Citizens and Exiles: Judith Shklar's Cosmopolitan Liberalism

Giacomo Gambino, Ph.D.
Muhlenberg College

Prepared for delivery at the 2023 Annual Meeting of the Western Political Science Association, San Francisco, Ca., April 6-8, 2023

Citizens and Exiles: Judith Shklar's Cosmopolitan Liberalism

Giacomo Gambino, Ph.D.
Muhlenberg College

Abstract

The current wave of political refugees and other transnational migrations has heightened the urgency of addressing what Seyla Benhabib calls the constitutive dilemma at the heart of liberal democracies: between sovereign self-determination claims on the one hand and adherence to universal human rights principles on the other. I examine one effort to reconfigure these dual commitments in the late work of Judith Shklar. Shklar's career began with a stalwart defense of an inclusive constitutional state as a bulwark against 20th century totalitarianism, including the forced expulsions of people. Shklar reformulates liberalism's cosmopolitan commitments as well as its conception of citizenship and state sovereignty in order to take seriously the right to claim one's rights will remain the first of all rights. Shklar believes that a recognition of a psychological need for civic security might serve as a more secure basis for underwriting liberalism's defense of a constitutional state. Moreover, even as she insists that the constitutional state is the best measure of defense against state-sponsored cruelty, including forced expulsions, Shklar challenges the sovereignty of the state and citizenship by viewing liberal citizenship from the perspective of exiles those who are excluded and beyond its borders. Shklar's exilic perspective ultimately provides liberalism with a kind of negative cosmopolitanism, but one that promises to provide more expansive terms of civic inclusion.

Liberalism's long historical association with cosmopolitanism has in recent years come under scrutiny. On the one hand, the cosmopolitan Enlightenment project articulated by Kant and culminating in the 20th century with the United Nations, the human rights convention, and economic globalization has been questioned for its undeniable complicity with imperialism, racism and Western ethnocentrism.[1] On the other hand, liberalism's attachment to formal equality and the civil rights of citizenship has been criticized for its failure to come to terms with cultural differences or to deliver equality and justice for members of marginalized groups.[2] These criticisms endorse versions of cosmopolitanism rooted in a deeper appreciation of subaltern social movements and in an emerging transnational civil society that aims to severely curtail the state's claims to sovereignty. To be sure, the emerging "critical cosmopolitanism" does not abandon all liberal values such as pluralism, toleration, and human rights. But critical

[1] Walter Mignolo. "The Many Faces of Cosmo-polis: Border Thinking and Critical Cosmopolitanism." *Public Culture* 12, no. 3 (2000): 721-748. https://muse.jhu.edu/ (accessed May 18, 2018)
[2] Stuart Hall, "The Multicultural Question." The Political Economy Research Centre Annual Lecture," Delivered on 4th May 2000 in Firth Hall Sheffield,

cosmopolitanism seeks to decouple these values from the state-based liberal institutions that were originally meant to secure them.

The following reflections on the cosmopolitan liberalism of Judith Shklar[3] are intended as an viable alternative to critical cosmopolitanism's an attack on the liberal constitutional state. In what follows, I argue that Shklar's defense of the "liberalism of fear" draws heavily upon the fundamental experience of exiles. In the first section, I show that Shklar considered the condition of exile as necessary for political theorists, the source of the critical detachment that immunizes them against seductive "ideologies of solidarity" and nostalgia for imaginary homelands that leads to mass expulsions. The next section follows Shklar's reflections on liberal constitutionalism (rule of law, sovereignty) as premised on a normative commitment that prohibits the use of exile as a matter of state policy. Exile, along with torture, is a form of political imposed cruelty that the liberal state from its inception, in Shklar's telling, sought to protect against. "The right to have rights," Shklar implies, is not simply a right to citizenship in some state to citizenship in a liberal state. The final section takes up the intriguing relationship between the condition of exile and citizenship, and argues that the possibility of exile is ever present in liberal citizenship. My conclusion is that Shklar points us toward developing not a critical cosmopolitanism but a cosmopolitan liberalism.

I. Exiles and Political Theory

Shklar's liberalism was born out of her personal experience of exile.[4] Growing up in Riga, Latvia between the world wars, she saw exclusion and exile first hand. "Politics completely dominated our lives," she writes of her childhood, but it was a politics driven by fear, hostility

[3] Shklar was a political theorist in Harvard's Government Department from 1956 to 1992. She was the first female president of the American Political Science Association (1989 - 1990).
[4] Andreas Hess, *Exile from Exile: The Political Thought of Judith Shklar*. (New York: Palgrave Macmillan, 2014).

and prejudice. "We were essentially German Jews, which meant that almost everyone around us wanted us to be somewhere else at best, or to kill us at worst."[5] Her family initially found refuge in Sweden, but the German invasion of Norway forced them to flee once again, first to Japan via the trans-Siberian railroad, then to the U.S., where her family was temporarily held in a detention camp for illegal Asian immigrants in Seattle. Eventually, they secured refuge in Canada.[6] This flight was surely a fortunate escape from the horrors suffered by Jews who remained in Europe, but harrowing enough to have influenced Shklar's choice of a vocation: political theory offered her "a way of making sense of my experiences and that of my particular world."[7] For her, personal freedom and security could not be taken for granted and ultimately depended on the *kind of state* that would protect those values. And on this matter, the only possible state that could do so was the liberal democratic state that ensures personal freedom by means of the rule of law.

Shklar was not alone among exiles who turned to political theory: Hannah Arendt, Herbert Marcuse, Leo Strauss, and Eric Voegelin were all refugees who attained celebrated academic careers at American universities, even if none of them ever fully felt at home in a liberal democracy. Shklar was particularly alert to the seductions of nostalgia that led many of these fellow refugees to seek out new theoretical and imaginary homelands.[8] Yet even as she vigorously defended American liberal democracy, she was keenly aware of a paradox at its very heart: it provides the security of citizenship, especially to exiles, precisely because it fails to offer the "home" that would satisfy the exile's nostalgic longing.

---

[5] Judith N. Shklar, "A Life of Learning." Charles Homer Haskins Lecture. ACLS Occasional Paper, No. 9 (Washington D.C.: American Council Learned Societies, 1989), 1-2.

[6] Shklar eventual attended Harvard as a student and taught there for the entirety of her professional career. She also became an American citizen, which she very much valued – the kind of settled life that stood in stark contrast to her exiled youth.

[7] "A Life of Learning," 3. See Andreas Hess, *Exile from Exile: The Political Thought of Judith Shklar*. (New York: Palgrave Macmillan, 2014).

[8] See Mark Lilla, *The Shipwrecked Mind: On Political Reaction.* (New York: New York Review Books, 2016).

This anti-nostalgic impulse is evident in her long professional disagreement with her friend, the political theorist Michael Walzer, which she characterized as "a dialogue between an exile and a citizen."[9] Shklar vigorously rejected Walzer's view of the theorist as a critic connected to and firmly embedded within a community of shared understandings[10]. For her, critical engagement with politics required instead the intellectual detachment of those willing to become "cosmopolitan exiles from their place and time."[11] She seems to have reminded Walzer that political theorists, insofar as they are obliged like Plato's philosophers to leave the cave, are essentially outsiders, no matter how fervent their longing to return to and enlighten their fellow citizens.

But it is not just the theorists who are exiles. For Shklar, the liberal construction of citizenship itself is predicated on the exile's memory of loss, homelessness, and alienation. Throughout her career, she launched blistering attacks on the ideological zealotry and nationalist loyalties that promised new homelands to remedy social uprootedness, only to produce new waves of wars, deportations and mass exterminations. The utopian excesses of 20th century revolutions, largely driven by nostalgic longings of deracinated intellectuals, needed to be tempered by a political skepticism[12], which she eventually formulated as the "liberalism of fear." Shklar's political skepticism was principally aimed against the "ideologies of solidarity" that undermined the kind of critical detachment she thought necessary for both political theory and liberal citizenship. Any theorist who insists, as Walzer does, on group membership as a

[9] "The Work of Michael Walzer" in *Political Thought and Political Thinkers*, ed. Stanley Hoffmann (Chicago and London: The University of Chicago, 1998) 377.
[10] Ashenden and Hess, Introduction, Between Utopia and Realism: The Political Thought of Judith N. Shklar, ed. Ashenden and Hess (University of Pennsylvania Press, 2019), 13-14.
[11] Ibid, 378.
[12] Here I will avoid the debate as to whether Shklar's skepticism led to epistemic "anti-foundationalism" or simpy "political" that was rooted in positive normative commitments that were beyond epistemological doubt. Hannes Bajohr, "The Sources of Liberal Normativity."

condition for citizenship, either ignores or unwittingly sanctions the nationalistic impulses that have been largely responsible for the massive social displacements, forced migrations, and other official policies of exclusion that have marked much of the politics of the 20th century. Indeed, Shklar wondered if she herself would have been admitted into the U.S. had its immigration policies reflected Walzer's emphasis on maintaining the nation's communal character.[13] The matter of exile was thus more than simply a personal one for Shklar nor just the occupational hazard of political theorists: exile has become "a common experience and so searing that it should invite reflection. No experience is more fundamental, and not one has been used metaphorically more seriously."[14] Some of her last essays were reflections on how exiles "constitute a perfect limiting case" for understanding the obligations and loyalties of contemporary liberal citizenship. They also shed light on the cosmopolitan character of her liberalism.

II. Liberalism of Fear and the Right to Have Rights

Exiles are persons who are compelled involuntarily to leave their country under threat of harm to themselves or to their family.[15] Exile is nothing new, of course. In the ancient world, as Shklar notes, ostracism was considered a prudent policy against ambitious leaders who were thought to be too divisive or a threat to political stability.[16] Modern exile, however, is regarded not as a precautionary policy against civil war, but as a form of "official illegality" by states

[13] Ibid, 384.
[14] "The Bonds of Exile" in *Political Thought and Political Thinkers*, ed. Stanley Hoffmann (Chicago and London: The University of Chicago, 1998), 57.
[15] Ibid, 56.
[16] "Obligation, Loyalty, Exile" in *Political Thought and Political Thinkers*, ed. Stanley Hoffmann (Chicago and London: The University of Chicago, 1998), 46-47. See also "The Bonds of Exile," 60-72.

against the "legally created expectations" of its citizens.[17] This view reflects the normative and conceptual framework of modern liberalism, which sets constitutional limits on the power of government to infringe upon personal freedom. For liberalism, exile can never be a matter of expediency because it is "a disruption of the law as it stands and is known. It violates trust in a way that renders the very basis of public life unreliable and vitiates the chief reasons for our obligations to obey the law." Shklar does not suggest that all or even most modern states have been liberal in this way, or even that more or less liberal democracies like the United States have always lived up to their own legal and moral standards. But she does assert a normative claim that she believes underwrites the modern constitutional state: any state that systematically violates individual rights with policies of forcible exclusion betrays its principles and threatens its very legitimacy[18]. For the liberalism of fear, "the rights and the wrongs suffered by the victims are therefore of primary interest."[19]

Liberalism's concern for the victims of organize violence traces back to the intellectual response to two events in early modernity that resulted in massive social displacements: the European conquest of New World and the religious wars that followed the Reformation. Both events involved spectacular displays of public cruelty toward peoples deemed to be alien: the first toward indigenous peoples and the second toward those with non-conforming religious

[17] Exiles form "a part of a larger social category, ranging from the forcibly excluded to people who exile themselves without moving by escaping into themselves, as it were, because their world is so politically evil." She includes not only political refugees like herself, but the "nonterritorial form of exile," namely, all those who suffer from the "internal exclusion from citizenship, which afflicts slaves, unwelcome immigrants and ethnic groups, and morally upright people trapped within the borders of tyrannical states." The internally excluded share the unwanted status of being deliberately and officially marginalized as "second-class citizens" or worse, not because they are being punished for criminality, but "because they belong to a group that is thought to be inherently unfit for inclusion" even within the constitutional order of liberal states. "Obligation, Loyalty, Exile," p. 38.

[18] See Samantha Ashenden, "Political Obligation and the Rule of Law" in Between Utopia and Realism: The Political Thought of Judith N. Shklar, ed. Samantha Ashenden and Andreas Hess. University of Pennsylvania Press, 2019.

[19] In effect, liberalism, and the legal protections of the constitutional state it requires, simply rejects the claim that "dire necessity" can serve as a rationale for excluding or expelling some from citizenship or by casting aside "a public and published system of rights and duties." "Obligation, Loyalty, Exile," 47-48, 50-51. "The Bonds of Exile," 56. On the other hand, no state has a legitimate power to deny citizens the right to exit.

beliefs. For Shklar, the intellectual movement toward liberalism, with its insistence on religious toleration, limited government, and the legal protections of rights, was a reaction to acts of cruelty, torture, intimidation and arbitrary coercion by political agents. Montaigne was among the first to criticize such abuses by "putting cruelty first" as a moral principle.[20] His outrage against cruelty took the form of a non-religious moral judgment made, in Shklar's words, "entirely from within the world" and "a purely human verdict upon human conduct." Montaigne's condemnation of cruelty did not rely on lofty religious or philosophic claims but on the ordinary moral intuitions of sentient beings who seek to defend themselves against the cruelty of the powerful. It reflected nothing more than the *summum malum,* which everyone, regardless of social or political status, could readily imagine and seeks to avoid. For Shklar, the prevention of cruelty and the fear it inspires is in fact "a cosmopolitan claim" upon which the liberalism of fear has historically rested.[21]

Shklar greatly admired Montaigne not only for his moral condemnation of religious persecution and Spanish colonialism, but also for his attack on Machiavelli's new science of politics, which similarly abandoned Christian morality in order to justify princely cruelty for reasons of state. But it was left to Montaigne's disciple, Montesquieu, to propose a political alternative to Machiavellianism with an explicitly liberal theory of the constitutional state. Montesquieu called for a complex institutional arrangement that would simultaneously organize and restrain public power, and thereby enforce the moral prohibition against cruelty by *political means*.[22] The institutional mechanisms for dispersing and checking power provided the political

[20] Judith N. Shklar, *Ordinary Vices* (Cambridge, Massachusetts and London: Harvard University Press, 1984), 8. Shklar adds that because "the fear of systematic cruelty is so universal, moral claims based on its prohibition have an immediate appeal and can gain recognition without much argument." "The Liberalism of Fear" in *Political Thought and Political Thinkers*, ed. Stanley Hoffmann (Chicago and London: The University of Chicago, 1998), 11.

[22] "Montesquieu should be a far more important figure in narratives about the rise of sovereignty than he currently is. Montesquieu developed a theory of limited sovereignty – a theory in which the sovereign, even though the highest power in state, is not above the law." William Selinger – "Montesquieu and the Theory of Limited Sovereignty."

conditions necessary for the exercise of personal freedom. Montesquieu's constitutional liberalism was thus a project to devise "public cures" for preventing cruelty by the powerful over the weak through both legal/political institutions and a pluralism of freely competing groups.[23] It was this brand of realism upon which the framers of the U.S. Constitution built the first thoroughly modern, albeit flawed, republic.

For Shklar, it is no accident that many of the founders of the liberal state were either political refugees (e.g., Locke) or internal exiles driven by a conscience outraged by the injustices of their own country (e.g., Montaigne). Moreover, she notes that exilic narratives were central to shaping early American identity.[24] The modern constitutional state in this sense aimed to provide a haven for refugees from religious persecution, political repression and even social displacement brought about by economic injustices.[25] It sought to provide freedom for a plurality of groups to thrive while establishing toleration as a foundational principle that would cultivate citizens who not only endure but cherish the diversity of opinions and habits.[26] Most importantly, it would create safeguards against the use of kind of systematic fear that forces ethnic or religious minorities "to leave because they are threatened with death, imprisonment, or torture if they remain."[27] Either because they are forced to leave an oppressive state or suffer the communal violence unleashed by a failed one, exiles are "stateless" persons, which "is one of the

https://www.manchesterhive.com/display/9781526165657/9781526165657.00010.xml#:~:text=Montesquieu%20should%20be%20a%20far,is%20not%20above%20the%20law.

[23] *Ordinary Vices*, 217

[24] Exile, rather than the state of nature, was in fact a powerful metaphor in early American political thought, as Shklar notes in a posthumously published essay, "The Boundaries of Democracy" in *Redeeming American Political Thought*, ed. Stanley Hoffmann and Dennis F. Thompson, 49-64. Repr. (Chicago and London: The University of Chicago, 1998), 136.

[25] Shklar notes elsewhere that famines are often also the work of passive injustices rather than simple nature disasters: "When nothing is done to end one when it begins, there is injustice." See *The Faces of Injustice* (New Haven and London: Yale University Press, 1990), 68-70. Shklar also insists that "extreme poverty may also be regarded as a form of coercive expulsion," suggesting another example of passive injustice. "Obligation, Loyalty, Exile," 45.

[26] Judith N. Shklar, *Legalism: Law, Morals, and Political Trials,* (Cambridge, Massachusetts and London: Harvard University Press, 1964, 1986), *5-6*.

[27] "The Bonds of Exile," 56.

most dreadful political fates that can befall anyone in the modern world."[28] The remedy for statelessness is citizenship in a constitutional state, which ensures the legal and social standing of citizens and their rights.[29]

Shklar is influenced by another exile from Nazi Germany, Hannah Arendt, who understood, in Shklar's words, that "in a world of nations, human rights are meaningless apart from citizenship. The only fundamental right of man, therefore, is the right to be a legal citizen of some state."[30] It is the exile's experience of political deprivation (homelessness, betrayal, desperation, loneliness, and powerlessness) that best illuminates the primary *need* for citizenship, which for Shklar was "both the beginning and an end of political institutions such as rights. The first right is to be protected against the fear of cruelty. People have rights as a shield against this greatest of public vices."[31] Constitutional government responds to this need by providing the institutions, such as police and the courts, that are capable of making rights binding through various enforcement mechanisms, even though these same institutions depend on coercive power that can also be the source of fear. Given that the state no longer relies on the authority of religion, its legitimacy depends on appeals to democratic sovereignty, which is *collectively* authorized through various forms of democratic consent and accountability, such as elections. But who or what constitutes "the people" is always the result of shifting political forces that mobilize diverse coalitions for concrete political purposes, including illiberal ones voicing the prejudices of ethnic or racial majorities. There is, then, for Shklar, a built-in tension in the liberal constitutional state. The rhetorical inclusiveness of the liberal principles (rights,

[28] Judith N. Shklar, *American Citizenship: The Quest for Inclusion*. (Cambridge, Mass.: Harvard University Press, 1991), 4.
[29] Ibid, 51-2. "Obligation, Loyalty, Exile," 47.
[30] Shklar, "Hannah Arendt as Pariah," in *Political Thought and Political Thinkers*, ed. Stanley Hoffmann (Chicago and London: The University of Chicago, 1998), 367.
[31] *Ordinary Vices*, 237.

toleration, equality before the law) that constitutions seek to secure is subject to the exclusionary logic of popular sovereignty that authorizes those constitutions in the first place.

Given the centrality of constitutional government to liberalism, Shklar is clear about the solution to the problem of exiles: they ought to have a right to "citizenship in *some* country", which she, following Arendt, proposes as "the necessary human right of our century."[32] The "right to have rights" means the right to p*olitical* and civil rights, understood as "legally created expectations" of citizens that are enforced through constitutional government. No liberal state should ever expel, illegally imprison, or forcibly segregate its own citizens and residents, or discriminate against ethnic and racial minorities. Moreover, Shklar believes that all liberal states should never deny the right to asylum of exiles and refugees, as stated in Article 14 of the Universal Declaration of Human Rights.[33] Certainly, the case for such rights can be made on moral and humanitarian grounds.[34] But Shklar is a political realist and knows the moral obligations entailed by the "right to have rights" will not necessarily compel even liberal states to grant exiles admittance, asylum, residency, or a path to citizenship. Admittance and citizenship requirements are ultimately political questions subject to public accountability and popular support.

Shklar shares the same legal and civic particularism that Seyla Benhabib finds in liberal writers since Kant, which severely circumscribes the cosmopolitan moral claims implied by the "right to have rights."

> For Kant, this is the obligation to grant refuge to each human being in need, whereas for Hannah Arendt this is the obligation not to deny membership or not to deny the right to have rights. Yet for each thinker this universalist moral right is politically and juridically so circumscribed that every act of inclusion generates its

[32] "Obligation, Loyalty, Exile," 54.
[33] Article 14, Universal Declaration of Human Rights. http://www.un.org/en/universal-declaration-human-rights/index.html Shklar was an active member of Amnesty International.
[34] "[A]s we all look on helplessly at the ever-growing numbers of human refuse heaps, we might perhaps listen to the voice of conscience." "Obligation, Loyalty, Exile," 52.

> own terms of exclusion. For Kant, there is no *moral claim* to permanent residency; for Arendt there is no escaping the historical arbitrariness of republican acts of founding whose ark of equality will always include some and exclude others. The right to have rights cannot be guaranteed by a world state or another world organization, but only by the collective will of circumscribed polities, which in turn, willy-nilly, perpetrate their own regimes of exclusion.[35]

Shklar is clearly aware of this paradox but is skeptical of efforts to expand the international institutional arrangements for human rights based on vague notions of cosmopolitan citizenship.[36] For her "rights" may have a universal moral appeal, but absent a world government, they acquire legal standing only within the contexts of states willing to recognize them. Of course, state-based citizenship is unavoidably bounded, particularistic, and exclusionary. [37] Existing territorial boundaries that mark some citizens off from others may be arbitrary[38] but they nonetheless establish the space within which constitutional mechanisms for representation, accountability and participation can legitimately function.

Still, Shklar ultimately wants to promote a more inclusive, tolerant, open, and ultimately cosmopolitan liberal democracy by framing the problem of exiles not simply in terms of human rights but as a matter of policy – that is, as a *political* and not merely an ethical problem.[39] To be sure, she insists that liberalism's cosmopolitan "political empathies" and humanitarian impulses have always focused attention on the victims of political tyranny. But political empathy is more a matter of conscience and historical memory than of legal justice, and she also knows the historical record of even relatively liberal countries have often proven less than generous in

[35] Benhabib, *The Rights of Others: Aliens, Residents and Citizens* (Cambridge: Cambridge University Press, 2004), p. 66.
[36] "The Liberalism of Fear," 12-13.
[37] "The Boundaries of Democracy," 143-144. It's important to note that even the universal claims of early American liberalism resulting in horrific exclusions (i.e., slaves and Indians) and imperialistic claims over Spanish controlled parts of the continent.
[38] "Few if any territorial boundaries have ever been chosen by a people." "The Boundaries of Democracy," 127.
[39] "In short, it might be a good idea to discuss issues raised by legal and political obligation not as issues of individual autonomy and legal doctrines, but more politically in terms of the prevailing policies of states as they affect excluded groups." "Obligations, Loyalty, Exile," 55.

opening their borders.[40] Nonetheless, Shklar maintains that such humanitarian impulses can be encouraged by rethinking citizenship and the terms of inclusion (obligations, loyalty, trust) from the perspective of exiles, who can awaken liberal citizens from their civic complacency and routine obedience.

III. Liberal Citizenship: The View from Exile

The constitutional state is not simply an impersonal system of rules and procedures; it also requires leaders and citizens who are committed to the rule of law, a culture of toleration, and a pluralistic politics. In this respect, Shklar's position is similar to the "constitutional patriotism" articulated by Jürgen Habermas, which defines citizenship in terms of the shared principles and national symbols of a political culture expressed in the constitution.[41] But there are different forms of civic commitment through with individuals relate to each other as citizens. The first of these forms, according to Shklar, is based on the *obligations* that derive from individuals' mutual consent to a limited public authority based on the rule of law. Liberals have traditionally resorted to social contract theories to explain the source of citizen obligation and government legitimacy. "We are called to obey because it is right to do so according to natural law and reason, or utility, or the historical mission of the modern state. The reasons for accepting or rejecting political obligations in liberal democracies are said to derive from consent, explicit or tacit, while the modern state merely enforces the rule of law as legitimated by the security and fairness that it gives its citizens. The very word legitimacy reminds us of the law-bound character of political obligation."[42] Despite this foundational eclecticism, Shklar insists that such obligations entail

[40] "It used to be the mark of liberalism that it was cosmopolitan and that an insult to the life and liberty of a member of any race or group in any part of the world was of genuine concern. It may be a revolting paradox that the very success of liberalism in some countries has atrophied the political empathies of their citizens." "The Liberalism of Fear," 17.
[41] See Sarah Song, "Three Models of Civic Solidarity," in *Citizenship, Borders, and Human Needs*, ed. Rogers Smith (Philadelphia: University of Pennsylvania Press, 2013),194-200.
[42] "Obligations, Loyalty, Exile," 40; See also "The Bonds of Exile," 58-59.

attachments of a rational, rule-related character, and tend to be impersonal and impartial, thus requiring citizens who are able to detach themselves from their communal prejudices and group identities.

However, Shklar concedes that the "thin" set of rationalistic principles underwriting obligations in liberal states is neither politically nor psychologically compelling. Liberal citizens are neither as rationalistic nor atomistic as traditional social contract theory has made them out to be. In Shklar's view, citizens are subject to a multiplicity of overlapping and conflicting commitments and attachments. These include loyalty to a social, cultural or religious groups; fidelity to friends; allegiance to a particular leader; and explicit commitments to a party, cause or ideology.[43] "Conflicts are common between obligations, loyalties, fidelities, and allegiances. Moreover, each of these has to endure internal conflicts as well. Loyalties clash and so do obligations. However sincere we may be in our commitments, however rational our sense of political obligation, however devoted to our country, cause, and spouse, we will have diverse claims on our feelings and calculations."[44] This multiplicity of conflicting commitments and values are generated by the complex relationships of a deeply pluralist society. And it is for this reason that Shklar eschews any simple model of rational or deliberative consensus as the basis for our political commitments.

The second form of civic commitments draws on the power of *loyalty,* which is a "deeply affective and not primarily rational" attachment to identity-constituting groups (e.g., race, ethnicity, caste, class, nation) to which one is a member.[45] Loyalty demands of individuals much more than simple law-abidingness, for it "requires positive demonstrations of commitment to,

[43] "Obligations, Loyalty, Exile," 40-44.
[44] "Obligation, Loyalty, Exile," 43.
[45] "Obligation, Loyalty, Exile," 41.

and of being at one with, the other members of the association with which we are identified."[46] Whereas obligations are generated by consent to impersonal and rational rules that in principle aspire to universal applicability, loyalty is generated by the intensely personal and particularistic attachments that define identities and enclose membership. Because liberal societies are pluralistic and multicultural, they provide a fertile breeding ground for group-based loyalties to develop and to be mobilized for political purposes. Recognizing that loyalties and the need to belong are powerful psychological forces, Shklar calls on liberals to understand "the ways in which loyalty can both sustain and undermine public rules."[47] Indeed, efforts have been made to develop a form of "liberal nationalism" as a form civic solidarity based on a shared national culture.[48] But Shklar cautions that where there is loyalty, there is also a great pressure to exclude nonmembers.

No group is more instructive in understanding the complexities of loyalty than exiles.[49] Exiles experience the most extreme form of betrayal, and it is for this reason that they can teach liberal citizens how to "to think imaginatively" about civic commitments.[50] "It is one of the anguishing aspects of exile that its victims cannot forget their former homes, nor can they wholly discard the bonds that tied them to it. Exiles cannot do what most people do, accept their political obligations and loyalties as simple habits. Displaced and uprooted, they must make decisions about the sort of lives they will now lead. As political agents they must at the very least think about these decisions and sort out their various and incompatible political duties and

[46] "The Bonds of Exile," 59- 60.
[47] "Obligations, Loyalty, Exile," 44-5.
[48] See Susan Song, "Three Models of Civic Solidarity," 200-204)
[49] "One advantage of looking closely at such exiles is that they can help one to illustrate how obligation, loyalty, and fidelity support and undermine each other." "Obligation, Loyalty, Exile," 45.
[50] Shklar's turn to exiles to help understand political problems, and not just a problem, is similar to the way that Bonnie Honig treats foreignness in democracies. Instead of asking, "How should we solve the problem of foreignness?" she asks, "What problems does foreignness solve for us?" Bonnie Honig, *Democracy and the Foreigner* (Princeton: Princeton University Press, 2001), 4.

ties."[51] It is the nature of the choices that exiles are forced to make – what Masha Gessen has recently deemed to be "impossible choices" – among their conflicting loyalties, transitory identities, and memories of betrayal.[52]

The conflict between obligations and loyalties reaches a dramatic intensity among exiles whose deprivation and loss of communal belonging provoke deep feelings of nostalgia. Edward Said posed the exile's dilemma as such: "How … does one surmount the loneliness of exile without falling into the encompassing and thumping language of national pride, collective sentiments, and group passions?" He notes that exiles feel "an urgent need to reconstitute their broken lives, usually by choosing to see themselves as part of a triumphant ideology or restored people."[53] Jews and Palestinians, for instance, share a similar fate as exiled peoples desiring a state of their own. Of course, the tendency of exiled peoples is toward a state that is exclusively their own. Exile and the "tragic fate of homelessness" has become all too common in an era of war, mass deportations, ethnic cleansing. But, as Said points out, the response to homelessness is too often a seductive and dangerous mythology of a "restored people" secured in a homeland of their own and not necessarily the pluralist one favored by liberals. Exiles and nationalism may easily go hand and hand. Said warns that worship of the state is one of the most insidious remedies to homelessness because it "tends to supplant all other human bonds."[54] Of course, not all states are the same, and for Shklar it is precisely the constitutional state, which establishes the

[51] "The Bonds of Exile," 57-8. It is important to note that unlike other post WW II "realists," Shklar's realism was not an apology for political apathy.
[52] Impossible choices, according to Gessen, are made by those, like herself, who are forced into exile by totalitarian regimes, and whose sole form of resistance takes "the shape of insisting on making a choice, even when the choice is framed as one between unacceptable options", such as leaving the country or going into exile. Such choices produce a "discontinuous self" that is forced to cross borders and question its sense of belonging. But the choice is also "the call to invent one's life" and to imagine "other, better choices." Masha Gessen, "To Be, or Not to Be." New York Review of Books, Feb. 8, 2018, p.6.
[53] Edward Said, "Reflections on Exile" in *Reflections on Exile* (Cambridge, Mass.: Harvard University Press: 2002) 177.
[54] Ibid., 183.

legal and institutional framework for a vigorous pluralism, that provides the best defense against a state based on an exclusively nationalist identity.

For Shklar, the liberal constitutional state can never completely satisfy the exiles' nostalgia for a restored homeland. At best, it provides the private security for communal living and the kind of group loyalties that have sustained exiles who find themselves in often less than hospitable host countries (e.g., immigrant communities in the U.S.). But the pluralism that liberal institutions promote also ensures the heightened awareness of communal identities and the potential for intergroup conflict. Even in a deeply pluralistic society, particularistic attachments and ascriptive memberships will continue to constitute individual and group identities, and provide a sense of belonging that distinguishes the familiar world of kin and kinship from what is strange and alien.[55] Shklar does not deny that such groups form an important source of civic education and an important check on state power. What she does want to challenge, however, is a benign view of group loyalties and the desirability of expanding such loyalties into the kind of liberal nationalism suggested by Isaiah Berlin and others.[56] Liberal institutions need to be structured in order to contain and manage social conflict among groups, rather than facilitate national expressions of belonging

More Madisonian than Tocquevillian, Shklar is under no illusion that the freedom of association that enables groups to flourish in a deeply pluralistic society also makes possible the kind of "passive injustice" of group members who place "a greater claim upon their loyalties than the rules of society at large."[57] A pluralist society is riven by such social antagonisms

[55] *Ordinary Vices*, 138-140.
[56] Despite the many similarities between her liberalism of fear and the anti-cosmopolitan liberalism of Isaiah Berlin, including her recognition of the power of what Berlin called the "need to belong," Shklar nonetheless resists catering to that need by following Berlin and others in formulating and adopting a theory of liberal nationalism. See Arie M. Dubnov, "Anti-cosmopolitan liberalism: Isaiah Berlin, Jacob Talmon and the dilemma of national identity."
[57] *The Faces of Injustice*, 44-48.

generated by competing grievances. And that is why she insists the role of the constitutional state is not to impose a false nationalist unity upon these competing groups, but to control their effects through political and legal institutions. In rather stark terms, she asserts, "Far from sharing a common understanding, the citizens of a modern state are culturally disparate and often deeply hostile to one another as individuals and especially as members of ascriptive groups. A modern state … not only stands above the warring groups but exists to mitigate by lawful coercion the murderous proclivities generated by racial, ethnic, and religious solidarity."[58] Shklar takes multicultural associations as a matter of fact, a result of liberalism's historical embrace of freedom of association, toleration and limited government based on the rule of law. Indeed, Shklar insists that a pluralist society is largely the creation of the legal protections provided by the liberal state, which must be strong enough to protect its citizens against the coercive proclivities of group solidarities, but not too powerful as to become a threat to their individual rights.[59] Clearly, Shklar believes that the pursuit of multiculturalism outside the state structure would be a foolhardy project.

Liberal citizenship, in Shklar's view, cannot in the end rest on the demands of loyalty or communal affection. Rather, it is born out of the psychological and emotional burdens of individuals living in a pluralistic society in which one is never quite or fully at home. "In a society whose members are free to move up and down, in and out, and across the social and geographic terrain of North America, ties of loyalty are readily made and unmade. That, in addition to its multiple ethnic and religious groups, the latter not all equally nationalist in orientation, does not make America a unitary nation-state. Everyone is beset by strangers at his

[58] "The Works of Michael Walzer," 385. *Ordinary Vices*, 68-69.
[59] "It is only the modern state, with its unified legal system, that provides the framework within which voluntary associations can form, and their autonomy is wholly derivative and dependent upon their adherence to the rules of the state." "The Works of Michael Walzer," 382.

gate, and that inspires mutual suspicion."[60] Liberal citizens are bound to feel alienated from the society in which they are a part because they are free to leave any of the groups to which they belong. The price of liberal citizenship is a kind of homelessness. Divided loyalties are the rule; citizens change party affiliations, ideological commitments, and they are free to remain loyal to, or exit, their ethnic and religious groupings. Indeed, "opportunities for dissent and exit" must remain open and easy in any system based on liberal consent.[61]And even alienated citizens are free to join other groups and develop new commitments. Shklar hoped that with the diminution of the ideologically charged politics of the 20th century, the charges of betrayal might cease to be a public offense and thus make nationalistic "loyalty binges" less frequent.[62] But she also knew that underestimating the call for loyalty is dangerous, especially for liberal citizens who must continually resist their own desire to overcome the dissociation of a fragmented and contentious society by seeking a mythical homeland rather than a relatively just state.

This possibility appears to rest on a third form of civic commitment, which is based on *trust*.[63] Trust involves the capacity of members of particular communities to reach beyond their own loyalties in order to build political alliances with members from other economic groups and cultural communities. As Shklar notes, citizens of diverse groups must "trust one another to constitute parties, electoral constituencies, and majorities. Mutual trust must exist between those chosen to rule and the electorate. Finally, when those in office betray their trust, citizens must trust one another enough to organize resistance to unlawful rule."[64] Trust is the key if the strangers of a liberal society are to function as citizens. Unlike loyalty, trust is always

[60] *Ordinary Vices*, 183.
[61] *The Faces of Injustice*, 116.
[62] *Ordinary Vices*, 189.
[63] "Consent and promises were the sole ties of Locke's constitutional vision. And if American resort to oaths constantly, in order to contain their dissociation, they are again only following Locke and attempting to establish those relations of trust which they require politically, even as their culture tends to destroy and threatened them at every turn." *Ordinary Vices*, 183.
[64] Ibid, 183-184.

conditional and vigilantly guards against the threat of abusive power. But a constitutional system that relies on trust is also one that suspects frequent betrayals. Fear of a government that betrays its citizens, that breaks its obligations, is "simply built into this system," and representative government can never be more than "a fine balance between trust and distrust."

Shklar's defense of the constitutional state as the proper home for an agonistic pluralism will not satisfy multicultural critics of liberalism. Stuart Hall, for example, argues that "liberal values" need to be "disinterred from their universalistic embeddedness" in Western standards of rationality and formal equality in order to support the "multicultural well-being" of ethnic and racial minorities as a "cosmopolitan value." This means "a deepening and expansion and radicalization of democratic practices, but democracy conceived, not in formal institutional terms but in the form of a never ending agonistic democratic struggle and negation between particulars which, as it were, acknowledge their insufficiency." While Hall does not specify the public spaces in which such agonistic politics would be located, he presumably means civil society understood both at the transnational and sub-national levels. But one might ask, as I believe Shklar would, whether a multicultural democratic agonism can do without the institutional spaces, or the political discourse, of the constitutional state? This question seems urgent if, as Hall insists, the political task is also unrelentingly to contest "every form of racialised and ethnicised exclusionary closure."[65] For Shklar, the institutions the liberal state go a long way in promoting the agonistic demands for citizenship and civic inclusion that Hall calls for.

In this respect, the demand for full *citizenship*, with all the protections and empowerments associated with civil liberties and voting rights, continues to be a powerful motive for political action, as it has been for oppressed peoples in the past. Shklar believes that

[65] Stuart Hall, "The Multicultural Question," 10-12.

liberal democracy empowers even its most marginalized individuals (including non-citizens) by affording them some claim to legal and civil redress in a court of law. In this respect, she considers rights not simply as a set of abstract principles, but rather the "licenses and empowerments that citizens must have in order to preserve their freedom and to protect themselves against abuse."[66] It is because the social belief in rights has become so pervasive in the United States that Shklar can highlight its political history as the "struggle for citizenship," which has been "overwhelmingly a demand for inclusion in the polity, an effort to break down excluding barriers to recognition, rather than an aspiration to civic participation as a deeply involving activity."[67] It was out of this experience that rights emerged in the 20th century as "claims addressed to the government, asking it to act positively in order to protect the freedom of minorities, of blacks, of the weak, and of all those who are second-class citizens." Liberal political freedom is tantamount to "the pursuit of rights," for rights "constitute a perpetual social process without end, a way of political life." This makes liberal political culture both a matter of mobilizing democratic electoral majorities built on trust across a diverse coalition of groups, and the ability of minorities to defend themselves effectively in "a judicial court against all those who would like to deprive him of his full citizenship and of his constitutional rights. This freedom is not a passive enjoyment, but a form of permanent action."[68]

Liberal citizenship may be the solution to statelessness but only if it learns to abandon the nostalgia for a communal or religious home. For it is the condition of liberal citizens that they are never fully included, never fully at home, and never fully at ease even in the best of liberal constitutional states. Shklar does not claim that the liberal state rests on an incontrovertible

[66] "The Liberalism of Fear", 19.
[67] *American Citizenship*, 3.
[68] "Positive Liberty, Negative Liberty," in *Redeeming American Political Thought*, ed. Stanley Hoffmann and Dennis F. Thompson, 49-64. Repr. (Chicago and London: The University of Chicago, 1998), 112-113.

standard of rationality, nor that it is neutral with respect to all groups – even liberal rights are interpreted within particular historical contexts that reflect the experiences and prejudices of dominant groups. But liberalism has also empowered minority groups and outsiders, albeit imperfectly and unevenly, to challenge and resist such hegemonic constructions and instigate struggles for recognition and inclusion. And these struggles have not all been failures.

III. Conclusions: Cosmopolitan Liberalism in a Global Age

Shklar's liberalism is admittedly old-fashioned, and she considered herself as a "refugee from the 18th century."[69] Her liberal defense of constitutional institutions as the proper public space for the competitive struggle for inclusion and recognition is admittedly anti-utopian and she holds little hope for a cosmopolitanism without liberal states. Yet, liberal citizenship has always skirted the boundaries of the constitutional state. The tension between its cosmopolitan moral empathies and its constitutionalism is, in Shklar's view, a necessary one for liberalism. She agrees with cosmopolitan critics who view ethnic, nationalist or racist understandings of citizenship as chauvinistic and exclusionary, and she argues that the needs of exiles should be a priority for liberal states. Nonetheless, her cosmopolitanism is primarily negative, defined largely in terms of the exile's experience of "statelessness" rather than on any positive notion of "global citizenship." The liberal constitutional state is a valuable modern achievement, and any solution to the problem of exiles must enlist its institutional, legal and political resources. Her project aims to rescue and repair liberalism both from the abstract rationalism of much of liberal theory (e.g., John Rawls) and from the nationalist, ethnic, and communitarian loyalties that have led states to close borders and impose rigid disciplinary projects of assimilation on newcomers.

[69] (Shklar 1998)

By viewing citizenship through the perspective of exiles, Shklar hoped to reground liberalism on the "existential experience of fear and cruelty"[70] that provoked its earliest adherents.

To be stateless is to exist in pure limbo, for one is deprived on the benefits of full citizenship in a state, including the legal standing to get a hearing in institutions of justice. The modern refugee crisis is only the latest reminder of what it means to be victims of tyrannical or failed states, civil wars, ethnic cleansing and communal violence. Certainly, the Rohingyas have received considerable humanitarian relief from states like Bangladesh as well as the international community, but their condition remains tenuous as a stateless people until they are granted not simply repatriation to their lands in Rakhine, but also the full rights of citizenship in Myanmar or any other state, without which they will remain vulnerable. The emergence of new authoritarian regimes that exploit populist and nationalist resentments, along with the dysfunctionality beset liberal states, certainly does not provide much optimism that the crisis will find an immediate and humane solution.

Shklar's liberalism reminds us that modern cosmopolitanism can neither ignore the contemporary plight of refugees and exiles nor the kinds of states that produce them. It bids us to pay attention to the constitutional limits on state power and the political value of a pluralistic society. And it focuses our attention of the importance of civil and political rights of citizenship as the surest way of promoting human rights. Stuart Hall argues that "all identities are radically insufficient because they require the existence of the other." This suggests "cosmopolitan values" that exceed confinement to particular cultures without implying a substantive cosmopolitan*ism*, that is, some positive notion of a "citizens of the world" who are free to go as they please without boundaries and entanglements. Hall knows that no cosmopolitan perspective

[70] Stanley Hoffman, "Editor's Preface" in *Political Thought and Political Thinkers*, ed. Stanley Hoffmann (Chicago and London: The University of Chicago, 1998), xxii.

can ignore the burdens of the "various boundaries that people actually occupy," even if they are never quite defined by them.[71] Perhaps Shklar's cosmopolitan liberalism, with its focus on the necessity of constitutional boundaries, can also be seen in this light. For the exile is the ever-present reminder that all such boundaries are subject to the political struggles that define and revise the terms of civic inclusion and exclusion.

[71] Stuart Hall, "The Multicultural Question," 11, 13.