

BOOK REVIEW

FULLY HUMAN: PERSONHOOD, CITIZENSHIP, AND RIGHTS BY LINDSEY N KINGSTON (OXFORD UNIVERSITY PRESS) 312 PAGES. PRICE £41.99 ISBN 9780190918262

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A couple of months ago, I learned about the story of a person applying for statelessness determination in Switzerland that left me puzzled. The case concerned a man who was born in North America within an indigenous community. After having lost his indigenous nationality due to personal circumstances, he was not able to establish Canadian or United States nationality despite having many connections to both states. As he once travelled to Switzerland, he wanted to apply for statelessness determination there. The case resonated with me. How was it possible that this man was stateless even though he was born in the US or Canada — both states that know a strong *jus soli*? Could he be stateless despite having indigenous nationality? How come the European Union qualifies passports from indigenous nations as a ‘fantasy passports’, on an equal rank with documents issued by sects, private organisations or individuals?¹ How does such an indigenous nationality fit within the international system of legal nationality? And how are the rights of this man protected?

I found answers to some of my questions while reading Lindsey N Kingston’s insightful new book *Fully Human: Personhood, Citizenship, and Rights*.² In her book, Kingston analyses existing hierarchies of personhood, which render some people more worthy of protection and membership than others. She highlights examples of various marginalised groups that are relegated to different levels on

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¹ Council of the European Union, *Information Concerning the Non-Exhaustive List of Known Fantasy and Camouflage Passports, as Stipulated by Article 6 of the Decision No 1105/2011/EU (Policy List)* <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/borders-and-visas/document-security/docs/list_of_known_fantasy_and_camo_passports_en.pdf>. On the list of travel documents that entitle the holder to cross the external borders and may be endorsed with a visa and on setting up a mechanism for establishing this list, see Public Register of Authentic Travel and Identity Documents Online, *List of Travel Documents Which Entitle the Holder to Cross the External Borders and Which May Be Endorsed with a Visa* (Policy List) Part I (‘Travel Documents Issued by third Countries and Territorial Entities’), Part II (‘Travel Documents Issued by Member States and Schengen Associated States’), Part III (‘Travel Documents Issued by International Organisations and Other Entities Subject to International Law’) <consilium.europa.eu/prado/en/prado-recognised-documents.html>.

² Lindsey N Kingston, *Fully Human: Personhood, Citizenship, and Rights* (Oxford University Press 2019).

the ‘hierarchy of personhood’.³ She goes beyond the usual categories of belonging caused by migratory movements and looks at groups marginalised because of their way of life, their status as indigenous peoples or markers of race and class. On the basis of that analysis, she argues that our current binary system of legal citizenship and non-citizenship (or statelessness) fails to protect individuals’ rights to place and purpose and thereby, ultimately, threatens the universality of human rights.⁴ Kingston argues that ‘legal nationality is not enough to be recognized as fully human’.⁵ Against that background, she introduces the notion of ‘functioning citizenship’ as a form of meaningful membership in the political community for all, which is based on an active and mutually beneficial relationship between an individual and a state and goes beyond a mere legal status.⁶ With her book, Kingston has the ambitious aim to remedy structural weaknesses in the modern human rights regime and close protection gaps for people at the margins.⁷

The book is structured around six groups of persons affected by hierarchies of personhood and dysfunctional citizenship. A first, theoretical Part scrutinises the constructions of political membership and worthiness prevailing in international human rights law, critically discusses the development of contradictory concepts of citizenship in political thought — which are posited as rights, identities or commodities — and the inherent tension between state sovereignty and legal nationality underlying the international human rights regime in Chapter One.

Chapter Two then opens the discussion to the different case studies. It starts by examining statelessness as the extreme, most blatant form of lack of functioning citizenship. Kingston discusses the concept of statelessness in modern political theory and law and reminds the reader that statelessness does not happen in a vacuum.⁸ Rather, statelessness is the result of marginalisation and discrimination. By being denied legal citizenship, stateless persons are not only denied political rights, but rights to place and purpose in a much broader sense. Accordingly, in legalistic solutions aiming at attribution of legal nationality, the issuance of identity documents or the granting of political rights alone cannot compensate for functioning citizenship.

Chapter Three on forced displacement deals with forcibly displaced persons — asylum seekers, refugees and internally displaced persons — who, despite formally having a legal nationality, lack functioning citizenship to their state of nationality.⁹ International refugee law and the United Nations High Commissioner for Refugees, Kingston argues, fail to effectively fill these protection gaps.¹⁰ Instead, they posit displacement as the ‘abnormal’, often framed as an emergency or crisis, whereby short-term solutions are privileged and functioning citizenship is continuously denied.¹¹ This reinforces hierarchies of personhood and might increase sentiments of mistrust among the citizens of host countries. Looking at the situation of refugees in camps, Kingston illustrates how the rights to place and purpose of forcibly displaced persons are routinely violated and denied.

³ *ibid* 5.

⁴ *ibid* 5–6.

⁵ *ibid* 53–54.

⁶ *ibid* 18.

⁷ *ibid* 23.

⁸ *ibid* 67.

⁹ *ibid* 80–81.

¹⁰ *ibid* 81–86.

¹¹ *ibid* 86–87.

Chapter Four completes the part on migration related categories of personhood. It focuses on ‘irregular human movements’, noting that

these forms of illicit movement also create liminal spaces where migrants and trafficking victims exist outside the law, beyond the reach of functioning citizenship where they are dangerously vulnerable to rights abuses.¹²

Kingston convincingly illustrates that the creation of categories of regular and irregular migrants form degrees of worthiness that constrain migrants’ rights to place and purpose.¹³ Even though the boundaries between irregular migration and forced migration are often overlapping, the conflation of different groups and situations under the notion of ‘irregularity’ in this Chapter could be problematic from a legal perspective. Unaccompanied migrant children, for example, are entitled to special protection and assistance from the state.¹⁴ Therefore, arguably, they should never be framed as irregular migrants, but should be treated first and foremost as children.¹⁵ Considering that much of the Chapter deals with border crossing — through trafficking or smuggling, without valid identity documents or without a legal right to enter — as well as sanctions for these border crossings or other acts deemed to constitute a threat to national security — from detention to deportation — the thematic focus could have been the securitisation or the bordering of global mobility rather than irregular migration. Ultimately, declaring people to be ‘irregular’ or even ‘illegal’ is but one of different strategies of migration control that ‘serve[s] to limit or deny functioning citizenship, physically separating migrants from legal citizens and effectively criminalizing human movement’.¹⁶

Part III of the book then opens the discussion beyond migration. Chapter Five starts by exploring the ways in which, within the hierarchy of personhood, the rights to place and purpose of nomadic populations are devalued and questioned. The three case studies Kingston analyses — the Roma and Travellers in Europe, the Maasai in Tanzania and Kenya, and the Bedouin in the Middle East — show how similar the mechanisms are through which nomadic peoples are perceived as threats to the majority society. In consequence, despite formally having citizenship, they are relegated to inferior positions on the hierarchy of personhood and are unworthy of protection and denied functioning citizenship.¹⁷

The following Chapter (Six) looks at indigenous nations — and discusses the situation of individuals like the man wanting to apply for statelessness determination in Switzerland. Kingston shows how the case of indigenous nations provides a model for an alternative form of political membership that exists separate from or even alongside state citizenship and offers alternative accounts on how to conceptualise identity, legal status and political membership.¹⁸ She argues that the increasing protection of indigenous rights has improved the position of indigenous communities on the hierarchy of personhood.¹⁹ In order to

¹² *ibid* 103.

¹³ *ibid* 102–14.

¹⁴ *Convention on the Rights of the Child* (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 20.

¹⁵ See also *General Comment No 6: Treatment of Unaccompanied and Separated Children outside Their Country of Origin*, UN Doc CRC/GC/2005/6 (1 September 2005) 66.

¹⁶ Kingston (n 3) 111.

¹⁷ *ibid* 149.

¹⁸ *ibid* 150–52.

¹⁹ *ibid* 154.

safeguard tribal sovereignty and alternative membership, rights to place and to purpose are crucial. Adopting a positive, but not uncritical perspective, she maintains that the case of indigenous nations thus offers an interesting viewpoint on how functioning citizenship for different groups could be achieved.²⁰

Chapter Seven zooms in on the US context and discusses the situation of ‘second-class citizens’ in the cities of Saint Louis, Flint, and New Orleans. The mainly black and poor populations in these cities suffer from structural violence, marginalisation and oppression despite having legal nationality.²¹ Kingston contends that these three examples illustrate the construction, reinforcement and perpetuation of hierarchies of personhood in race and class over generations, and denial of fundamental rights to place and purpose.²² She discusses the right to housing, water and health, and shows how ‘functioning citizenship is frequently allotted along racial and socioeconomic lines’.²³ (Neo)liberal conceptions of rights and worthiness thereby serve as markers on the hierarchy of personhood by valuing personal choice rather than rights’ protection. The chapter clearly illustrates that legal nationality alone does not guarantee equal rights protection. Kingston goes full circle to the situation of stateless persons, where the granting of legal nationality alone does not guarantee equal rights protection either.

Part IV closes the book with a number of concrete policy recommendations on how to create inclusive forms of membership. Chapter Eight focuses on the topic of issue emergence and discusses the ways in which hierarchies of personhood are addressed but also reinforced in the work of the international human rights community, with the example of images, visual narratives and social media.²⁴ Kingston calls upon actors in the human rights field to re-evaluate the hierarchies and categories of worthiness that influence issue emergence and to empower claimants to share their perspectives and knowledge.

In the conclusion (Chapter Nine), Kingston develops a number of concrete and very practical policy recommendations to actualise the ideal of functioning citizenship. Some protection gaps caused by the persisting hierarchies of personhood could, as Kingston proposes, be filled with relatively simple measures — such as the ratification and implementation of relevant international human rights standards, the issuance of birth certificates and identity documents, fair and impartial procedures or an understanding of ‘rights entitlement rather than reliance on charity models’.²⁵ Eventually, Kingston defines functioning citizenship as

an aspirational ideal that moves beyond mere legal status to facilitate mutually beneficial, rights-protective relationships between the state and the individual while opening political space for those who do not fit within traditional conceptions of the citizenry.²⁶

With her thorough discussion of the six groups and their respective positions on the hierarchy of personhood, Kingston elegantly weaves together different sites of contestation of citizenship and denial of rights and makes a credible claim for her concept of functioning citizenship. One could argue that the idea of citizenship

²⁰ *ibid* 173.

²¹ *ibid* 176.

²² *ibid*.

²³ *ibid* 189.

²⁴ *ibid* 205–15.

²⁵ *ibid* 223–32.

²⁶ *ibid* 240.

as a non-binary concept is no particularly innovative proposal, given that other scholars have developed similar ideas of degrees of citizenship.²⁷ Moreover, one could criticise that other (non-ethnically defined) groups could have been added to the discussion — for example, along the lines of disability, gender and sexual orientation, or conduct (as in the case of convicted criminals losing their right to vote as a consequence of a prison sentence, or alleged terrorists being deprived of citizenship). Nevertheless, with its focus on stateless persons; forcibly displaced persons; irregular migrants; nomadic peoples; indigenous nations; and second-class citizens, Kingston's book offers a convincing analysis of the problem, an interesting normative claim and very practical first steps towards possible solutions. Kingston thereby makes a valuable and important contribution to the emerging field of statelessness studies. It will not only be interesting for academics in the fields of law, political theory, international relations, sociology, anthropology or history but also for practitioners — activists, journalists, lawyers, or migration authorities — and, maybe most importantly, for individuals claiming full and functioning citizenship.

²⁷ One might think of Elizabeth F Cohen, Margaret Somers or Iris Marion Young on whose work Kingston draws in her book, but also scholars such as Linda Bosniak, Audrey Macklin, Nira Yuval Davies or Leti Volpp.