

Had Scotland voted for independence in September 2014, it would have gained all the paraphernalia of statehood, including full rights over citizenship. But despite the ‘no’, can we still detect a Scottish citizenship without the machinery of statehood? This article examines Scotland’s ability to influence citizenship and migration policy from two perspectives. First, from a legal perspective, it examines the Scottish government’s limited control over citizenship, nationality and migration legislation, though it has broader scope to develop its own approach to migrant integration. Next, the article considers citizenship from a broader political and sociological perspective, focusing on the extent to which the three facets of citizenship identified by Marshall in 1950 – civil, social, and political rights – have been decentralized with the creation of the Scottish Parliament. Finally, the article examines the ways in which the Scottish approach to citizenship has diverged from the UK (English) approach.

Keywords: citizenship; migrant integration; migration policy; Scotland

I. INTRODUCTION

One of the key debates in the referendum campaign on Scottish independence in 2014 was the issue of immigration and citizenship. While UK Prime Minister David Cameron introduced a series of reforms that restricted the rights of migrants to naturalisation and accessing public services, and endorsed a controversial campaign for illegal immigrants to ‘Go Home or Face Arrest’,¹ Scottish First Minister Alex Salmond produced a white paper advocating a more inclusive model of citizenship in

¹ Patrick Wintour, “‘Go Home’ vans to be scrapped after experiment deemed a failure,” *The Guardian*, 27 November 2013.

an independent Scotland, with a commitment to increasing migrant rights.² The two visions of citizenship and migrant integration could not have been more different. The Scottish Nationalist Party (SNP)-led Scottish Government's approach to citizenship was driven by concerns over Scotland's ageing population, the need to fill key gaps in the labour market through increased immigration, a continuing commitment to multiculturalism and diversity, and – one may speculate – a desire to portray Scotland as more open, tolerant and progressive than its southern neighbour. The UK approach—following the trend towards more coercive or neo-assimilationist approaches to migration and citizenship across Europe³—was on the other hand driven by the perception that there was *too much* immigration, that the UK's social benefits to migrants were too generous, that migrants were failing to integrate – leading to pockets of extremism, and that public opinion was turning against the mainstream parties on this issue, fuelling a rise in support for the UK Independence Party (UKIP).

For a brief moment, in the week preceding the referendum, opinion polls indicated that Scots might actually embrace the vision of a more inclusive, social-democratic Scotland that the Yes campaign were touting, and vote for secession. However, economic uncertainty and fear of the risks of independence swayed the undecided and Scots voted No by 55% to 45% on 18 September 2014. The question remains, however, of whether the Scottish Government's commitment to creating a more inclusive, liberal and progressive citizenship and migration policy will also be swept under the carpet until a future referendum—or if, as a devolved region of the UK state, Scotland can still carve out its own approach to citizenship.

Certainly, the lack of the machinery of statehood has not prevented Scotland – and indeed other substate regions—from developing its own distinct policy agenda. Indeed, the territorial rescaling of states, resulting from decentralisation and European integration, has led to increasing policy divergence across states, whereby regions are departing from state-level policies to satisfy their own social, cultural and economic needs.⁴ This has resulted, for example, in conflicting positions on the role of

² Scottish Government, *Scotland's Future. Your Guide to an Independent Scotland* (Scottish Government, Edinburgh, 2013).

³ Christian Joppke, "Beyond National Models: Civic Integration Policies for Immigrants in Western Europe", 30(1) *WEP* (2007) 1-22.

⁴ Michael Keating, "Devolution and Public Policy in the United Kingdom:

privatisation in health care between Wales and the UK⁵; tensions over the role of religion in school education between Bavaria and Germany⁶; and disputes between Catalonia and Spain over the use of minority languages.⁷ These cases illustrate that substate legislative regions are increasingly battling with the central-state over what rights and obligations the residents of the region should be entitled to.

In the case of Scotland, citizenship, nationality and immigration control are reserved to Westminster. Yet given that Scotland was given control over health, housing, education, economic development, policing and culture, one could argue that certain aspects of citizenship—including civil, social and political rights identified by T.M. Marshall in 1950⁸—have been decentralized to the Scottish level. But while Scotland may have the policy capacity to shape its own approach to regional rights, has it used these powers to forge a distinct path?

This article considers whether Scotland exhibits its own sub-state (regional) approach to citizenship. It begins with a reflection on the meaning of citizenship and the extent to which the primary tenets of citizenship have been devolved to the substate level. The article then focusses on the case of Scotland, which is well known in the policy studies literature owing to its strong divergence from UK (England) policy in matters of social welfare, and its greater emphasis on inclusiveness and social justice.⁹ However, Scottish-UK policy divergence, which has been under-scrutinized with regard to its citizenship approach, may well follow a similar dynamic. This article seeks to address this gap. It does so by, firstly, examining the formal legal framework for citizenship and migration policy in the UK, and the extent to which Scotland is able to influence citizenship and migration laws – with a

convergence or divergence?”, in John Adams and Peter Robinson (eds.) *Devolution in Practice. Public Policy Differences within the UK*, (Institute for Public Policy Research, London, 2002); Michael Keating, “Policy convergence and divergence in Scotland under devolution”, 39(4) *Regional Studies* (2005), 453-463.

⁵ Scott Greer (ed.) *Devolution and Social Citizenship in the UK*, (Policy Press, Bristol, 2008).

⁶ Eve Hepburn, “Small Worlds in Canada and Europe: A Comparison of Regional Party Systems in Quebec, Bavaria and Scotland”, 20(4/5) *Regional & Federal Studies* (2010), 527-544.

⁷ Ricard Zapata-Barrero, *Immigration and Self-government of Minority Nations*, (Peter Lang, Brussels, 2009).

⁸ Thomas H. Marshall, *Citizenship and Social Class*. (Cambridge University Press, Cambridge 1992 [1950]).

⁹ Gerry Mooney, and Gill Scott (eds.), *Social Justice and Social Policy in Scotland* (Policy Press, Bristol, 2012).

particular focus on admissions, citizenship and integration policies. The article will then explore, in a broader sense, the extent to which Scotland constitutes a distinct arena for the exercise of citizenship in terms of rights, participation and belonging. Has Scotland developed its own distinctive approach to social, political and cultural citizenship? And how does a Scottish framework for citizenship affect the rights, identity and engagement of individuals, both native-born and those with a migration background, in Scotland? The article concludes with a reflection on the constraints – and opportunities – of regional citizenship in multi-level states.

II. REGIONAL CITIZENSHIP

Despite the wealth of citizenship studies to have emerged since the 1990s, citizenship remains a very much contested concept.¹⁰ In the broadest sense, citizenship is understood as a relationship between an individual and the state. As Jenson puts it, “states construct the boundaries of their political community by recognizing their own citizens, often with the hope that this will generate a sense of belonging and national integration”.¹¹ Reflecting this assumption that “state” and “nation” are one and the same thing, most scholarship on citizenship and immigration has focussed exclusively on the state as the “granter” of rights and obligations.¹²

However, the proposition that citizenship is an exclusively state prerogative has been challenged from a number of quarters. Changes to the structure of states resulting from European integration have led some scholars to posit the development of transnational or postnational forms of citizenship.¹³ And state rescaling as a result of decentralisation has led other scholars to identify the development of new forms of

¹⁰ Thomas Faist “Social Citizenship in the European Union: Nested Membership”, 39(1) *Journal of Common Market Studies* (2001), 37-58.

¹¹ Jane Jenson, “Fated to Live in Interesting Times: Canada’s Changing citizenship Regimes”, 30(4) *Canadian Journal of Political Science*, 627–44, at 627.

¹² Rogers Brubaker, *Citizenship and Nationhood in France and Germany*. (Harvard University Press, Cambridge, Massachusetts, 1992); Seyla Benhabib, “Borders, Boundaries and citizenship”, *PSOnline*, (2005) at <<http://www.aspanet.org.htm>>; Rainer Bauböck, “Why European citizenship?”, 8(2) *Theoretical Inquiries in Law* (2007), 452–88.

¹³ Yasemin Soysal, *Limits of Citizenship. Migrants and Postnational Membership in Europe*, (University of Chicago Press, Chicago, 1994); Jo Shaw, *The Transformation of Citizenship in the European Union: Electoral Rights and the Restructuring of Political Space*, (Cambridge University Press, Cambridge, 2007).

citizenship beneath the state, in particular at the local and regional levels.¹⁴ Most importantly for our discussion, decentralization has endowed regions with political legitimacy and authority over a wide range of areas relating to welfare entitlements, political rights and cultural integration that were once controlled by the state. This means that the question of who does or does not belong to a region is becoming highly important. Indeed, some scholars and policy practitioners have put forward the concept of ‘civic citizenship’ as a way to guarantee rights and participation of migrants based on their *residence* rather than their nationality, thereby opening up the possibility that civic citizenship could be pursued at the substate level. Such rights include, for instance, a right to education, social services, employment, participation in political life, and a right to association.¹⁵

But while rights are an important dimension of citizenship, they are not the totality of citizenship. In addition to rights and obligations, scholars have identified the central components of *participation* in the life of the community,¹⁶ and *membership* or belonging to that community.¹⁷ Shaw argues that it is necessary to include all three aspects of citizenship, incorporating rights, membership and participation, to fully understand the relationship between an individual and their political community.¹⁸ This more holistic understanding also enables an exploration of citizenship not only as a legal status, but as an identity.¹⁹ Following in the footsteps of these scholars, let us explore the extent to which the rights, participation and membership dimensions of citizenship have been decentralized to the regional level.

A. Rights

¹⁴ Rainer Bauböck, “Reinventing Urban Citizenship”, 7(2) *Citizenship Studies* (2003), 139-60; Joe Painter, “European citizenship and the Regions”, 15(1) *European Urban and Regional Studies* (2008), 5–19; Daniel Wincott, “Social Policy and Social Citizenship”, 36(1) *Publius. The Journal of Federalism* (2006), 169–188; Eve Hepburn, “‘Citizens of the region’: party conceptions of regional citizenship and immigrant integration”, 50(4) *EJPR* (2011), 504-529.

¹⁵ British Council, *European Civic Citizenship and Inclusion Index* (British Council, Brussels, 2004).

¹⁶ Andreas Føllesdal, “Union Citizenship: Unpacking the Beast of Burden,” 20 *Law and Philosophy* (2001), 313-343.

¹⁷ Jenson, *op cit*, note 11.

¹⁸ Shaw, *op cit*, note 13.

¹⁹ Will Kymlicka and Wayne Norman, “Return of the citizen. A survey of recent work on citizenship theory”, 104(2) *Ethics* (1994), 352-381.

According to Marshall's famous treatise on "social citizenship", rights were accorded to individuals on an evolutionary basis, beginning with civil rights in the eighteenth century, political rights in the nineteenth century and social rights in the twentieth century.²⁰ First, civil rights included rights of freedom, property, freedom of speech and equality before the law (though, at the time, for white men only). It is often assumed that civil rights are strongly attached to citizenship at the state level. However, this ignores the fact that many aspects of the "equality agenda" within states have been decentralized, and some regions are developing their own standards of criminal law and marriage law, which affects the civil rights of residents.

Secondly, according to Marshall, political rights—the right to vote and stand in elections at the national level—emerged in the nineteenth century. However, in the late twentieth century, with a trend towards state decentralization,²¹ political rights began to vary across state territories. Most notably, in asymmetric federations, citizens resident in a region with an elected assembly have greater rights to vote than those who do not have an elected assembly.²²

Thirdly, Marshall argued that citizens have since the early twentieth century been entitled to equal access to social rights, such as health, education and housing. However, this situation no longer pertains in devolved or federal states, as regions control much of these policy areas and they often provide differentiated access to welfare provision. As a result, scholars have argued that social citizenship has become distinct in different parts of multi-level states.²³

B. Participation

In addition to the Marshallian focus on rights, another central component of citizenship is participation. We can interpret this as participation in the political life of the community as well as society at large, which connotes the "activity of individuals directly engaging in public decision-making".²⁴ A large literature has documented

²⁰ Marshall, *op cit*, note 8.

²¹ Gary Marks, Liesbet Hooghe and Arjan Schakel (eds.) "Regional Authority in 42 Countries, 1950-2006", 18(2/3) *Regional & Federal Studies* (2008), 111-302.

²² John Grahl, "Regional citizenship and Macroeconomic Constraints in the European Union", 20(3) *International Journal of Urban and Regional Research* (1996), 480–97.

²³ Keating, 2002, *op cit*, note 4; Greer, 2008, *op cit*, note 5.

²⁴ Carolina Johnson, "Local Civic Participation and Democratic Legitimacy: Evidence from England and Wales," 63 *Political Studies* (2014), 765-792, at 3.

how civic and political participation and “social capital” tends to be more intense at more local levels of community.²⁵ Furthermore, access to participation may vary depending on which part of a state one lives in. For example, in the USA, residents of California have greater rights of political representation in the US House of Congress than Puerto Rico, whose Resident Commissioner in the House of Representatives has no right to vote on any issues.²⁶ However, regions may also provide greater opportunities for participation than the state: for instance, the government of Emilia-Romagna has encouraged the direct election of foreign citizens’ representative bodies from within the migrant community, which lies in sharp contrast to the Italian government’s approach.²⁷

C. Belonging

Finally, a third dimension of citizenship is membership of the political community, which has connotations with identity and belonging.²⁸ In particular, citizenship is often made synonymous with nationality,²⁹ which is problematic as nations are rarely congruent with states. Instead, citizens ordinarily consider themselves to be members of several political communities, which is evident in countries such as Switzerland and Italy, where political allegiance lies first with the city or canton, then the region, the state, and Europe. Citizens tend to have multi-level attachments³⁰ and in many cases membership of the regional community is the strongest.³¹ Regions provide

²⁵ Robert Putnam, “Bowling Alone: America’s Declining Social Capital”, 6(1) *Journal of Democracy* (1995), 65-78; Meindert Fennema & Jean Tillie, “Political participation and political trust in Amsterdam: Civic communities and ethnic networks”, 25(4) *JEMS* (1999), 703-726; Johnson *op cit*, note 24.

²⁶ Jaime Lluch, *Constitutionalism and the Politics of Accommodation in Multinational Democracies* (Palgrave Macmillan, Basingstoke, 2014).

²⁷ Oliver Schmidtke and Andrej Zaslove, “Politicizing Migration in Competitive Party Politics: Exploring the Regional and Federal Arenas in Germany and Italy, in Eve Hepburn and Ricard Zapata-Barrero (eds.), *The Politics of Immigration in Multilevel States: Governance and Political Parties* (Palgrave Macmillan, Basingstoke, 2014).

²⁸ Painter, 2008, *op cit*, note 14.

²⁹ Brubaker, *op cit*, note 12.

³⁰ Linda Berg, *Multi-level Territorial Attachments*, (Göteborg University, 2007).

³¹ Luis Moreno, “Local and Global: Mesogovernments and Territorial identities”, 5(3/4) *Nationalism and Ethnic Politics* (1999), 61–75.; Henderson, 2014, *ibid*.

important spaces for identity and belonging, particularly if there are claims to nationhood based on the existence of historical traditions, culture and values.³²

III. THE UK/SCOTLAND LEGAL FRAMEWORK

Scotland is one of the newest substate regional parliaments in the world. After decades of campaigning for devolution, Scotland was finally granted a Parliament and Executive in 1999. The legislation that transferred a number of powers from the UK Parliament to Scotland laid down a relatively clear division of powers between the two legislatures: it listed the powers reserved to the centre, leaving everything else to the devolved sphere. ‘Reserved’ powers included aspects relating to the Crown, constitutional matters, foreign affairs, defence, social security, citizenship and nationality, immigration and macroeconomic policy. The scope of devolved matters was much wider, concerning nearly all aspects of social and economic policy, including health, education, local government, economic development, criminal law and prisons, agriculture, the environment, and sport and the arts. Let us now consider how Scotland has sought to carve out a niche for itself within the ‘formal’ areas of migration and citizenship law: admissions, citizenship and integration.

A. Admissions Policy

Under the Scotland Act 1998³³, immigration and asylum—which covers selection and admission—is a power reserved to the UK government. As such, decisions about levels of migration and access to benefits are managed by the Home Office, with the Scottish Government playing no significant role in influencing immigration matters. However, this has not always been the case. In February 2004 the Labour-LibDem Scottish Executive, under the Premiership of Jack McConnell, launched the ‘Fresh Talent’ initiative. In response to concerns that “the single biggest challenge facing Scotland as we move further into the 21st century is our falling population”³⁴, McConnell negotiated a modicum of devolved Scottish control over immigration policy.

³² Keith Banting and Stuart Soroka, “Minority nationalism and immigrant integration in Canada”, 18(1) *Nations and Nationalism*, (2011), 156-176.

³³ Scotland Act, Section 5, 1998.

³⁴ Scottish Executive, *New Scots, attracting Fresh Talent to meet the Challenge of Growth* (Scottish Executive, Edinburgh, 2004), 1.

The Fresh Talent (FT) scheme was designed to promote and encourage inward migration to Scotland. In particular, the Fresh Talent Working in Scotland Scheme (FTWiss) allowed international graduates that had pursued studies at a Scottish university to live and work in Scotland for two years without the need for a work permit directly after graduation. It was hoped that the policy would encourage skilled immigrants to move to Scotland, in response to concerns of a pending demographic crisis resulting from an ageing population, high levels of emigration, low fertility and low levels of immigration.³⁵ This scheme was also part of the Scottish Government's broader economic strategy, whereby attraction and retention of highly skilled immigrants was connected with economic growth.

Despite early indications of success³⁶, however, the FTWiss scheme only lasted from 2004 until 2008, when it was mainstreamed into UK policy with the creation of the Points Based System (PBS) under the Labour Government. At this point, Scotland "lost its competitive edge and other means of attracting highly skilled labour may need to be considered".³⁷ Since then the visas for students were terminated in 2008. This has aroused the ire of the SNP government, for which immigration remains key to grow the economy.

Indeed, the SNP wishes to radically increase levels of immigration to Scotland, with the aim of raising the demographic growth rate to the EU average.³⁸ This is part of the Scottish Government's perception that attracting and retaining migrants is a key driver of population and economic growth in Scotland. First Minister Alex Salmond has consistently criticized London's immigration policies as 'damaging' to the interests of Scotland, especially its economic interests. Instead, the SNP wishes to pursue in a more liberal immigration policy, to grow the economy as well as to enrich Scotland's cultural diversity and international linkages.³⁹

B. Citizenship Policy

³⁵ *Ibid.*

³⁶ Over 8,000 students took advantage of the FTWiss scheme to stay in Scotland from 2004 to 2008. Scottish Government, *Recent Migration into Scotland: The Evidence Base*, (Scottish Government, Edinburgh, 2009),

³⁷ *Ibid.*, section 4.79.

³⁸ Scottish Government, *New Scots: Integrating Refugees in Scotland's Communities*. (Scottish Government, Edinburgh, 2013).

³⁹ *Ibid.*

The acquisition of nationality and citizenship—which determine the criteria for membership of the citizenry—are also reserved to the UK Government under the Scotland Act.⁴⁰ The Scottish Government therefore has no meaningful influence over the criteria for citizenship. However, this has not prevented the Scottish Government from tailoring certain citizenship requirements to the Scottish milieu, including access to “English for Speakers of Other Languages” (ESOL) courses in Scotland, seeking to embed a Scottish narrative in the ‘Life in the UK’ citizenship test, and ‘tartanizing’ citizenship ceremonies.

The UK Government (Home Office) sets the rules for citizenship and language courses across the UK territory and is responsible for administration related to the ‘Life in the UK’ citizenship test, which was first introduced in 2004.⁴¹ Migrants are required to take this test before acquiring settlement or citizenship, which was made necessary for naturalization in 2005 and settlement in 2007. This test involves 24 questions based on the “Life in the UK Handbook” relating to British customs, traditions, history, politics and values. When the Handbook relating to the citizenship tests was first introduced in 2004,⁴² the content of the material was criticized as being primarily about England (i.e. English customs, politics, traditions, society). As a result, the second edition of the handbook pays greater attention to regional diversity in the UK, with, for instance, candidates in Scotland being asked questions about the Scottish Parliament.⁴³

The citizenship test is also meant to demonstrate proficiency in the English language. To aid this, migrants are offered free ESOL language classes. In terms of administering language courses, the Department for Education provides support for ESOL learning in England and the Office of Qualifications and Examinations Regulation in England (OFQUAL) accredits this. Because education is a devolved policy competence, the Scottish Government provides support for ESOL learning in Scotland and the Scottish Qualifications Authority (SQA) accredits this. However, Scottish strategy must still work within the parameters set by UK Home Office requirements for ESOL language tests, as part of the UK’s remit over naturalization.

⁴⁰ Scotland Act 1998; schedule 5, section B6.

⁴¹ Bernard Crick, *Life in the United Kingdom: A Journey to Citizenship*, (HMSO, The Stationery Office, London, 2004).

⁴² *Ibid.*

⁴³ Home Office, *Life in the United Kingdom: A Journey to Citizenship, Second Edition*, (HMSO, The Stationery Office, London, 2007).

The Scottish Government does have some scope, however, to tailor its levels of support for ESOL learning. Scotland is responsible for its own ESOL Strategy for Scotland, which has a commitment to significantly expand ESOL education.⁴⁴ The Scottish Strategy is intended to play a “key supporting role in achieving the Scottish Executive’s vision for a prosperous, inclusive, diverse and pluralistic Scotland”.⁴⁵ For instance, Scotland currently offers more ESOL language provision per capita than England, due to budget cuts following the Conservative-led UK Government’s austerity and welfare reforms. As a result, while in Scotland great stress has been placed on ESOL provision, in England, there is a “greater rationing of free places...so that some low paid migrants can no longer access classes at no cost”.⁴⁶

It is also interesting to note that English is not the only language that migrants can choose to express proficiency in to obtain nationality and citizenship in the UK. According to Home Office guidelines, linguistic proficiency in Scottish Gaelic⁴⁷ and Welsh can also legally be used to fulfill citizenship requirements, though in practice, the take-up on being tested in one of these two minority languages is very low.

In addition to a citizenship test and language test, citizenship ceremonies were introduced in the UK in 2004. During the ceremonies immigrants make a ‘citizenship oath’ and are granted a citizenship certificate – very much based on the US model. The Home Office has, however, given substate regions and local authorities considerable leeway in deciding on the particularities of the ceremony with regard to the regalia and symbols of nationhood, such as flags and anthems. Thus, the first citizenship ceremony in Scotland, which was performed in Glasgow, included the Scottish Saltire flag and Union Jack flag, and the Scottish national anthem was sung by participants.⁴⁸ Thus, citizenship ceremonies in Scotland may have a strong Scottish cultural aspect to them.

C. Migrant Integration Policy

⁴⁴ Scottish Executive, *ESOL Strategy for Scotland* (Scottish Executive, Edinburgh, 2007).

⁴⁵ *Ibid.*

⁴⁶ Sarah Spencer, *The Migration Debate*, (Policy Press, Bristol, 2011), 3.

⁴⁷ Scottish Gaelic is only spoken by about 1% of the Scottish population.

⁴⁸ *BBC News*, “Scots citizenship ceremony move,” *BBC News*, 26 February 2004.

Migrant integration was not specifically spelled out as a policy area in the legislation that created the devolved Scottish institutions,⁴⁹ nor in subsequent enhancements to devolution in 2014. This is largely because ‘migrant integration’ has not, until recently, been part of the British policy lexicon. Instead, the preferred terms to address the status of individuals with a migration background have historically been black and minority ethnic (BME) policy, race relations policy, and more recently, “community cohesion” policy. However, none of these terms specifically address the situation of new (often white) migrants to the UK; instead, the focus was on integrating the UK’s visible minorities during the postcolonial era.

Regardless of this lack of explicit legislative control over migrant integration, because devolution is based on the retainer model—whereby anything not specifically reserved to the UK level is devolved to the Scottish level—migrant integration has become a *de facto* policy competence of the Scottish government.

Recent research has revealed how successive Scottish executives have pursued an explicitly multicultural approach to migrant integration that has diverged significantly from UK (English) policy.⁵⁰ All of the political parties in Scotland have advanced an overwhelmingly positive position on the contributions of immigrants and ethnic minorities to Scottish society.⁵¹ In contrast to the increasingly anti-immigrant political debates in England, Scotland’s parties have carefully crafted an “elite discourse that portrays immigrants as key players in an open, inclusive and multicultural Scotland”.⁵²

The multiculturalist orientation was first evident in the early 2000s when Scotland’s first executive, led by a Scottish Labour--Liberal Democrat coalition, launched the ‘One Scotland, Many Cultures’ campaign. Building upon recent UK legislation on anti-discrimination, this project sought to combat racism and celebrate Scotland’s many diverse cultures. The One Nation campaign involved the promotion of race equality and multiculturalism in school curricula and the funding of cultural

⁴⁹ Scotland Act, 1998.

⁵⁰ Eve Hepburn, “Scotland’s hidden policy competence: immigrant integration and policy-making in Scotland since devolution”, paper presented at the Policy & Politics annual conference, University of Bristol, 16-17 September 2014.

⁵¹ Hepburn, 2011, *op cit*, note 14.

⁵² Michael Rosie and Eve Hepburn ‘The Essence of the Union... Unionism, Nationalism and Identity on these Disconnected Islands’, 24(2) *Scottish Affairs* (2015), 141-162.

groups in Scotland⁵³ – which may be defined as explicitly ‘multicultural policies’.⁵⁴ This emphasis on multiculturalism marked a strong contrast with the civic integration approaches in England, whereby multiculturalism was “never talked about” and the preferred approach was to emphasis shared British values rather than differences in cultural heritage.⁵⁵

The principles underlying the One Scotland campaign—of diversity and multiculturalism—have been endorsed and extended by subsequent SNP governments. In its refugee integration strategy, called ‘*New Scots*’, the SNP-led Scottish Government underscored its commitment to creating a plural society, whereby ‘we see integration as being a two-way process...which leads to cohesive, multi-cultural communities’ and a recognition of ‘the contribution that refugees can make by enriching our cultural diversity, expanding the world view of our children and bringing new languages, skills and experience’.⁵⁶ This contrasts with the UK/English refugee integration strategy, with its shared-values focus on ‘promoting inclusive notions of citizenship, identity and belonging’⁵⁷, and whereby the end-goal is ultimately integration into Britain’s society and culture. As part of the *New Scots* refugee integration initiative, the Scottish Government has also made a pledge to granting asylum seekers full civil rights – including the right to employment – from the first day of their arrival in Scotland. This contrasts with the UK/England approach, whereby asylum seekers are denied employment until they officially gain refugee status.

IV. DOING CITIZENSHIP DIFFERENTLY IN SCOTLAND?

The above discussion has examined the legal framework relating to citizenship and migration policy in the UK. As we have seen, “citizenship”, as narrowly conceived as government policy relating to the composition of the citizenry, is reserved to

⁵³ Scottish Executive, *Promoting Equal Opportunities in Education* (Scottish Executive, Edinburgh, 2006).

⁵⁴ Keith Banting and Will Kymlicka, “Is there really a backlash against multiculturalism policies?” 14 *GRITIM Working Paper Series* (2012), 1-23.

⁵⁵ Hannah Lewis and Gary Craig, ““Multiculturalism is never talked about’: community cohesion and local policy contradictions in England”, 42(1) *Policy & Politics* (2014), 21-38.

⁵⁶ Scottish Government, 2013, *New Scots, op cit*, 9, 7, note 38.

⁵⁷ UK Government, *The Equality Strategy – Building a Fairer Britain*, (HMSO, The Stationary Office, London, 2010), 50.

Westminster in the UK, as is control over immigration, asylum and nationality. The only area in which Scotland has been devolved competence has been the area of migrant integration which is, nonetheless, not explicitly recognized in UK law.

But as we discussed earlier, citizenship is not only a legal status—it is also an identity and a means of engagement—be it the labour market, the political system and society at large. The next part of our discussion will therefore consider the concept of citizenship from a broader political and sociological perspective, as implying a person's *full participation in society and the political community*. The question we seek to answer is: will we see greater evidence of regionalization of citizenship in Scotland? While the Scottish government has little influence over UK nationality and migration laws, does Scotland constitute a community through which the rights, participation and membership dimensions of citizenship may be exercised? Let us take each of the three dimensions of citizenship espoused by Marshall⁵⁸ in turn to see if these have been embedded in a Scottish frame of reference.

A. Rights in Scotland

According to one leading scholar of citizenship, “to be a citizen means to enjoy certain rights and obligations, guaranteed by the state”.⁵⁹ This view echoes Marshall's approach to citizenship, which focused on the civil, political and social rights that the UK state successively conferred in response to demands for equality and welfare. For Marshall, these rights were meant to act as a force for statewide integration and nation-building in Britain. But in the devolved UK, does the state still hold exclusive power over the conferral of civil, political and social rights? When the powers and responsibilities of states are redistributed to lower territorial governments, are not the rights associated with these functions also rescaled?

1. Civil rights

The first bundle of citizenship rights to be conferred by the UK state in the eighteenth century were civil rights, implying “individual freedom—liberty of the person, freedom of thought, speech and faith, the right to own property and to conclude valid contracts and the right to justice”.⁶⁰ Since devolution to the Scottish Parliament in

⁵⁸ Marshall, *op cit*, note 8.

⁵⁹ Jenson, *op cit*, 628, note 11.

⁶⁰ Marshall, *op cit*, at 8, note 8.

1999, do civil rights now fall under Scottish competence? Let us explore equal opportunities, as this encompasses several areas of civil rights.

As a whole, the UK Government is responsible for ‘equal opportunities’, which is a reserved matter in the Scotland Act.⁶¹ However, in the same Act, the Scottish Government is made responsible for matters relating to the “The encouragement of equal opportunities, and in particular of the observance of the equal opportunity requirements”.⁶² Indeed, the Scottish Parliament has the power to encourage equal opportunities and to ensure compliance with equality legislation – and some scholars have argued that Scotland has “a wider definition of equality than contained in primary UK legislation”.⁶³ Evidence suggests that the Scottish Parliament has utilized this wriggle-room to embed even more advanced equality and human rights laws than Westminster. Equality is one of the founding principles of the devolved Scottish Parliament and it has also been vigorously advocated as a key aspect of Scottish government policy (regardless of the political parties in power).

Within the Scotland Act (1998), equal opportunities is defined in terms of “the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions”.⁶⁴ The Scottish Government has identified several equalities groups, which “are ‘vulnerable’ to hardship”⁶⁵, including young people, older people, women, disabled people, ethnic minorities and Lesbian Gay Bisexual and Transgender (LGBT) groups.⁶⁶ While it is not possible to consider the civil rights accorded to all of these groups in Scotland in this short essay, let us see—in line with our central question—whether there is any evidence that Scotland is pursuing a distinctive approach to civil rights.

One example, with regard to women, is that in November 2004 the Scottish Parliament passed legislation that created a legal right for mothers in Scotland to breastfeed in public. The Breastfeeding etc (Scotland) Act 2005 makes it a criminal

⁶¹ Scotland Act 1998, Schedule 5.

⁶² Scotland Act 1998, schedule 5, section L2.

⁶³ Mariya Shisheva, Gary Christie and Gareth Mulvey, *Improving the lives of refugees in Scotland after the referendum*, (Scottish Refugee Council, Glasgow, 2013), 29.

⁶⁴ Scotland Act 1998, schedule 5, section L1.

⁶⁵ Scottish Government, *Coping with Change and Uncertainty. Scotland’s equality groups and the recession* (Scottish Government, Edinburgh, 2010), 1.

⁶⁶ *Ibid.*

offence to deliberately obstruct breastfeeding in any public place where children are allowed. If someone is found deliberately stopping a mother from breastfeeding a child under the age of two, they are committing a criminal offence and liable to pay a fine. This legislation, which aims to increase breastfeeding rates and protect the rights of mothers in Scotland to do so, was the first of its kind in the UK and one of only a handful in the world. One commentator argued that the ‘bill broadens the policy gulf between Westminster and Holyrood’⁶⁷.

With regard to another vulnerable group—newcomers to Scotland—the Scottish Government, as previously mentioned, has proposed that asylum seekers be given the same rights as refugees in accessing the labour market. Whilst the English/UK’s refugee integration policy excludes asylum seekers from the integration strategy, the Scottish strategy intentionally includes them. And while asylum policy is reserved to Westminster (including control over accommodation and financial support), Scotland *does* exercise competence in areas that affect the asylum process, such as child welfare protection and legal representation, as well as control over social policy that underpins integration efforts, such as health and educational services. With these powers in hand, the Scottish Government has taken the position that integration does not begin on the day on which an asylum seeker becomes a refugee (the Home Office position), but on their first day of arrival in Scotland.⁶⁸ The Scottish Government is also seeking to change the law so that asylum seekers can obtain a work permit and thus a right to employment, which is currently forbidden under UK law.⁶⁹

However, such efforts to extend the rights of migrants and refugees in Scotland do not equate to the pursuit of special rights, recognition and protection for migrant groups. There are a couple of reasons for this. The first is that migrant groups—such as Poles (the largest non-UK born group in Scotland) or Germans (the third largest non-UK born group)—are not correlated with ‘ethnic minorities’ in the UK.⁷⁰ Historically, many migrants to the UK in the post-war period were subjects of the British Commonwealth (such as African-Caribbeans and South Asians) and

⁶⁷ Kirsty Scott, “Scots mothers can breastfeed in public – by law,” *The Guardian*, 19 November 2004.

⁶⁸ Scottish Government, 2013, *New Scots*, *op cit*, at 1, note 38.

⁶⁹ Scottish Government, 2013, *Scotland’s Future*, *op cit*, at 20, note 2.

⁷⁰ Carlos Vargas-Silva *Migrants in Scotland: An Overview*, (Migration Observatory, University of Oxford, 2013).

automatically received full citizenship rights. As such, the race relations model in the UK has been based on black and ethnic minorities (BME), which does not apply to many recent EU migrants who tend not to make claims on the basis of their racial identity. On the other hand, it has been revealed that Scotland's largest non-UK born BME groups—Indians and Pakistanis—tend to have a stronger religious identity (Muslim) than racial identity (South Asian), and their claims are related to their religion rather than their migrant background.⁷¹ As such, “ethnicity and migration status are largely unrelated concepts in the UK”.⁷²

The second reason why the Scottish Government has not actively pursued the creation of special rights and treatment for migrant groups is that the dominant UK/Scottish approach to migrant integration focuses on mainstreaming, equal opportunities and antidiscrimination, rather than targeting groups based on their ethnic, linguistic or national origin.⁷³ Mainstreaming is the “effort to reach people with a migration background through social programming and policies that also target the general population”.⁷⁴ Thus the focus is on securing migrants’ equal access to full social, civil and political rights, rather than granting special treatment to certain groups.

Finally, a third reason the Scottish government has not created targeted policies for Poles and other recent migrant groups is that there has been little demand (as yet) for them. Civil society organisations representing Poles often prioritise demands for equal access to training, equal access to the Scottish labour market, and equal pay, rather than special treatment.⁷⁵ This suggests that Polish groups support the Scottish Government goals of equality (though it should also be noted that it has been

⁷¹ Paul Stratham, “Political Mobilisation by Minorities in Britain: a negative feedback of ‘race relations’?” 24(4) *JEMS* (1999), 597-626; Ruud Koopmans and Paul Stratham, “Challenging the Liberal Nation-State? Postnationalism, Multiculturalism and the Collective Claims Making of Migrants and Ethnic Minorities in Britain and Germany”, 105(3) *American Journal of Sociology* (1999), 652-696.

⁷² Elizabeth Collett and Milica Petrovic, *The Future of Immigrant Integration in Europe: Mainstreaming Approaches for Inclusion*, (Migration Policy Institute, London, 2014), at 9.

⁷³ Shamit Sagar and Will Somerville, *Building a British Model of Integration in an Era of Immigration*, (Migration Policy Institute, London, 2012); Eve Hepburn, “Intergovernmental Relations on Immigrant Integration in Scotland,” paper presented at the IMISCOE annual conference, Geneva, 25-27 June 2015.

⁷⁴ Collett and Petrovic, *op cit*, at 3, note 73.

⁷⁵ Polish Cultural Festival Association, *The experience of Polish-Scottish integration in Scotland*, (Polish Cultural Festival Association, Edinburgh, 2013).

argued that one way to achieve equal access to public services is to provide more access to language training or Polish-speaking staff⁷⁶).

Moving on to another area of civil rights, this time for the LGBT community, the Scottish Government has funded a series of projects supporting equality of opportunities in education that have focused on LGBT issues and bullying. These have resulted in reports on *Promoting Equal Opportunities in Education*, which were conducted by LGBT Youth Scotland.⁷⁷ However, on same-sex marriage legislation, the Scottish Government has been behind the curve. In November 2014, Scotland passed the Marriage and Civil Partnership law, which extends marriage to same-sex couples in Scotland. However, rather than innovating in this area, Scotland was following legislation that had already been introduced in England and Wales.⁷⁸ Interestingly though, there has been a subsequent debate in Scotland about the right of mixed-sex couples to enter into civil partnerships, to give their relationship a legal basis outside of marriage.⁷⁹ The Scottish Parliament is conducting an inquiry on mixed-sex civil partnerships at the time of writing.

2. *Political rights*

For Marshall, a second bundle of citizenship rights are political rights, which comprise “the right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body”.⁸⁰ These political rights emerged in the nineteenth century, at which point elections in the UK were to Westminster, and suffrage was decided by the actions of that parliament. However, when the UK Parliament devolved powers to regional legislatures in Scotland, Wales and Northern Ireland, political rights to vote and stand for election began to vary across the UK.

Since devolution, residents in Scotland may now vote to elect members to public office in the Scottish Parliament, and they may also stand for election to the Scottish Parliament. And it is not only nationals that have differentiated access to

⁷⁶ *Ibid.*

⁷⁷ LGBT Youth Scotland *Promoting Equal Opportunities in Education*, (Scottish Executive, Edinburgh, 2006).

⁷⁸ BBC News, “Gay marriage law comes into effect in Scotland,” *BBC News*, 16 December 2014.

⁷⁹ Tom Peterkin, “Straight couples want civil partnership equality,” *The Scotsman*, 2 January 2015.

⁸⁰ Marshall, *op cit*, at 8, note 8.

political rights across states, but also non-nationals. Shaw's analysis reveals that EU citizens have a right to vote not only in local and European elections across the whole of the UK, but in addition to this, they have the right to vote in regional elections in Scotland, as well as regionally based referendums,⁸¹ such as the referendum on devolution in 1997, and on independence in 2015. Of course, all citizens living in Scotland only received the right to vote in the independence referendum as a result of the 'Edinburgh Agreement', whereby the UK Parliament agreed to temporarily transfer powers to the Scottish Parliament to hold a referendum. The granting of voting rights to EU migrants in Scotland led to the political mobilization of migrants during the independence referendum, especially on the side of the 'Yes' campaign. Joining the more established Scots Asians for Independence were organisations such as Poles for an Independent Scotland, Italians for Yes and EU Citizens for an Independent Scotland, whose purpose was to galvanise support amongst migrant and minority groups for Scottish statehood. While the SNP in particular made strong efforts to support such groups,⁸² in the end non-native born Scots were just as split on the issue of independence (43% Yes 57% No) as the general population (45% Yes 55% No).⁸³

In addition to rights for adult nationals and non-nationals living in Scotland, there is an additional proposal to grant political rights to young people to vote in such elections and referenda. Indeed, during the referendum on Scottish independence in 2014, all 16 and 17 year olds were, after much debate and consultation, given the political right to vote on the future constitutional status of Scotland. Given the success of engaging 16-17 year olds in political debates and voting in the referendum, there is now draft legislation working its way through the UK Parliament to give 16-17 year olds residing in Scotland the right to vote in Scottish Parliament and local government elections. If passed, this legislation would constitute some of the most extensive political rights given to young people in the world.

⁸¹ Jo Shaw, "EU Citizenship and Political Rights in an Evolving European Union", 75 *Fordham Law Review* (2007), 2549-2579, at 2561.

⁸² For an in-depth analysis of the SNP's courting of the migrant vote, see Hepburn, 2011, *op cit*, note 14.

⁸³ Ailsa Henderson 'The Scottish Question. Six Months On', Centre on Constitutional Change, March 2015, 27, at <<http://www.centreonconstitutionalchange.ac.uk/blog/scottish-referendum-study>>.

3. *Social rights*

As theorized by Marshall (1992), citizens have since the nineteenth century been entitled to equal access to social rights guaranteed by the UK welfare state, such as health, education and housing. The rationale behind the introduction of social rights was to reduce inequalities amongst citizens of the UK, and to offer universal protections against the risks of ill-health, old age and unemployment.

However, citizens in the UK no longer have equal access to social rights since devolution, because most social policy areas have been devolved to the Scottish (and Welsh and Northern Ireland) level. Whilst social security rights (i.e. pensions, unemployment benefits) remain entrenched at the UK level, the vast majority of social rights have been devolved to the Scottish Parliament (including health, education, social work, housing). Thus, according to Jeffery, “the regionalization of political rights of citizenship appears likely to spill over *by default* into a growing regionalization of social rights”.⁸⁴

Scotland has been developing its own standards of welfare provision, which has led to greater access to social rights for residents living in Scotland. This includes, for instance, right to healthcare—such as free care for the elderly, free prescriptions, free eye-care and free dental check-ups, which are currently not available to residents of England.⁸⁵ In education, Scottish students have been entitled to a free university education since the Scottish Government abolished tuition fees in 2007 (which contrasts with the increase of annual tuition fees to up to £9000 for students resident in other parts of the UK)⁸⁶. Scotland has also increased rights to housing. In 2012, the Scottish Government introduced new homelessness legislation, which stipulates that all those assessed as homeless by local authorities are “entitled to settled accommodation as a legal right”.⁸⁷ In particular, Scottish councils must now treat all homeless people equally, ending the distinction between families with children and

⁸⁴ Charlie Jeffery, “Devolution, public attitudes and social citizenship”, in Scott Greer (ed.) *Devolution and Social Citizenship in the UK*, (Policy Press, Bristol, 2009), 95.

⁸⁵ Scott Greer, “Devolution and Health Policy in the UK”, 14(4) *Eurohealth* (2009), 22-24; Michael Keating, “Social citizenship, devolution and policy divergence”, in Scott Greer (ed.), *Devolution and Social Citizenship in the UK*, (Policy Press, Bristol, 2009).

⁸⁶ Michael Keating, *The Government of Scotland. Public Policy Making after Devolution*. 2nd edition, (Edinburgh University Press, Edinburgh, 2010).

⁸⁷ Scottish Government, ‘Tackling homelessness’, Press Release, 21 November, 2012.

single people. The legislation has been viewed as one of the most progressive in the developed world.⁸⁸

B. Participation in Scotland

Devolution to Scotland has not only brought additional opportunities for citizenship rights, but also participation. Because of the mere existence of the Scottish Parliament, citizens living in Scotland enjoy greater political representation through the devolved assembly than those living in England outside London, which does not have devolved institutions.⁸⁹ Yet participation is not only restricted to voting or standing for election—it also implies active engagement in broader political processes and civil society. On a practical basis, citizenship participation may include becoming a member of a political party, labour union, interest group or civic organization.

Scotland has historically maintained a distinct civil society since the Treaty of Union with England in 1707, which comprises a distinct educational system, legal system, the Church of Scotland and distinctly Scottish associations and unions.⁹⁰ The “Scottish frame” has constituted the most important social and political community for residents, and citizenship participation thus takes place largely at the Scottish level.⁹¹ In particular, third-sector organizations and trade unions may operate on a Scotland-only basis to serve that community. Thus, an individual becomes a member of the Scottish Council of Voluntary Organisations (SCVO) or the Scottish Trades Unions Congress (STUC) rather than joining a UK-wide organization (though many professional associations and business groups do continue to operate across the UK in a multi-level fashion). Recent research has shown that devolution has strengthened the territorial focus of Scottish policy organisations, whereby interest groups now articulate their policy platforms at the Scottish level.⁹²

⁸⁸ Graeme Brown, “Scotland’s law to end homelessness: a bold policy which needs more action,” *The Guardian*, 1 February 2013.

⁸⁹ Painter, 2008, *op cit*, at 14, note 14.

⁹⁰ Lindsay Paterson, *The Autonomy of Modern Scotland* (Edinburgh University Press, Edinburgh, 1994).

⁹¹ Michael Keating, *Nations Against the State. The New Politics of Nationalism in Quebec, Catalonia and Scotland*, (Macmillan, London, 1996).

⁹² Michael Keating, Paul Cairney and Eve Hepburn, “Territorial Policy Communities and Devolution in the United Kingdom”, 2(1) *Cambridge Journal of Regions, Economy and Society* (2009), 51-66.

Furthermore, UK political parties have undergone degrees of decentralization to their Scottish branches, so that parties are now organizing at a Scottish level, with their own membership and financial bases.⁹³ Scottish branches of UK parties, as well as Scottish-only parties, have sought to engage the local electorate and engage them in the Scottish political process. As mentioned earlier, the Scottish National Party (SNP) has sought to welcome ethnic minorities and immigrants into its ranks, supporting the creation of groups such as Scots Asians for Independence, Africans for an Independent Scotland and Poles for an Independent Scotland.⁹⁴ While the SNP does not seek to create special minority rights or preferential treatment for migrant groups in Scotland (indeed, few mainstream parties in the UK support the development of “special treatment for groups” —instead, the growing emphasis has been on “giving everyone an equal right to be treated fairly as an individual”⁹⁵), the SNP has been explicit in seeking to enhance equal opportunities for ethnic and migrant groups and to recognise their contribution to Scotland’s diverse culture and labour market.⁹⁶ However, this commitment does not necessarily mean that the efforts of Scottish parties to integrate migrants have been successful. For instance, one study revealed that Polish migrants do not feel that they are represented in political structures⁹⁷, indicating that Scotland is a long way from realizing the full political mobilization and representation of its migrant groups. In any case these developments indicate that the participation dimension of citizenship is increasingly viewed as part of a Scottish-level frame.

C. Belonging in Scotland

Along with rights and participation, Bellamy et al maintain that membership is the third basic building block of the modern concept of citizenship.⁹⁸ This dimension is

⁹³ Klaus Detterbeck and Eve Hepburn, “Party Politics in Multi-level Systems”, in Wilfried Swenden and Jan Erk (eds.), *Exploring New Avenues of Comparative Federalism Research* (Routledge, London, 2010).

⁹⁴ See Hepburn, 2011, *op cit*, note 14.

⁹⁵ UK Government, 2010, *op cit*, at 9, note 58.

⁹⁶ Scottish Government, 2013, *Scotland’s Future*, *op cit*, notw 2.

⁹⁷ Polish Cultural Festival Association, *op cit*, note 76.

⁹⁸ Richard Bellamy, Dario Castiglione and Emilio Santoro, *Lineages of European citizenship. Rights, Belonging and Participation in Eleven Nation-States*, (Palgrave Macmillan, Basingstoke, 2004), 7.

more difficult to measure that rights and participation, as it relates to a citizen's more nebulous sense of identity and belonging.⁹⁹

According to some authors, decentralization has promoted a re-thinking of the territorial scale of belonging, and strengthened citizen identification with the region.¹⁰⁰ This is especially true if there are claims to nationhood based on the existence of historical traditions, culture and language. In Scotland, scholars have maintained that the Scottish identity is so widely shared that it does not provide a discriminating factor among groups.¹⁰¹ Survey data reveals that membership of the Scottish political community is stronger than that of state (UK) membership. Thus, Scots are less likely to identify themselves as British (only 5% of Scots feel “more British than Scottish”) and more likely to identify themselves as “more Scottish than British” (30% of Scots).¹⁰²

Recent research has compounded these findings, revealing that Scottish identity is so widespread that the vast majority of Scots describe themselves as Scottish (83% according to the Scottish Social Attitudes Surveys 2009-11), while only 49% described themselves as British.¹⁰³ Survey analysis has also found that “choosing Scottish identity is ubiquitous amongst the Scotland-born in *all* groups”, including ethnic minority groups, while in contrast, Scotland's native-born Muslims did not embrace Britishness to any great extent.¹⁰⁴ This confirms previous studies by Hussain and Miller which revealed that immigrant communities – such as Pakistanis in Glasgow – consider themselves Scottish (not British) and are far more likely to vote for independence and the SNP than the average Scot.¹⁰⁵ Devolution has therefore contributed to the consolidation of a Scottish national identity, whereby Scotland has

⁹⁹ Joe Painter and Chris Philo, “Spaces of Citizenship: an Introduction”, 14 *Political Geography*, (1995) 107-20; Joe Painter, “Multilevel Citizenship, Identity and Regions in Contemporary Europe”, in James Anderson (ed.) *Transnational Democracy. Political Spaces and Border Crossings*, (Routledge, London, 2002).

¹⁰⁰ Jeffery, *op cit*, note 85.

¹⁰¹ David McCrone, *Understanding Scotland. The sociology of a nation*, 2nd edition, (Routledge, London, 2001).

¹⁰² Jeffery, *op cit*, at 87, note 85.

¹⁰³ Rosie and Hepburn, *op cit*, note 53.

¹⁰⁴ *Ibid.*

¹⁰⁵ Asifa Hussain and William Miller, *Multicultural Nationalism. Islamophobia, Anglophobia and Devolution*, (Oxford University Press, Oxford, 2006); see also Peter Hopkins, “Young Muslim Men in Scotland: Inclusions and Exclusions”, 2(2) *Children's Geographies* (2004), 257–72.

– for many citizens – become the primary political community of allegiance, membership and belonging.

VI. CONCLUSIONS

Traditionally, citizenship policy has been viewed as the exclusive realm of the central-state. In both the legal and political conceptualisations, citizenship was understood as a framework of rights and duties required to for membership of a nation-state community, and therefore legislation on citizenship was reserved to the central-state level.¹⁰⁶ However, in multilevel states, the decentralization of powers over social, cultural and economic policy has led to a disentangling of citizenship as a ‘legal status’ and citizenship as membership of, and participation in, a political community. In many cases, the substate region has become the primary framework for social rights (and to varying extents, civil and political rights), participation, and belonging, while at the same time residents continue to operate within an overarching framework of citizenship laws at the central-state level.

These developments suggest that we should move away from an exclusively state-centric understanding of citizenship to one that acknowledges that multi-level nature of citizenship in multi-level states, not only from a political science perspective (which this article has sought to provide) but also from a legal perspective. Citizenship is no longer a set of rights and obligations concentrated at the nation-state level. With decentralization (and indeed European integration), citizens now hold different packages of rights at different territorial levels. This very much reflects changes in identity, political structures and policy-making resulting from decentralization in European states. For instance, a vast scholarship has revealed how citizens now hold multi-level attachments and identities¹⁰⁷, how regional party systems diverge from one another in multi-level states¹⁰⁸, how political parties have decentralized their party organisations to become multi-level political creatures¹⁰⁹,

¹⁰⁶ Irene Bloemraad, Anna Korteweg, and Gokce Yurdakul, “Citizenship and Immigration: Multiculturalism, Assimilation and Challenges to the Nation-State”, 34 *Annual Review of Sociology* (2008), 153-179.

¹⁰⁷ Berg, *op cit*, note 30; Moreno, *op cit*, note 31; Ailsa Henderson, “Why Regions Matter: Sub-state Polities in Comparative Perspective”, 20(4/5) *Regional and Federal Studies* (2010), 441-447.

¹⁰⁸ Dan Hough and Charlie Jeffery (eds.) *Devolution and electoral politics*, (Manchester University Press, Manchester, 2006)., 2006 Hepburn small worlds

¹⁰⁹ Dettnerbeck and Hepburn, 2012, *op cit*, note 94.

and how policy-making is conducted in systems of multi-level governance.¹¹⁰ As legal scholars such as Shaw have noted, citizenship is one of the few remaining areas where scholarship remains wedded to the idea of the nation-state.¹¹¹ A renewed focus on untangling the legal status of citizenship would further contribute to our understanding of the changing nature of state sovereignty.¹¹²

As we have seen in this case, the Scottish Government exercises very limited influence over the legal framework of citizenship, nationality and migration in the UK. However, it does hold substantial power over the rights of citizenship and control over institutions that provide access to participation and belonging. This has enabled Scotland to fashion a distinct approach to citizenship—emphasising multiculturalism, equality and a social-democratic ethos to policy-making—that has diverged significantly from the UK level. In particular, devolved control over health, education, housing, economic development and culture has enabled Scotland to extend citizenship rights to *all residents* in Scotland, as well as developing policies that specifically aim at integrating immigrants and ethnic minorities.

However, these attempts to carve out a distinct Scottish approach to citizenship have not been without their constraints. As citizenship, immigration and social security legislation is reserved to Westminster, this poses particular limitations on the extent to which Scotland can diverge from the UK model. One obvious example is the Fresh Talent scheme—which was supported by all of the political parties in Scotland and claimed as a success—but which was abolished by the UK Government against the wishes of Scottish political actors. Another area is the rights of asylum seekers in Scotland, whereby Scotland is unable to pursue its commitment to granting employment rights to asylum seekers from their first day of arrival in Scotland, due to the restrictions in UK asylum legislation. A third example is the UK Government’s recent proposal to require migrants to pay an up-front ‘health levy’ when they arrive in the UK, and to restrict EU migrants’ rights to access public services and tax benefits, in order to make the UK a ‘less attractive’ destination for

¹¹⁰ Gary Marks and Liesbet Hooghe, “*Types of Multilevel Governance*”, 5(11) European Integration Papers Online, (2000).

¹¹¹ Shaw 2007, *op cit*, note 13.

¹¹² William Maas, (ed.), *Multi-level Citizenship*, (University of Pennsylvania Press, 2013).

migrants.¹¹³ These policy proposals are anathema to the Scottish Government's commitment to attract a greater number of migrants to the country and to extent full social rights to non-citizen residents in Scotland.¹¹⁴ As Scotland enjoys exclusive control over healthcare, government officials in Edinburgh responded by saying that the proposals were incompatible with devolution.¹¹⁵ However, because migrant benefit curbs are being tied to citizenship, it is likely that Scotland must abide by UK directives, despite the further devolution of limited welfare powers in the proposed Scotland Bill (which is passing through Parliament at the time of writing).

The SNP-led Scottish Government has strongly criticized the UK's immigration and citizenship laws as not being reflective of Scottish needs and interests. Instead, the SNP has advocated a more liberal immigration model for an independent Scotland and "an inclusive model of citizenship for people whether or not they define themselves as primarily or exclusively Scottish or wish to become a Scottish passport holder".¹¹⁶ This includes accepting dual and multiple citizenship, and enabling a very unusual route of naturalisation 'by connection', whereby a person may apply for naturalization as a Scottish citizen on the basis of ten years of prior residency at any point in time.¹¹⁷

Why has the SNP – and other Scottish political parties – pursued a more liberal approach to citizenship and more multicultural approach to integration? One explanation is demographic. The immigrant community only makes up about 7% of the overall Scottish population (less than half that of England), the general perception is that Scotland's small migrant community has integrated fairly well into Scottish society. Furthermore, there is an elite political consensus that Scotland needs higher levels of immigration to meet its demographic and labour market needs.¹¹⁸ But an equally important factor is possibly *due to* Scotland's lack of power on the issue. The devolved Scottish Government's lack of competence over citizenship and immigration

¹¹³ Patrick Wintour and Alan Travis, "Cameron to tell EU: cut all tax credits to migrants," *The Guardian*, 28 November 2014.

¹¹⁴ Scottish Government, 2013, *New Scots*, *op cit*, note 38.

¹¹⁵ Tom Gordon, "SNP challenge Cameron over EU reform over migrants' rights to keep benefits," *The Herald*, 15 November 2015.

¹¹⁶ Scottish Government, 2013, *Scotland's Future*, *op cit*, at 271, note 2.

¹¹⁷ *Ibid.*

¹¹⁸ Eve Hepburn and Michael Rosie, "Immigration, Nationalism and Political Parties in Scotland" in Eve Hepburn and Ricard Zapata-Barrero (eds.), *The Politics of Immigration in Multilevel States: Governance and Political Parties* (Palgrave Macmillan, Basingstoke, 2014).

policy allows it to subdue political mobilisation and to avert responsibility – and culpability – to the UK Government on unpopular aspects of immigration and citizenship requirements. If Scotland became independent at some point in the future, then, it may have less motivation and capacity to pursue a liberal approach to citizenship and migration, than it does as a devolved entity. Herein lies the conundrum of multi-level citizenship: while Scotland may have the space to develop more progressive forms of citizenship within the ambit of the state, as a sovereign entity there may be more pressure towards convergence with the UK (and indeed other European states) towards coercive civic integration.¹¹⁹ For that reason, among many others, we should re-focus our attention on the diverse forms of citizenship that are possible within multi-level states.

¹¹⁹ Joppke, *op cit*, note 3.