

CITIZENSHIP DENATIONALIZED

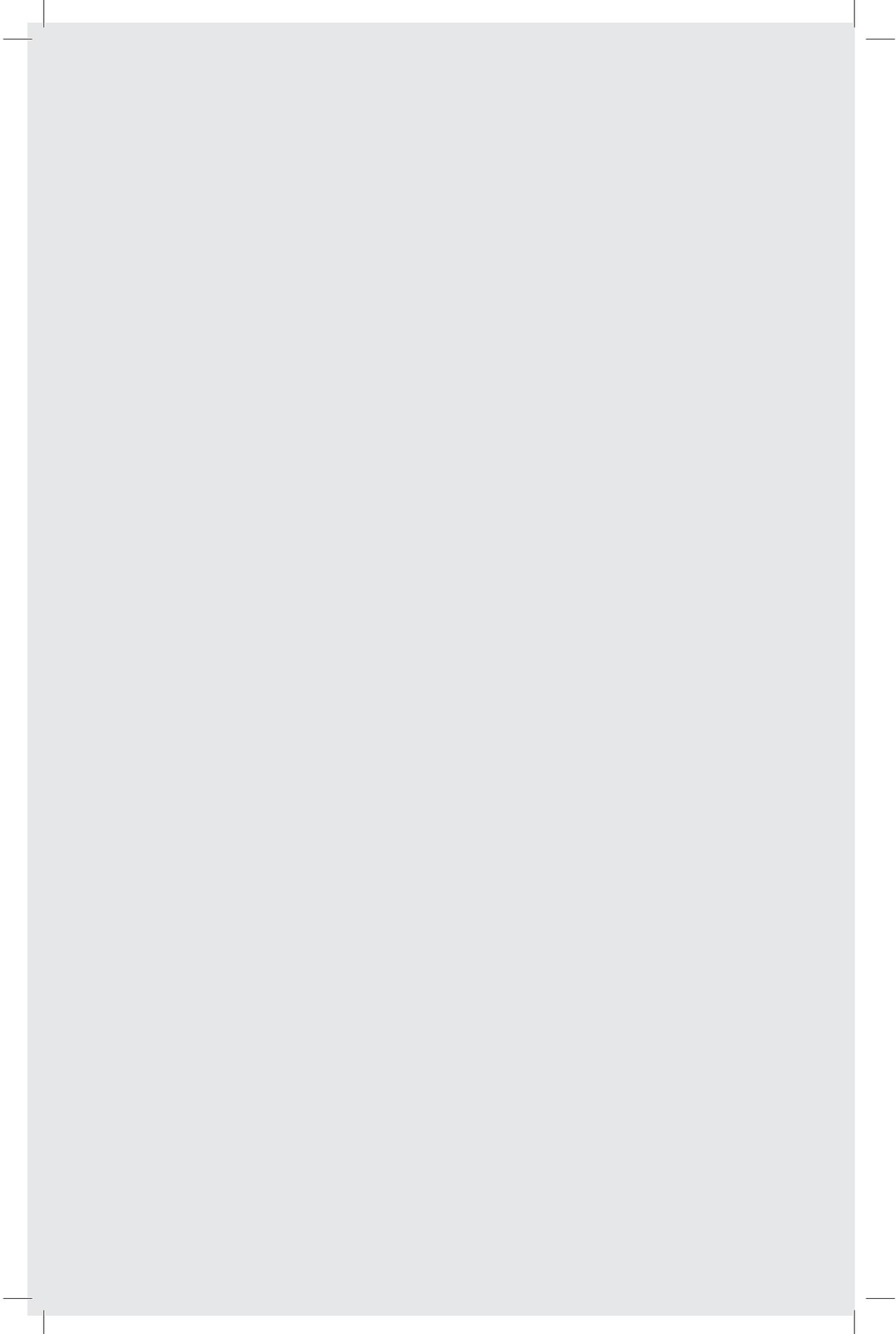
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INTRODUCTION

When Martha Nussbaum declared herself a «citizen of the world» in a recent essay, the response by two dozen prominent intellectuals was overwhelmingly critical.² Nussbaum's respondents had a variety of complaints, but central among them was the charge that the very notion of world citizenship is incoherent. For citizenship requires a formal governing polity, her critics asserted, and clearly no such institution exists at the world level. Short of the establishment of interplanetary relations, a world government is unlikely to take form anytime soon. A good thing too, they added, since such a regime would surely be a tyrannical nightmare.³

² See Martha Nussbaum, *Patriotism and Cosmopolitanism*, *BOSTON REV.*, Oct.-Nov. 1994, reprinted in *FOR LOVE OF COUNTRY: DEBATING THE LIMITS OF PATRIOTISM* (Joshua Cohen ed., 1996) (containing Nussbaum's essay and eleven of the original replies) [hereinafter *FOR LOVE OF COUNTRY*].

³ See, e.g., Amy Gutmann, *Democratic Citizenship*, in *FOR LOVE OF COUNTRY*, *supra* note 1, at 66, 68 («We can truly be citizens of the world only if there is a world polity. Given what we now know, a world polity could only exist in tyrannical form»); Michael Walzer, *Spheres of Affection*, in *FOR LOVE OF COUNTRY*, *supra* note 1, at 125 («I am not a citizen of the world, as she [Nussbaum] would like me to be. I am not even aware that there is a world such that one could be a citizen of it. No one has ever offered me citizenship, or described the naturalization process, or enlisted me in the world's institutional structures, or given me an account of its decision procedures (I hope they are democratic), or provided me with a list of the benefits and obligations of citizenship, or shown me the world's calendar and the common celebrations and commemorations of its citizens»); Gertrude Himmelfarb, *The Illusions of Cosmopolitanism*, in *FOR LOVE OF COUNTRY*, *supra* note 1, at 72, 74 (Nussbaum «speaks of 'the world citizen' and 'world citizenship,' terms that have little meaning except in the context of a state»); but see Amartya Sen, *Humanity and Citizenship*, in *FOR LOVE OF COUNTRY*, *supra* note 1, at 116 (stating «[c]an one be a citizen of the world without there

In declaring herself a «citizen of the world», of course, Nussbaum never meant to claim that she held formal legal status in a world polity, or even wished to do so. The phrase «world citizen» has a long and venerable history, some of which Nussbaum recounted in her essay; the phrase is a shorthand for a cosmopolitan outlook that expresses loyalty and moral commitment to humanity at large, rather than any particular community of persons. Claiming oneself as a «citizen of the world» signals the embrace of some form of moral universalism.

It was, in fact, the feasibility and desirability of such a universalism that was at the heart of the debate between Nussbaum and her interlocutors. Yet the debate over Nussbaum's essay was not confined to cosmopolitanism proper. The exchange was marked, as well, by a concern with the nature of citizenship itself. In their remarks, several commentators addressed the meaning and scope of citizenship, and in their view, Nussbaum had made a fundamental category mistake: she had lost sight of citizenship's inherently national character. As Gertrude Himmelfarb wrote, the term citizenship has «little meaning except in the context of a state».⁴

The assertion that citizenship is necessarily a national enterprise finds much support in conventional understandings, both popular and scholarly.⁵ The view was perhaps most famously articulated in this century by Hannah Arendt, who wrote that a citizen «is *by definition* a citizen among citizens of a country among countries. His rights and duties must be defined and limited, not only by those of his fellow citizens, but also by the boundaries of a territory...».⁶ Like Nussbaum's respondents, Arendt made this statement as part of a broader repudiation of a cosmopolitan ethics. But in the process,

being a world state? There is a legal form of language that excludes this possibility. And yet so many 'mixed' concepts —human rights, libertarian entitlements, just deserts— seem to communicate well enough without being fully tied to the legal sense).

For the classic denunciation of the notion of world citizenship, see HANNAH ARENDT, *MEN IN DARK TIMES* 81-94 (1968). Arendt writes: «A world citizen, living under the tyranny of a world empire, and speaking and thinking in a kind of glorified Esperanto, would be no less a monster than a hermaphrodite». *Id.* at 89.

⁴ Himmelfarb, *supra* note 2, at 74.

⁵ Of course, citizenship has not always been regarded as a project of the modern nation-state; in fact, the concept has its origins in the classical Greek city-state. For a history of the concept of citizenship, see DEREK HEATER, *CITIZENSHIP: THE CIVIC IDEAL IN WORLD HISTORY, POLITICS AND EDUCATION* (1990). See also Michael Walzer, *Citizenship*, in *POLITICAL INNOVATION AND CONCEPTUAL CHANGE* 211, 211-19 (Terrence Ball et al. eds., 1989).

⁶ ARENDT, *supra* note 2, at 81 (emphasis added).

she made an affirmative claim about the nature of citizenship: citizenship, she declared, is an inherently national project.

But is citizenship, in fact, inextricably bound up with the nation-state? Certainly, thinking of citizenship in national terms is part of our political common sense. And if citizenship denotes «membership in a political community», as many commentators assume that it does, there can be little question that the nation-state is the predominant community of political membership in the contemporary world. Arendt's assertion cuts deeper than this, however, for she insists not only as a descriptive matter that citizenship is national in form, but that any conception of citizenship that is not framed by national boundaries is both nonsensical and a terrible mistake.

The question of where citizenship can be said to «take place», and in particular, whether it can, and should, be said to exist beyond the boundaries of the national state, is beginning to surface in the recently revitalized debate over citizenship in political and social theory. In the past few years, a handful of scholars and activists have announced the growing inadequacy of exclusively nation-centered conceptions of citizenship. Citizenship is becoming increasingly denationalized, they have argued, and new forms of citizenship that exceed the nation are developing to replace the old. They have coined phrases for these alternatives: «global citizenship», «transnational citizenship», «postnational citizenship».⁷

These concepts contrast with the liberal cosmopolitan notion of «world citizenship» in that they are not necessarily intended to express universalist ideals. Proponents mean a variety of different things with these formulations but they are usually meant as descriptive terms, intended to capture various cross-border identities, relationships, and allegiances that have been developing during the current period of intensive globalization. They are sometimes deployed as normative concepts as well, intended to elicit visions of possible new forms of community and popular empowerment for the future.

⁷ Most scholars and activists do not use the term «denationalization» itself, but speak instead of the globalization, transnationalization, and postnationalization of citizenship. In this article, I use «denationalization» as a generic, shorthand term for these various other formulations. Note, however, that one scholar has specifically sought to theorize the idea of denationalization, and in so doing distinguishes it from globalization and transnationalization. See SASKIA SASSEN, *LOSING CONTROL? SOVEREIGNTY IN AN AGE OF GLOBALIZATION* 33 (1996) (arguing that «economic globalization has contributed to a denationalizing of national territory»).

Following Arendt and some of Nussbaum's critics, ought we to conclude that these nascent efforts to conceive of citizenship beyond the nation-state are both incoherent and undesirable? I will contend in this article that they are neither in principle—though some formulations are more convincing than others. Rather, it seems to me both sensible and worthwhile in at least some circumstances to talk about citizenship in ways that locate it beyond the boundaries of the nation-state. Doing so does not necessarily mean embracing Nussbaum's universalist stance; neither does it require a complete repudiation of national conceptions of citizenship. It means, rather, an acknowledgment of the increasingly transterritorial quality of political and social life, and the need for such politics where they do not yet exist. It also means a commitment to a vision of citizenship that is multiple and overlapping. Of course, determining whether conceptions of citizenship that locate it beyond the nation-state are coherent and/or worthwhile will depend a great deal on our understandings of citizenship itself. As it happens, the meaning of citizenship has been, and remains, highly contested among scholars. The term has an extraordinarily broad range of uses; it is invoked to characterize modes of participation and governance, rights and duties, identities and commitments, and statuses.⁸ As Judith Shklar has written, «[t] here is no notion more central in politics than citizenship, [yet] none more variable in history, or contested in theory».⁹

Significantly, however, citizenship's appraisive meaning is hardly controversial at all.¹⁰ Virtually everyone in the debates treats citizenship as em-

⁸ To the extent the term is meant to cover such a broad array of social phenomena, it has arguably become less useful analytically. As political theorists Will Kymlicka and Wayne Norman have observed, «almost every problem in political philosophy involves relations among citizens or between citizens and the state». Will Kymlicka & Wayne Norman, *Return of the Citizen: A Survey of Recent Work on Citizenship Theory*, 104 *ETHICS* 352, 353 (1994).

⁹ JUDITH N. SHKLAR, *AMERICAN CITIZENSHIP: THE QUEST FOR INCLUSION I* (1991); see also Etienne Balibar, *Propositions on Citizenship*, 98 *ETHICS* 723 (1988) («[H]istory still shows that this concept has no definition that is fixed for all time. It has always been at stake in struggles and the object of transformations»). This confusion is not merely a contemporary one. «The nature of citizenship... is a question which is often disputed; there is no general agreement on a single definition». See ARISTOTLE, *POLITICS* 93 (E. Barker ed., 1946).

¹⁰ Quentin Skinner usefully argues that the meaning of an evaluative political or moral term has three different aspects. The first concerns the word's «sense». Here the question is «the nature and range of the criteria in virtue of which the word or expression is standardly employed». Quentin Skinner, *Language and Political Change*, in *POLITICAL INNOVATION AND*

bodying the highest normative value.¹¹ The term rings unmistakably with the promise of personal engagement, community well-being, and democratic fulfillment.¹² It is, in fact, precisely because we all agree on citizenship's immense value that the term's denotative meaning is often so contested.

The struggle over the concept of citizenship beyond the nation-state is, therefore, ultimately a struggle over the meaning of citizenship *tout court*.¹³ This struggle is important because citizenship is a core concept in our political and moral vocabulary. And such concepts, we now know, are

CONCEPTUAL CHANGE *supra* note 4, at 6, 9. The second aspect concerns the term's «range of reference». At issue is «the nature of the circumstances in which the word can be properly used to designate particular actions or states of affairs [or]... the criteria for applying the word correctly». *Id.* at 10. Finally, there is the word's evaluative effect. The question here is «what exact range of attitudes the term can standardly be used to express», or «what range of speech acts the word can be used to perform». *Id.* at 11.

With regard to the term «citizenship», there is no dispute by anyone as to its favorable appraisive effect. The debates over citizenship instead concern the term's sense and its reference. With respect to claims on behalf of trans/postnational citizenship, the debate is largely over reference —over «whether a given set of circumstances— what a lawyer would call the facts of the case—are such as to yield the agreed criteria for the application of the given appraisive term». *Id.* at 10. For a further discussion, see *infra* notes 181-86 and accompanying text.

¹¹ I should note that citizenship is used as both a descriptive and normative term, and it is not always clear in any given context which meaning is intended. However, as I point out in note 9 *supra*, there is never any confusion as to the normative message the word should be understood to convey. Citizenship is a term that communicates the highest political value; it is a «hurrah word», in the language of linguistic philosophers.

¹² I make this point in an earlier article. See Linda Bosniak, *The Citizenship of Aliens*, 56 SOCIAL TEXT 29 (1998). See also Nancy Fraser & Linda Gordon, *Civil Citizenship Against Social Citizenship? On the Ideology of Contract-Versus-Charity*, in THE CONDITION OF CITIZENSHIP 90 (Bart VanSteenbergen ed., 1994) (describing «citizenship» as «a weighty, monumental, humanist word», which has «no pejorative uses»).

¹³ Citizenship is a classic example of what William Connolly describes as an «essentially contested concept». Connolly writes:

When [a concept] is *appraisive* in that the state of affairs it describes is a valued achievement, when the practice described is *internally complex* in that its characterization involves reference to several dimensions, and when the agreed and contested rules of application are relatively *open*, enabling parties to interpret even those shared rules differently as new and unforeseen situations arise, then the concept in question is an «essentially contested concept». Such concepts «essentially involve endless disputes about their proper uses on the part of their users.

WILLIAM E. CONNOLLY, THE TERMS OF POLITICAL DISCOURSE 10 (1993) (quoting W.B. Gallie, *Essentially Contested Concepts*, in PROCEEDINGS OF THE ARISTOTELIAN SOCIETY 1955-56 (emphasis in original)).

not merely descriptions of the social world; they are an integral part of its fabric. They help to construct the world; as one group of political theorists has recently written, «the political landscape is partially constituted by [the language] which locates and marks its main features».¹⁴ There is a great deal at stake, therefore, in the way we use the term citizenship. The apparently oxymoronic notions of transnational or postnational or global citizenship challenge conventional presumptions that the nation-state is the sole actual and legitimate site of citizenship. The effort by proponents of these concepts to resituate citizenship thus represents a kind of «political innovation».¹⁵ And citizenship's future will be shaped, in part, by the debates generated by their efforts.

In this article, I examine and assess recent efforts in political and social thought to locate citizenship beyond the nation-state. I first approach the «postnational citizenship» claim as an empirical claim, and address the question whether citizenship has, in fact, begun to be reconfigured in postnational terms.¹⁶ I contend that there is no single answer because there

¹⁴ TERRENCE BALL ET AL., *Editor's Introduction*, in POLITICAL INNOVATION AND CONCEPTUAL CHANGE, *supra* note 4, at 2. See also James Farr, *Understanding Conceptual Change Politically*, in POLITICAL INNOVATION AND CONCEPTUAL CHANGE, *supra* note 4, at 28-29. («[P]olitical concepts partly constitute the beliefs which inform action and practice»). Thus, «the study of political concepts... becomes an essential not incidental task of the study of politics»). See also HANNAH PITKIN, *WITTGENSTEIN AND JUSTICE* 115 (1972) (describing Wittgenstein's conception of the «interdependence of words and the world»); CONNOLLY, *supra* note 12, at 1, 3 («The language of politics is not a neutral medium that conveys ideas independently formed; it is an institutionalized structure of meanings that channels political thought and action in certain directions... [T]he discourse of politics helps to set the terms within which that politics proceeds»); MURRAY EDELMAN, *CONSTRUCTING THE POLITICAL SPECTACLE* 103 (1988) («The most incisive twentieth-century students of language converge from different premises on the conclusion that language is the key creator of the social worlds people experience, not a tool for describing an objective reality»).

¹⁵ Farr, *Understanding Conceptual Change Politically*, *supra* note 13, at 29. In Skinner's terms, they are arguing that citizenship aptly describes «situations which have not hitherto been described in such terms». Skinner, *supra* note 9, at 15. In this respect, they are not so much urging that citizenship be understood differently (that the criteria for applying the term be revised); rather, their claim is that «the ordinary criteria for applying... [the] term are present in a wider range of circumstances than has commonly been allowed...». *Id.*

¹⁶ I borrow the «reconfiguration» term from Soysal. See Yasemin Nohuglu Soysal, *Changing Parameters of Citizenship and Claims-Making: Organized Islam in European Public Spheres*, in 26 *THEORY AND SOCIETY* 509, 513 (1997) [hereinafter Soysal, *Changing Parameters*]. See also YASEMIN NOHOGLU SOYSAL, *LIMITS OF CITIZENSHIP: MIGRANTS AND POST-NATIONAL MEMBERSHIP IN EUROPE* 137 (1994) [hereinafter SOYSAL, *LIMITS OF CITIZENSHIP*].

is no single conception of «citizenship». Instead, the question can be approached only in relation to the various understandings we maintain of the concept of citizenship more generally. Depending on whether we are addressing citizenship as a legal status, as a system of rights, as a form of political activity, or as a form of identity and solidarity, the answer varies substantially. I thus examine the claim of denationalization within each of these usages, and conclude that within each, citizenship can fairly be said to exceed the bounds of the nation to some degree, though the process of denationalization has occurred more extensively and meaningfully in some domains than in others.

I next contend that, notwithstanding the empirical style of most exponents of citizenship's denationalization, the postnational citizenship claim cannot be read merely in descriptive terms. It must, instead, be regarded at least as much as a normative claim about citizenship's future shape and direction as a characterization of the current state of the world. For the concept of citizenship is not merely a label but also a signal: to describe a set of social practices in the language of citizenship serves to legitimize them and grant them recognition as politically consequential, while to refuse them the designation is to deny them that recognition.

I therefore address the denationalization claim as an aspirational claim, a claim of desire rather than fact. And I suggest that to assess this claim, we need to examine the question of whether citizenship's denationalization ought, indeed, to be fostered and celebrated. I focus my discussion on that dimension of citizenship concerned with identity and solidarity, in particular, because it is here that the normative question of citizenship's location has been systematically addressed in political and social thought.

Most such discussions presume that citizenship is appropriately (and necessarily) an enterprise located within the bounds of the modern nation-state, and treat any alternative conception as requiring special justification. I read the postnational citizenship claim as a critical trope that usefully enables us to challenge that presumption, and to invert the burden of justification, so that normative nationalism may itself be interrogated. I also suggest that there are important reasons of justice and democracy to support nonnational conceptions of identity and solidarity—although I recognize as well that many difficult questions remain about how, precisely, denationalized citizenships will be effectuated in practical terms.

I. DENATIONALIZATION IN FACT

The subject of citizenship has produced an extraordinary outpouring of scholarly commentary over the past several years. The great majority of this work has addressed two sorts of questions. The first concerns what we might call citizenship's substance; analysts ask what, precisely, citizenship should be understood to entail for its holders. The second concerns citizenship's subjects; at issue is who should be entitled to enjoy citizenship in the first instance.¹⁷

There is, however, another fundamental question concerning citizenship that is almost never addressed in any detail in this literature: this is the question of citizenship's location—the question of where citizenship should be understood to take place. The question has been ignored because the answer is usually regarded as self-evident and unproblematic; citizenship is understood to be a national undertaking by definition, and the site of citizenship is therefore presumed to be that of the political community of the nation-state.¹⁸

Recently, however, questions involving citizenship's location have captured the attention of a small but growing number of commentators. Among them, many are challenging the presumptive nationalism that frames most approaches to citizenship. Citizenship has begun to exceed the boundaries of the nation-state, they argue, and is increasingly taking nonnational forms. Whether described as «transnational», «postnational», or «global», the new forms of citizenship are understood to be denationalized in some way. As sociologist Yasemin Soysal has written, citizenship is «no longer unequivocally anchored in national political collectivities».¹⁹

But what, exactly, is the basis of this denationalization claim? And what do these new, denationalized forms of citizenship look like? This is not always easy to discern from the literature. No one has elaborated a systematic theory of post/transnational/global citizenship, and the concepts are more often than not deployed casually. Furthermore, a review of their uses

¹⁷ Ronald Beiner similarly distinguishes between «what» and «who» questions associated with citizenship. See RONALD BEINER, *WHAT'S THE MATTER WITH LIBERALISM?* 114 (1992).

¹⁸ «Most scholars who have studied citizenship... would —notwithstanding their difference in choice of conceptual or historical approach— agree that to talk about citizenship always involves a notion of stateness». See ANTJE WIENER, 'EUROPEAN' CITIZENSHIP PRACTICE: BUILDING INSTITUTIONS OF A NON-STATE 27 (1998).

¹⁹ Soysal, *Changing Parameters*, *supra* note 15, at 512.

makes clear that they are intended to designate an extraordinarily broad and diverse range of social and political phenomena—a fact which limits their usefulness analytically.

The definitional problem does not lie entirely with the claim of denationalization, however. Much of the confusion one might reasonably feel over claims regarding the denationalization of citizenship derives from the chronic uncertainty of meaning associated with the concept of citizenship itself. For, despite citizenship's intellectual currency, there is often little agreement among scholars over precisely how to understand the term. Most analysts concur in defining citizenship as membership of a political community,²⁰ or of a «common society».²¹ Yet these definitions are subject to numerous and often conflicting interpretations. For some analysts, citizenship denotes a formal legal relationship between individual and polity; for others, it signifies active engagement in the life of the community. For some, it is largely a matter of individual justice, while for others still, it implicates pressing questions of collective identity.

In an effort to bring order to what is otherwise a very chaotic field, several analysts have proposed organizing schema to help make sense of the citizenship debates. Their formulations vary, but many of them attempt to distinguish, broadly, between several distinct understandings of citizenship: one concerned with citizenship as legal status; another, with citizenship as rights; a third, with citizenship as political activity; and the last, with citizenship as a form of collective identity and sentiment.²² For some com-

²⁰ See, e.g., Walzer, *Citizenship*, *supra* note 4, at 211.

²¹ David Held, *Between State and Civil Society: Citizenship*, in *CITIZENSHIP* 19-20 (Geoff Andrews ed., 1991) (Citizenship entails «membership, membership of the community in which one lives one's life»). see also J.M. BARBALET, *CITIZENSHIP* I (1988). Definitions of this kind—those not specifically linking the concept to a *political* community—tend to appear in the sociological literature on citizenship. See e.g., Bryan S. Turner, *Postmodern Culture/Modern Citizens*, in *THE CONDITION OF CITIZENSHIP*, *supra* note 11, at 153, 159 (defining citizenship as «a set of practices which constitute individuals as competent members of a community»). For further discussion about the question of whether citizenship's community must be political in nature, see text accompanying notes 172-78, *infra*.

²² See generally Kymlicka & Norman, *supra* note 7 (distinguishing among three approaches to citizenship, which they call «citizenship-as-rights», «citizenship-as-activity», and «citizenship-as-identity», and contrasting all of these with «immigration and naturalization policy», by which they seem to mean citizenship as legal status, and which they choose not to address); see also Joseph H. Carens, *Dimensions of Citizenship and National Identity In Canada*, 28 *PHIL. F.* 111-12 (1996-97) (distinguishing among the legal, psychological,

mentators, these different understandings reflect distinct «dimensions» of a larger phenomenon.²³ For others, the categories seem to refer to often incommensurable discourses.²⁴ In either case, the ordering has been analytically useful.

As I see it, recognizing that citizenship talk implicates several distinct discourses —incommensurable or otherwise— is indispensable in any effort to make sense of recent claims by scholars and activists to the effect that citizenship is becoming denationalized. In what follows, therefore, I will argue that the denationalization claim is not one claim but many, each of which relates to a different strand of our citizenship-related discourse. I will further suggest that the meaning and plausibility of the denationalization claim varies substantially depending on the discourse, or dimension, of citizenship at issue.

A. *Citizenship as Legal Status*

In one of its aspects, citizenship is a matter of legal recognition. To be a citizen is to «possess the legal status of a citizen».²⁵ In this usage, citizenship refers to formal or nominal membership in an organized political community.

In recent years, there has been a great deal of debate in both the scholarly and policy arenas about this dimension of citizenship. In this country, and in many others, much of the controversy has concerned the question of precisely who is entitled to acquire and maintain citizenship status. U.S. analysts have debated, among other things, the constitutional and moral propriety of birthright citizenship and the proper criteria for according naturalization, including the legitimacy of requiring an oath of allegiance and proof

and political dimensions of citizenship); HEATER, *supra* note 4 (distinguishing among «the feeling of citizenship», «political citizenship» and «the status of citizenship»). For other efforts toward conceptual organization, see Friedrich Kratochwil, *Citizenship: On the Border of Order*, 19 *ALTERNATIVES* 485 (1994) (distinguishing between citizenship as status and citizenship as belonging); Ursula Vogel & Michael Moran, *Introduction*, in *THE FRONTIERS OF CITIZENSHIP* x, xii (Ursula Vogel & Michael Moran eds., 1991) (examining what they call the «territorial, temporal, social, political and behavioral frontiers of citizenship»).

²³ E.g., Carens, *supra* note 21. See also Pamela Johnston Conover, *Citizen Identities and Conceptions of the Self*, 3 *J. POL. PHIL.* 133, 134 (1995) (Citizenship «encompasses a variety of elements, some legal, some psychological, and some behavioral»).

²⁴ E.g., Kymlicka & Norman, *supra* note 7.

²⁵ Carens, *supra* note 21, at 172.

of basic acculturation by applicants. More recently, commentators have sparred over the question of whether citizenship ought to be an exclusive status, or whether the growing incidence of dual (and sometimes multiple) citizenships should be tolerated and even embraced. Analysts have spilled much ink, as well, over questions regarding the significance and legitimacy of the line dividing citizens from aliens, including the legitimacy of denying rights and benefits to aliens. The positions taken by scholars in these and related debates have been shaped by a wide range of conflicting views on fundamental questions of theory and policy. The controversies can perhaps best be characterized as dividing those who would accord more value to citizenship status from those who would accord it less.²⁶ Despite the differences among participants in these debates, however, nearly everyone involved shares one vital premise: that the locus, or site, of citizenship status is the territorially-bounded nationstate. The bond of membership and allegiance that citizenship status represents is understood to be established with, or in relation to, the national political community.

In general terms, treating citizenship as a status exclusively tied to the nation-state is a reasonable premise. As a practical matter, citizenship is almost always conferred by the nation-state, and as a matter of international law, it is nation-state citizenship that is recognized and honored. It is true that people throughout much of the world enjoy formal legal memberships in subnational entities, including provinces, states, and municipalities. But these memberships are often subordinated to the demands of national citizenship as a matter of domestic law,²⁷ and are almost always regarded as subsidiary in the international arena.

Some commentators have pointed to three recent developments, however, which in their view signal an increasing denationalization of citizenship status in the current period. The first and most obvious is the case of the European Union (EU), where efforts have been underway to construct a

²⁶ For a recent volume of essays reflecting a range of positions on this question, see *IMMIGRATION AND CITIZENSHIP IN THE TWENTY-FIRST CENTURY* (Noah M.J. Pickus ed., 1998).

²⁷ In the United States, for example, the Fourteenth Amendment of the U.S. Constitution treats national citizenship as legally and politically paramount, and relegates state citizenship (once regarded as a significant form of membership distinct from membership at the national level) to «a mere incident of residence». See Christopher Eisgruber, *Justice and the Text: Rethinking the Constitutional Relation Between Principle and Prudence*, 43 *DUKE L.J.* 1, 40 (1993). In international law, subnational entities are generally not regarded as legitimate sites of citizenship.

regionally framed supranational citizenship—a European citizenship.²⁸ This development no doubt importantly challenges the conventional correspondence that we ordinarily assume exists between citizenship and national membership, and alerts us to possibilities for nonnation-centered arrangements. A few commentators have seen more dramatic import, however, contending that in light of developments in the EU, the assumption of the territorial nation-state as the «unquestioned terrain of membership has today disintegrated», resulting in a «crisis of citizenship».²⁹ By «breach[ing] the link between status attached to citizenship and national territory», another suggests, EU citizenship portends «postnational» forms of citizenship the world over.³⁰

These characterizations strike me as something of an overstatement. Certainly, citizenship is being dramatically reconstituted in Europe.³¹ For EU citizens, Europe's internal borders have been effectively removed with the guarantee of the right to free movement;³² and EU citizens enjoy economic rights and

²⁸ See TREATY ON EUROPEAN UNION, Feb. 7, 1992, art. 2, reprinted in EUROPEAN UNION, CONSOLIDATED VERSIONS OF THE TREATY ON EUROPEAN UNION AND THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY 12 (1997) (stating an objective of the Union is «to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union») [hereinafter TEU TREATY];

1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union.

2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.

Id.

According to Soysal, «'European citizenship' clearly embodies postnational membership in its most elaborate legal form». SOYSAL, LIMITS OF CITIZENSHIP, *supra* note 15, at 148.

²⁹ Vogel & Moran, *supra* note 21, at xii.

³⁰ SOYSAL, LIMITS OF CITIZENSHIP, *supra* note 15, at 147. See also Miriam Feldblum, «Citizenship Matters»: *Contemporary Trends In Europe and the United States*, 5 STAN. HUMAN. REV. 97, 107 (1997) (arguing that EU citizenship «can be considered not simply as complementing national membership but displacing national citizenship») [hereinafter Feldblum, *Citizenship Matters*]. But see Miriam Feldblum, *Reconfiguring Citizenship in Western Europe*, in CHALLENGE TO THE NATION-STATE: IMMIGRATION IN WESTERN EUROPE AND THE UNITED STATES 231, 240 (Christian Joppke ed., 1998) (arguing that the postnationalization of citizenship in Europe has occurred in tandem with restrictive, «neo-natal» developments in the citizenship policy and practice of the various European states).

³¹ Many observers and participants in the process characterize Union citizenship as in process or «evolving». See STEPHEN HALL, NATIONALITY, MIGRATION RIGHTS AND CITIZENSHIP OF THE UNION 10 (1995); WIENER, *supra* note 17.

³² «Every citizen of the Union shall have the right to move and reside freely within the territory of Member States». TEU TREATY art. 18.

some political rights at a supranational level.³³ On the other hand, EU citizenship remains subordinate to European national citizenships in important respects.³⁴ First, the Treaty on European Union specifically defines EU citizens as those persons «holding the nationality of a Member State»;³⁵ and it is national law that ordinarily determines who will be deemed EU citizens.³⁶ Furthermore, the entity in which this new citizenship is based is still controlled in important ways by the individual states that comprise it; as one commentator put it, «the

³³ For a general discussion, see Hans Ulfich Jessurun d'Olivera, *Union Citizenship: Pie In The Sky?*, in *A CITIZEN'S EUROPE: IN SEARCH OF A NEW WORLD ORDER* 58 (Allan Rosas & Esko Antola eds., 1995).

³⁴ Hans d'Olivera concludes, for this reason, that European citizenship is «nearly exclusively a symbolic plaything without substantive content, and in the Maastricht Treaty very little is added to the existing status of nationals of Member States». *Id.* at 82-83.

³⁵ «Every person holding the nationality of a Member State shall be a citizen of the Union». TEU TREATY art. 17.

³⁶ Under international law, states are ordinarily regarded as having sovereign authority to determine who will be accorded citizenship or nationality. *See, e.g.*, Nottebohm Case (Liech. v. Guat). (second phase), 1955 I.C.J. 4, 20 (Apr. 6) («It is for Liechtenstein, as it is for every sovereign State, to settle by its own legislation the rules relating to the acquisition of its nationality, and to confer that nationality by naturalization granted by its own organs in accordance with that legislation»).

However, some commentators have contended that Community law may place some constraints on this authority. As Stephen Hall writes:

The power of States to make dispositions of nationality is an expression of their sovereignty in international law. Membership of the Community, however, involves the transfer of part of their sovereignty to the Community. To the extent that the exercise of State power to make dispositions of nationality impacts upon the rights and obligations arising under Community law, there is reason to believe that in principle State sovereignty in this area is subject to limits.

HALL, *supra* note 30, at 43. Hall argues that since European human rights law is considered to be «among the Community's general principles of law», (he refers to art. F(2) of the Treaty on European Union (1992)), any denial of nationality that violated human rights principles (*e.g.*, on the basis, for example, of racial, ethnic, religious, or political grounds) would violate Community law and, hence, would represent invalid national decision-making. *Id.* at 87-88. The dominant view, however, is that member states retain their authority to control nationality under most circumstances. *See, e.g.*, d'Olivera, *supra* note 32, at 61-62 («As long as the Community consists of independent and sovereign Member States, the competence to define their nationals belongs to each state»). Note that the question as to who is and is not a national of a Member State matters a great deal because Union citizenship (for which Member State nationality is a prerequisite) is exceedingly valuable. Member states are home to millions of people who are not regarded as nationals, and who are thus excluded from the benefits of Union citizenship. For a discussion critical of the status of third country nationals under the EU, see, *e.g.*, WEINER, *supra* note 17, at 290-92.

real *locus* of political power in the Community remains, as it has since the Community's foundations, with the governments of the Member States».³⁷

Finally, it must also be recalled that the case of the European Union is not, as yet, generalizable. Formal citizenship is currently nonexistent in any other supranational body (including at the world level), and its establishment elsewhere is unlikely any time soon. In this respect, while European citizenship represents a real departure from the national model, the departure is limited in both kind and effect.

Somewhat less persuasive are two additional claims made on behalf of the denationalization of citizenship status. One of these, advanced by Soysal, holds that the enjoyment by long-term resident aliens of substantial membership rights in many liberal democratic states signals the postnationalization of citizenship.³⁸ The extension of rights to aliens entails citizenship's postnationalization, Soysal maintains, because the source of many of these rights lies in the international human rights regime, which accords recognition to individuals on the basis of their personhood rather than their national affiliation. As she sees it, the imperatives of national belonging are subordinated to the norms of transnational membership—norms which themselves afford an alternative, denationalized kind of citizenship.³⁹

³⁷ HALL, *supra* note 30, at 11. Hall writes that the Union «remains primarily a Union of nation States, a confederation rather than a federation. In such a Union, the citizens are likely to continue seeing their own national government as the important object of political attention». *Id.* at 12.

If and when a federal European Union arrives and a federal citizenship accompanies it, then it will be possible to think of Union citizenship less in terms of its symbolism, and more in terms of its *rôle* in securing and being secured by a European democracy. That day, if it comes at all, is still some way off.

Id. at 13. See also Percy B. Lehning, *European Citizenship: Between Facts and Norms*, in CONSTITUTIONS 346, 353 (Andrew Arato & Nancy Fraser eds., 1998) (stating that «the potential contribution of the Maastricht Treaty provisions to the further development of European citizenship should not be overestimated. In general, it changed very little. National control in the area remains strong. This form of citizenship hardly represents an extension of EU powers and an erosion of national sovereignty»).

³⁸ SOYSAL, LIMITS OF CITIZENSHIP, *supra* note 15, at 2-4. In an earlier articulation of her position, Soysal contrasted national citizenship with postnational *membership*, thereby associating citizenship with nation-states exclusively. *Id.* at 139-43. In her more recent work, she designates this postnational membership as a form of «citizenship»—*postnational* citizenship, as she calls it. Soysal, *Changing Parameters*, *supra* note 15, at 513.

³⁹ As Soysal puts it, we are experiencing a «shift in the major organizing principle of membership in contemporary politics: the logic of personhood supersedes the logic of

Soysal is not the first to point out that aliens enjoy important rights traditionally associated with citizenship in many host societies.⁴⁰ Her innovation is to argue that the source of these rights resides in the international human rights regime. One problem with this claim, however, is that it has limited empirical application. However accurate Soysal's portrait is of the status of aliens in Europe,⁴¹ her model fails to capture the dynamic of alien status in many countries —among them, the United States— where the oft-substantial membership rights that aliens enjoy are not grounded in the international human rights regime at all, but in the national system itself.⁴² In the United States, the tension between personhood and citizenship as the national citizenship... And it is within this universalized scheme of rights that nonnationals participate in a national polity, advance claims, and achieve rights in a state not their own». SOYSAL, *LIMITS OF CITIZENSHIP*, *supra* note 15, at 164.

⁴⁰ For a detailed analysis of this phenomenon, see William Rogers Brubaker, *Introduction*, in *IMMIGRATION and the POLITICS OF CITIZENSHIP IN EUROPE AND NORTH AMERICA* (William Rogers Brubaker ed., 1989).

⁴¹ Some reviewers question Soysal's characterization of the legal situation of many noncitizens in Europe as well. See Helen M. Hintjens, Book Review, 71 *INT'L AFF.* 887-88 (1995) (reviewing SOYSAL, *LIMITS OF CITIZENSHIP*, *supra* note 15). By now it should have become clear that noncitizens from outside the EU, far from having virtually all the rights of nationals, are being progressively excluded from welfare benefits, and are being made to feel less and less welcome in this 'postnational' west European enclosure. I think that this research has mistaken the last dying embers of 1960 and 1970s formal statutory incorporation regimes in western Europe for the glimmerings of a new era.

Id. See also, Aristide R. Zolberg, Book Review, 24 *INTERNATIONAL MIGRATION REVIEW* 326, 327- 28 (1995) (reviewing SOYSAL, *LIMITS OF CITIZENSHIP*, *supra* note 15) (Soysal's analysis fails to «reflect the social inequalities that may exist between citizens and immigrants in most immigration societies—inequalities that are anchored in the discriminatory practices of institutions in such realms as housing, schools, and labor markets as well as in the attitudes of many citizens toward foreigners in their midst»); Marco Martiniello, *Citizenship, Ethnicity and Multiculturalism: Postnational Membership Between Utopia and Reality*, 20 *ETHNIC AND RACIAL STUDIES* 635, 640 (1997) (reviewing, among other books, SOYSAL, *LIMITS OF CITIZENSHIP*, *supra* note 15) (arguing that in Soysal's book, «the distinction between the theoretical possession of citizenship rights and their actual exercise... is insufficiently discussed. Yet discrimination often suffered by migrants often fills this gap and qualifies the notion of postnational membership»).

⁴² I thus disagree with Soysal when she writes that the arguments she develops «are not exclusive to Europe. As the transnational norms and discourse of human rights permeate the boundaries of nation-states, the postnational model is activated and approximated worldwide». SOYSAL, *LIMITS OF CITIZENSHIP*, *supra* note 15, at 156. For another critique, see T. Alexander Aleinikoff, *Between Principles and Politics: The Direction of U.S. Citizenship Policy*, in 8 *INTERNATIONAL MIGRATION POLICY PROGRAM* 50 n.88 (1998) («[H]owever persua-

basis for rights is, in fact, a chronic national preoccupation;⁴³ and the commitment to personhood over citizenship is often experienced and expressed in the most nationalist of terms. It is the United States Constitution that is invariably invoked to ground the protections aliens have enjoyed here.

There is another more conceptual problem with Soysal's argument as well. The difficulty is that she analytically conflates distinct senses of citizenship in a way that makes for confusion. One may reasonably argue, as she does, that the increasing guarantee of human rights at the level of international law signals that citizenship is becoming denationalized. Here, «citizenship» is treated as a state of enjoying basic rights; it is becoming denationalized, in this argument, in that the enjoyment of rights no longer depends so fundamentally on nationally-based norms. I discuss this claim in the following section.

Notice, however, that this is an argument about citizenship *qua* rights generally; the claim concerns the disarticulation of rights norms from nationstates for *everyone*. It is not a claim about aliens in particular. Aliens *can*, I believe, be argued to enjoy a modicum of «citizenship» by virtue of the various social and economic rights they have been afforded in national and international law—however paradoxical this may sound.⁴⁴ Yet, the fact that aliens enjoy these rights does not mean that their formal or nominal legal status *vis-à-vis* the political community in which they reside has

sive one might find Yasemin Soysal's account of a «postnational» membership in Europe, it does not seem an apt description of the U.S. system»).

Note also that one commentator suggests that in Europe itself, «the arguments and discourse about human rights need not originate outside the state. In European states, national courts have played important roles in striking down government actions to restrict rights and benefits as violating human rights of these people, regardless of their citizenship status». Feldblum, *Citizenship Matters*, *supra* note 29, at 105.

⁴³ I explore this tension, in two earlier articles: Linda Bosniak, *Membership, Equality and the Difference That Alienage Makes*, 69 N.Y.U. L. REV. 1047 (1994); Linda Bosniak, *Exclusion and Membership: The Dual Identity of the Undocumented Worker Under United States Law*, 1988 WIS. L. REV. 955 (1988).

⁴⁴ In my view, aliens' paradoxical relationship to citizenship in its various dimensions is an important and intriguing subject. I have addressed this issue specifically in Linda Bosniak, *Universal Citizenship and the Problem of Alienage*, 94 Nw. U. L. REV. (forthcoming 2000) (on file with author) [hereinafter Bosniak, *Universal Citizenship*] and Bosniak, *The Citizenship of Aliens*, *supra* note 11. See also RAINER BAUBOCK, *TRANSNATIONAL CITIZENSHIP* 185 (Edward Elgar Publishing, 1994) («Foreigners who are regarded as only transient members of society are not fully excluded from the citizenry either. They even enjoy a number of active rights denied to minor citizens...»).

changed. When citizenship is understood as formal legal membership in the polity, aliens remain outsiders to citizenship: they reside in the host country only at the country's discretion; there are often restrictions imposed on their travel; they are denied the right to participate politically at the national level; and they are often precluded from naturalizing. Furthermore, they symbolically remain outsiders to membership in the polity.⁴⁵

Consequently, Soysal's claim that in contemporary polities, «the logic of personhood supersedes the logic of national citizenship»⁴⁶ by virtue of the internationally guaranteed human rights accorded to aliens is not terribly convincing. To the extent that aliens enjoy important social, economic, and political rights in a society, citizenship will function less as «an instrument of social closure», in Rogers Brubaker's terms, than it may have once done.⁴⁷ But it remains an «object of social closure, a status to which access is restricted».⁴⁸ And as an object of social closure, citizenship remains a fundamentally national enterprise.

As a third signal of citizenship's increasing denationalization, some commentators have pointed to the growing incidence around the world of dual, and sometimes multiple, citizenships.⁴⁹ Today, more people than ever hold citizenship in more than one nation—the result, in part, of the recent liberalization of different national rules on naturalization, expatriation, and assignment of citizenship at birth, which together make multiple citizenships possible and often routine.⁵⁰ Without question, this is a significant development in the history of citizenship; it is significant because historically—and ideally—citizenship has been regarded as an exclusive status,

⁴⁵ Soysal herself acknowledges this at points in the book. See, e.g., SOYSAL, *LIMITS OF CITIZENSHIP*, *supra* note 15, at 120-22 (discussing entry and residence). «Obviously, all this is not to suggest that the formal categories of alien and citizen have withered away or that their symbolic intensity has eroded». *Id.* at 166-67.

⁴⁶ *Id.* at 164.

⁴⁷ ROGERS BRUBAKER, *CITIZENSHIP AND NATIONHOOD IN FRANCE AND GERMANY* 31 (1992).

⁴⁸ *Id.*

⁴⁹ See Soysal, *Changing Parameters*, *supra* note 15, at 512 («[D]ual citizenship, which violates the traditional notions of loyalty to a single state» is one indicia of the emergence of «postnational» «forms of citizenship»); see also Peter J. Spiro, *Dual Nationality and the Meaning of Citizenship*, 46 *EMORY L.J.* 1411, 1478 (1997).

⁵⁰ See Spiro, *supra* note 48, for a recent treatment of dual nationality which usefully and comprehensively analyzes its history, causes and ramifications. See also Peter Schuck, *Plural Citizenships*, in *IMMIGRATION AND CITIZENSHIP IN THE TWENTY-FIRST CENTURY*, *supra* note 25, at 149.

one the individual maintains with a single nation-state. Yet multiple citizenships can hardly be said to represent a «postnational» form of citizenship or membership, as some commentators have suggested.⁵¹ For while it is true that multiple citizenships do entail divided commitments and identities on the part of those who hold them, these commitments and identities remain firmly bound to nation-state entities. In this respect, the «multinationalization» of citizenship would provide a better characterization.⁵²

All told, citizenship-as-legal-status remains a largely national enterprise, with the EU providing an important but limited exception. That is not to deny the fact that the status of citizenship has been affected in various ways by processes of globalization—both the consolidation of the EU and the worldwide increase in multiple citizenships show otherwise. But many of the transformations in the nature of citizenship status that commentators have pointed to have less to do with denationalization than with the demystification of an ideal. As Brubaker argues, the traditional ideal of citizenship status presumes that citizenship will be, among other things, both unique and socially consequential.⁵³ The widespread increase in dual citizenship and the extension of important membership rights to aliens are among those factors that show the ideal to be «significantly out of phase with contempo-

⁵¹ Soysal, *Changing Parameters*, *supra* note 15, at 512; Feldblum, *Citizenship Matters*, *supra* note 29, at 104 («Dual nationality breaks with the logic and aims of prior national citizenship strategies; the parameters, conflicts, referents, and political agents are no longer simply congruent with the single state»).

⁵² According to Peter Spiro, the divided commitments and identities entailed in the increase in multiple citizenships may imply «that national citizenship as an institution is less important than it once was». Spiro, *supra* note 48, at 1478. His argument is that there is little difference between the individual who is linked by affective or political ties to her country of origin after acquiring citizenship in the United States, and the U.S. citizen who is similarly linked to transnational organizations such as the Catholic Church or Amnesty International; in either case, the person's allegiances are divided, and nation-states are only one of many possible sites of identity and commitment. I agree with this assessment; see sections I C and D, *infra*. But arguing that national citizenship is declining in importance in a «postnational world», is not the same thing as claiming that citizenship itself is becoming postnational. There is a suggestion of this claim in Spiro's article, but it is not elaborated. See Peter J. Spiro, *The Citizenship Dilemma*, 51 *STAN. L. REV.* 597, 617 (1999) (positing nonnational sites of citizenship) [hereinafter Spiro, *The Citizenship Dilemma*].

⁵³ The ideal of uniqueness holds that «[e]very person should belong to one and only one state». Brubaker, *supra* note 39, at 1, 3. The ideal of social consequentiality holds that «[m]embership should entail important privileges... [which] should define a status clearly and significantly distinguished from that of nonmembers. *Id.* at 4.

rary realities of statemembership». ⁵⁴ Citizenship's traditional ideal may be frayed, in other words, but that doesn't necessarily make it any less national.

B. *Citizenship as Rights*

In twentieth-century social theory, the notion of citizenship has been most closely associated with the enjoyment of certain important rights and entitlements. In this conception of citizenship, the enjoyment of rights is the defining feature of societal membership: citizenship requires the possession of rights, and those who possess the rights are usually presumed thereby to enjoy citizenship. ⁵⁵

The rights approach was most influentially articulated by British sociologist T.H. Marshall in a well-known 1949 essay, *Citizenship and Social Class*. ⁵⁶ According to Marshall, citizenship consists in the enjoyment of rights progressively fought for and achieved in the civil, political, and social spheres of capitalist societies. ⁵⁷ Marshall's rights-based model has shaped much political and social thought about citizenship during the post-war period. ⁵⁸ Today, many seek to expand on his approach by urging, for example, that economic and cultural rights be treated as integral to any conception of citizenship. ⁵⁹ Marshall's model remains extremely influential, however, and many scholars across a variety of disciplines continue to rely on it. ⁶⁰

⁵⁴ *Id.* at 5.

⁵⁵ This is sometimes a tautological assumption, for it can be argued that noncitizens, or aliens, actually enjoy certain rights of citizenship. See Bosniak, *Universal Citizenship*, *supra* note 43.

⁵⁶ See generally T.H. MARSHALL, *CITIZENSHIP AND SOCIAL CLASS* (1949).

⁵⁷ See *id.*

⁵⁸ See BRYAN S. TURNER, *CITIZENSHIP AND CAPITALISM: THE DEBATE OVER REFORMISM* (1986); Ralf Dahrendorf, *Blind To the Greater Liberty*, *TIMES* (London), Nov. 9, 1990, at 14.

⁵⁹ For works that urge recognition of «economic citizenship», see SASKIA SASSEN, *LOSING CONTROL?: SOVEREIGNTY IN AN AGE OF GLOBALIZATION* 31-58 (1996); Maria-Patricia Fernandez-Kelly, *Underclass and Immigrant Women as Economic Actors: Rethinking Citizenship in a Changing Global Economy*, 9 *AM. U. J. INT'L L. & POL'Y* 150 (1993). See Turner, *supra* note 20, at 153, for an argument that «cultural citizenship» is a necessary part of any adequate conception of citizenship. See also Bart Van Steenberg, *Towards A Global Ecological Citizen*, in *THE CONDITION OF CITIZENSHIP*, *supra* note 11, at 141 (urging recognition of «ecological citizenship» within Marshall's schema).

⁶⁰ His conception of «social citizenship» in particular —by which he meant the right to basic economic security— remains resonant for many scholars, who continue to draw on this concept. See Fraser & Gordon, *supra* note 11; Ralf Dahrendorf, *The Changing Quality of Citizenship*, in *THE CONDITION OF CITIZENSHIP*, *supra* note 11, at 10; William Julius Wilson,

Marshall is not the only source of rights-based citizenship discourse. In the law, Charles Black and, later, Kenneth Karst employed the concept of citizenship to refer to the rights necessary to achieve «full and equal membership».⁶¹ Political theorists Judith Shklar and Rogers Smith can be located in a related tradition; for them, citizenship refers to an individual's «standing» in society, and each focuses on how the law has been used historically to structure that standing.⁶² The central problematic of this group is exclusion and second-class citizenship, and the ways that racial subordination has painfully distorted formally egalitarian polities.⁶³

Citizenship and the Inner-City Poor, in *THE CONDITION OF CITIZENSHIP*, *supra* note 11, at 49. The central theoretical question for Marshall was what effect the rights of citizenship would have on the persistence of social inequality. *See generally* MARSHALL, *supra* note 55. This question has likewise informed the work of the above-cited analysts.

⁶¹ *See generally* CHARLES LUND BLACK, *STRUCTURE AND RELATIONSHIP IN CONSTITUTIONAL LAW* 33-66 (1969) [hereinafter BLACK, *STRUCTURED RELATIONSHIP*]. As Black writes:

[W]e would be wrong not to see in the work of the Warren Court... an affirmation—the strongest by a very long interval, in our whole history—of the positive content and worth of American citizenship... First, citizenship is the right to be heard and counted on public affairs, the right to vote on equal terms, to speak, and to hold office when legitimately chosen... Second, citizenship means the right to be treated fairly when one is the object of action by that government of which one is also a part... Thirdly, citizenship is the broad right to lead a *private* life... [Finally, the *Warren Court*] affirmed, as no Court before it ever did, that this three-fold citizenship is to be enjoyed in all its parts without respect to race.

Charles L. Black, *The Unfinished Business of the Warren Court*, 46 *WASH. L. REV.* 3, 8-10 (1970) [hereinafter Black, *The Unfinished Business*]. *See also* KENNETH KARST, *BELONGING TO AMERICA: EQUAL CITIZENSHIP AND THE CONSTITUTION* (1989).

This use of the term «citizenship» in contemporary legal scholarship is not widespread; most analysts use the term to refer to formal legal status. *But see* Dorothy Roberts, *Welfare and the Problem of Black Citizenship*, 105 *YALE L. REV.* 1563, 1602 (1996) (asking «[0]n what terms can Blacks in America become full citizens in the next century»).

⁶² SHKLAR, *supra* note 8; *see also* ROGERS M. SMITH, *CIVIC IDEALS: CONFLICTING VISIONS OF CITIZENSHIP IN U.S. HISTORY* (1998).

In Marshallian terms, the concerns of Black, Karst, and Smith could be said to remain largely within the realm that Marshall called «civil rights». The attention to employment rights as an indispensable element of citizenship by Shklar and, more recently, by Karst, bring them closer to Marshall's concerns with what he called «social rights». *See* Kenneth L. Karst, *The Coming Crisis of Work in Constitutional Perspective*, 82 *CORNELL L. REV.* 523 (1997).

⁶³ While relying on the notion of citizenship to designate full and equal membership, the authors paid virtually no attention to the question of how this usage should be read to affect persons who lacked formal citizenship status in the political community. Black provides an exception. He wrote: «I must also say that I use the word 'citizen' hesitatingly. In

Despite their different disciplinary approaches, both the Marshallian and Black-Shklar traditions share a broadly common vision of citizenship—one that we today tend to identify as liberal or liberal-democratic in character.⁶⁴ In this vision, it is the full and equal enjoyment by individuals of formal recognition and rights (however precisely these rights are defined) that is the necessary condition of citizenship.

But recognition by, and rights against, *whom*? Any theory of citizenship, or «full community membership», in Marshall's terms,⁶⁵ obviously requires an account of what sort of institutional entity an individual is to be a citizen or member *of*. And where rights define citizenship, the theory requires an account of what sort of institutional entity the individual's rights claims are to be directed against and what sort of entity is to guarantee those rights.

These are questions that are rarely addressed explicitly in the literature, no doubt because the answer to them seems entirely self-evident: both rightsbased traditions routinely assume that the site of citizenship is the national society, and that the national state is both the source and guarantor of rights. Marshall draws on English history for his historical account of the evolution of citizenship rights during the past three centuries, but he seems to presume that this development will be applicable to other national, capitalist societies. Some of Marshall's contemporary followers have criticized this ethnocentric premise, but they too assume that rights-based membership is fought for and enacted in the context of the nation-state.⁶⁶ In the Black-Shklar tradition, attention is expressly focused on the scope and meaning of citizenship in one particular national political context, that of

the end, I think it will be possible to show that... inference of rights from citizenship need not put the lawfully resident alien at any serious disadvantage». BLACK, STRUCTURE AND RELATIONSHIP, *supra* note 60, at 52- 53. See also Black, *The Unfinished Business*, *supra* note 60, at 10. Gerald Neuman criticized Judith Shklar's usage of the term to designate full membership rights on the grounds that it implicitly serves to exclude aliens from the domain of normative concern. See Gerald L. Neuman, *Rhetorical Slavery, Rhetorical Citizenship*, 90 MICH. L. REV. 1276 (1992). I make a similar argument about the citizenship-as-rights tradition. See Bosniak, *The Citizenship of Aliens*, *supra* note 11.

⁶⁴ Some would characterize Marshall's approach as social-democratic, but it is fairly described as liberal as well given its preoccupation with rights and entitlements. See, e.g., THE CITIZENSHIP DEBATES (Gershon Shafir ed., 1998).

⁶⁵ MARSHALL, *supra* note 55, at 77.

⁶⁶ See, e.g., Michael Mann, *Ruling Class Strategies and Citizenship*, in *CITIZENSHIP TODAY: THE CONTEMPORARY RELEVANCE OF T.H. MARSHALL* 125-44 (Martin Bulmer & Anthony M. Rees eds., 1996) (criticizing Marshall's «Anglophile» model).

the United States. In each case, there is never any question that citizenship is a nationally-framed endeavor.

When citizenship is understood of as the enjoyment of rights, treating the nation-state as the locus of citizenship obviously makes a great deal of sense. In the contemporary world, nation-states define the nature and scope of most rights, as well as enforce them.⁶⁷ Nonetheless, states can no longer be said to be the sole source of existing positive rights. As is well-known, in the post- World War II period, a sizable human rights regime, or set of regimes, have taken shape at the international level which are designed to implement standards, set out in a variety of multilateral agreements, for the treatment of individuals by states.⁶⁸ These standards, which encompass civil, social, and sometimes cultural rights, represent an alternative source of rights which transcends the jurisdiction of individual nation-states.

Some scholars have recently begun to characterize the rights guaranteed under the international human rights regime as representing a burgeoning form of citizenship-beyond-the-nation. Soysal, for example, contends that the postwar era has witnessed a «breakdown of the link between the national community and rights», giving rise to the development of a new «postnational» form of citizenship.⁶⁹ Political theorist Rainer Baubock has similarly asserted that «human rights are the cornerstone as well as the most extended application of a transnational conception of citizenship».⁷⁰

⁶⁷ See DAVID HELD, *DEMOCRACY AND THE GLOBAL ORDER: FROM THE MODERN STATE TO COSMOPOLITAN GOVERNANCE* 223 (1995) («In modern times, rights have nearly everywhere been enshrined effectively within the institutions of nation-states. To the extent that certain types of rights have become more-or-less commonplace, this has been the result of processes which have spread with the form of the modern nation-state itself...»).

⁶⁸ Recently, commentators have urged that international law recognize the rights of cultural minority groups as well as of individuals. See, e.g., WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS* (1995). For now, however, the human rights regime is largely concerned with the status of individuals rather than cultural groups. *Id.*

⁶⁹ Soysal, *Changing Parameters*, *supra* note 15, at 512.

⁷⁰ BAUBOCK, *supra* note 43, at 240. Baubock also writes, however, that «[s]tronger enforcement of human rights by international agencies should not be seen as a move toward 'global citizenship' but it could be characterized as the quest for a 'polity of polities.'» *Id.* at 248. See also Geraint Parry, *Paths to Citizenship*, in *THE FRONTIERS OF CITIZENSHIP* 179 (Ursula Vogel & Michael Moran eds, 1991) (endorsing proposals for «transnational 'citizenship'» based on the «universalizing tendency of rights theory»); HEATER, *supra* note 4, at 258-59 («There are many circumstances in which the individual can be deemed to be appealing to his rights *qua* world citizen when his rights *qua* national citizen have

Does it make sense to view the growing international human rights regime as a nascent form of citizenship beyond the nation? It seems indisputable that «the acceleration of globalization has led to pressures to entrench significant ‘citizenship rights’ within frameworks of international law», as one analyst has written,⁷¹ but does that mean that citizenship itself is becoming transnational? Or is citizenship (read as an inherently national project) suffering *displacement* by the norms of universal personhood associated with the international human rights regime, as some commentators have contended?⁷² One difficulty with the claim that citizenship is becoming transnationalized is that it risks overstating the degree to which the international human rights regime actually protects the individual. The rights guaranteed under the regime are not self-executing; they are made available to individuals only by way of their states, which must have affirmatively assumed obligations to enforce them under the various human rights treaties.⁷³ Moreover, even where states have become parties to an agreement, any transnational or postnational citizenship that this could be said to entail for the individual is arguably more symbolic than real given the serious constraints individuals ordinarily face in enforcing their rights. As commentators have frequently emphasized, the agreements go to great lengths to protect the sovereignty of the state parties from outside

been circumscribed by his own state»); Held, *supra* note 20, at 10, 24-25 («The historical moment seems to have passed for trying to define citizens’ claims and entitlements in terms of membership of a *national* community»). (emphasis in original).

⁷¹ HELD, *supra* note 66, at 223.

⁷² Some analysts concur with the exponents of post/transnational citizenship that the norms of universal personhood associated with the international human rights regime have become increasingly important in organizing national and international public life, but they argue that this development reflects a *decline or devaluation* of citizenship—rather than a form of post/transnational citizenship. See, e.g., DAVID JACOBSEN, *RIGHTS ACROSS BORDERS: IMMIGRATION AND THE DECLINE OF CITIZENSHIP* (1996); SASSEN, *supra* note 58, at 89 («Human rights override... distinctions [of nationality] and hence can be seen as potentially contesting state sovereignty and devaluing citizenship»). In this approach, citizenship is an intrinsically national enterprise; and the increasing salience of personhood norms represent *not* a novel species of citizenship, but a loss of the possibility of citizenship altogether.

⁷³ In principle, international human rights conventions leave the task of directly enforcing their standards to the states parties to them, which are expected to enact the necessary legislation and other measures». HUMAN RIGHTS IN THE WORLD COMMUNITY: ISSUES AND ACTION 186 (Richard Pierre Claude & Burns H. Weston eds., 1989). To date, many of the major human rights instruments have yet to be embraced by many of the world’s major nation-states.

interference;⁷⁴ and with the exception of the European Court of Human Rights,⁷⁵ there is no transnational body that can ensure states' compliance with major human rights norms.⁷⁶

This is not to say that symbolism is unimportant. Human rights have come to provide a vocabulary for making moral claims;⁷⁷ this vocabulary «structures the space within which we converse, internationally, about constructing a moral order of global scope».⁷⁸ The rhetorical legitimacy now afforded to many human rights claims affords a kind of transnational «recognition»⁷⁹ to individuals irrespective of their national ties—a recognition which may be experienced by some as a kind of membership, or

⁷⁴ *E.g.*, RICHARD FALK, *REVITALIZING INTERNATIONAL LAW* 199 (1989) («[T]here persists a statist conception of rights. Their content and character are specified by governments, and those who are targets of governmental abuse have little international recourse to relief»). [hereinafter *INTERNATIONAL LAW*]. *See also* RICHARD FALK, *HUMAN RIGHTS AND STATE SOVEREIGNTY* (1981) [hereinafter *HUMAN RIGHTS*]; VINCENT, *infra* note 79, at 105 («[H]uman rights institutions are unreliable indicators of commitment to human rights in practice»).

⁷⁵ The European Court of Justice has held that nationals of Member States of the European Community can enforce human rights specified in the European Convention on Human rights in national courts, even against their own government. Case 26/62, *NV Algemene Transport-en Expeditie Onderneming van Gend & Loos v. Nederlandse administratie der belastingen*, 1963 E.C.K.

I. «The Court has also elaborated a system of constitutional general principles which must be observed within the Community legal order». HALL, *supra* note 30, at 3.

⁷⁶ *See, e.g.*, LOUIS HENKIN, *THE AGE OF RIGHTS* 23 (1990) (comparing the European human rights system, which «can claim dramatic successes», with the United Nations system where «[t]he establishment of even a 'toothless' office such as a UN High Commissioner for Human Rights has been strenuously (and to date successfully) resisted»). Rainer Baubock recognizes that a «claim for citizenship rights always implies an appeal directed towards political institutions which could enforce the right». BAUBOCK, *supra* note 43, at 247. He suggests that viewing human rights as transnational citizenship ultimately entails a conception of a transnational polity equipped to enforce them and to ground political membership more broadly. *Id.* at 248.

⁷⁷ *See* John Gerard Ruggie, *Human Rights and the Future International Community*, 112 *DAEDALUS* 93 (1983); *see also* R.J. Vincent, *The Idea of Rights in International Ethics*, in *TRADITIONS OF INTERNATIONAL ETHICS* 250, 267 (Terry Nardin & David R. Mapel eds., 1992) («[H]uman rights... have become a kind of *lingua franca* of ethics talk so that much of the discussion about ethics in international relations takes place using the vocabulary of rights...»).

⁷⁸ V. Spike Peterson, *Whose Rights? A Critique of the «Givens» in Human Rights Discourse*, 15 *ALTERNATIVES* 303, 304 (1990).

⁷⁹ Charles Taylor, *The Politics of Recognition*, in *MULTICULTURALISM EXAMINING THE POLITICS OF RECOGNITION* 25 (Amy Gutmann ed., 1994).

citizenship, in a new global moral order.⁸⁰ But note that here, citizenship is defined not so much by the existence of the rights themselves as by the universalist sentiment their existence arouses.⁸¹

Of course, if the notion of postnational citizenship *qua* international human rights seems implausible, some would argue that the problem lies with defining citizenship in terms of the possession of rights to begin with. In recent years, many theorists of citizenship have criticized the liberal rights-based model on various grounds.⁸² It is overly passive and formal,⁸³ many contend, and excessively individualistic and/or ethnocentric as well.⁸⁴ Presumably, in this view, characterizing the internationalization of human rights as a form of postnational citizenship simply reproduces liberalism's errors at a broader level of generality.

I agree that rights alone cannot define the meaning of citizenship. Yet rights are unlikely to be excised from our conception of citizenship altogether (nor should they be); they remain too integral a part of our political culture.⁸⁵

⁸⁰ Others, however, have argued that the growing legitimacy of international human rights in this century has served to «consolidat[e] the state rather than transcend[] it». R.J. VINCENT, *HUMAN RIGHTS AND INTERNATIONAL RELATIONS* 151 (1986). For a similar point, see, e.g., John Boli-Bennett, *Human Rights or State Expansion? Cross-National Definitions of Constitutional Rights*, in *GLOBAL HUMAN RIGHTS, PUBLIC POLICIES, COMPARATIVE MEASURES AND NGO STRATEGIES 1870-1970* (Ved P. Nanda et al. 1980).

⁸¹ This is a sentiment not unlike the cosmopolitan vision that Nussbaum defended. See *also supra* notes 1-5.

⁸² See Will Kymlicka and Wayne Norman, *Return of the Citizen: A Survey of Recent Work on Citizenship Theory*, 104 *ETHICS* 352, 355 (1994). These critiques are directed to liberal conceptions of political life in general, and are often advanced by theorists espousing civic republican or communitarian conceptions in their stead. For a discussion of civic republican conceptions of citizenship, see Section I C, *infra*.

⁸³ E.g., BENJAMIN BARBER, *STRONG DEMOCRACY: PARTICIPATORY POLITICS FOR A NEW AGE* (1984); MICHAEL J. SANDEL, *DEMOCRACY'S DISCONTENT: AMERICA IN SEARCH OF A PUBLIC PHILOSOPHY* (1996) [hereinafter SANDEL, *DEMOCRACY'S DISCONTENT*]; Chantal Mouffe, *Democratic Citizenship and the Political Community*, in *DIMENSIONS OF RADICAL DEMOCRACY* 225 (Chantal Mouffe ed., 1992); Charles Taylor, *Cross Purposes: The Liberal-Communitarian Debate*, in *LIBERALISM AND THE MORAL LIFE*, 159 (Nancy L. Rosenblum ed., 1989); Sheldon Wolin, *What Revolutionary Action Means Today*, in *DIMENSIONS OF RADICAL DEMOCRACY*, *supra*, at 240.

⁸⁴ E.g., Iris Marion Young, *Polity and Group Difference: A Critique of the Ideal of Universal Citizenship*, 99 *ETHICS* 250 (1989); WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP* (1995); Bhikhu Parekh, *British Citizenship and Cultural Difference*, in *CITIZENSHIP*, *supra* note 20, at 183.

⁸⁵ There is little question that «[t]he nation's basic political vocabulary is the language of rights», RONALD TERCHEK, *REPUBLICAN PARADOXES AND LIBERAL ANXIETIES* 22 (1997). Fur-

Assuming that the enjoyment of rights is to remain one aspect of what we understand citizenship to be, it seems fair to conclude that the national grip on citizenship in this particular aspect has been substantially loosened. It is clearly a significant development in the history of claims-making⁸⁶ that individuals may today reach beyond state law to press their claims of right against the state itself. On the other hand, there remain serious questions about the extent to which this development signals a transfer in the locus of citizenship given the lack of existing enforcement mechanisms that can give real effect to these claims. In either case, it bears reminding that rights are not the sole measure of citizenship, and that we need to look beyond rights-based conceptions to inquire about the denationalization of citizenship in its other dimensions.

C. *Citizenship as Political Activity*

As political theorists use the term, «citizenship» most commonly denotes active engagement in the life of the political community. This political understanding of citizenship derives from the ancient Greeks. According to Aristotle, the citizen is «one who participates in the rights of judging and governing»;⁸⁷ he is a man who both rules and is ruled.⁸⁸ The tradition was elaborated by later figures, including Machiavelli and Rousseau,⁸⁹ and had a critical role in shaping both U.S. and French revolutionary thought.⁹⁰

thermore, as I see it, the language of rights provides the potential for emancipatory political practice. For a recent volume addressing the debates over rights in political and legal thought, see *IDENTITIES, POLITICS AND RIGHTS* (Austin Sarat et al. eds., 1995).

⁸⁶ I borrow this term from Soysal. See Soysal, *Changing Parameters*, *supra* note 15, at 509.

⁸⁷ SIR ERNEST BARKER, *THE POLITICAL THOUGHT OF PLATO AND ARISTOTLE* 294 (1959).

⁸⁸ ARISTOTLE, *THE POLITICS*, Bk. 3, Ch. 1, at 4 (Carnes Lord trans., 1984). See also J.G.A. Pocock, *The Ideal of Citizenship Since Classical Times*, in *THE CITIZENSHIP DEBATES*, *supra* note 63, at 32-33.

Note that the classical Athenian citizen ruled not merely over other citizens (by whom he was also ruled), but also over «things and others in the household», including women. *Id.* at 35. For an analysis of the intrinsically masculinist and elitist understanding of citizenship that prevailed among the ancients, see *id.*; JEAN BETHKE ELSHTAIN, *PUBLIC MAN, PRIVATE WOMAN* (1981).

⁸⁹ See generally J.G.A. POCOCK, *THE MACHIAVELLIAN MOMENT* (1975); I QUENTIN SKINNER, *FOUNDATIONS OF MODERN POLITICAL THOUGHT* (1975); ADRIEN OLDFIELD, *CITIZENSHIP AND COMMUNITY: CIVIC REPUBLICANISM AND THE MODERN WORLD* (1990).

⁹⁰ Regarding the influence of republicanism in American revolutionary thought, see GORDON S. WOOD, *THE RADICALISM OF THE AMERICAN REVOLUTION* 95-225 (1992). In France,

In this century, Arendt's work is closely associated with the political conception of citizenship.⁹¹ Yet on the whole, the tradition of «high citizenship»⁹² lay dormant, having been supplanted by liberal conceptions largely concerned with the rights and status of individuals.⁹³ In the past two decades, however, civic republican theory has made a comeback in the academy, bringing with it a revitalized interest in citizenship's political dimension.⁹⁴ Somewhat earlier, proponents of participatory democracy began encouraging a focus on active, engaged citizenship, and their efforts continue today.⁹⁵ Altogether, the renewed attention now being paid to political understandings of citizenship is probably more responsible than any other factor for fueling the renaissance in citizenship studies in recent years.

Civic republicans and participatory democrats often speak of citizenship in descriptive terms to characterize the degree and nature of public involve-

republican thought took concrete political form in the ideology of the Jacobins, for whom citizenship entailed «a rigorous commitment to political (and military) activity on behalf of the community». Walzer, *Citizenship*, *supra* note 4, at 211.

⁹¹ See generally HANNAH ARENDT, *THE HUMAN CONDITION* (1958); see also Maurizio Passerin d'Entreves, *Hannah Arendt and the Idea of Citizenship*, in *DIMENSIONS OF RADICAL DEMOCRACY*, *supra* note 82, at 145.

⁹² Richard E. Flathman, *Citizenship and Authority: A Chastened View of Citizenship*, in *THEORIZING CITIZENSHIP* 108 (Ronald Beiner ed., 1995).

⁹³ Pocock usefully shows how the liberal conception of citizenship finds its source in the ancients as well: Specifically, it emerged during the Roman Empire, where «[a] citizen came to mean someone free to act by law, free to ask and expect the law's protection... Citizenship ha[d] become a legal status, carrying with it rights to certain things». Pocock, *supra* note 87, at 37. «Here», Pocock writes, «we move from the citizen as a political being to the citizen as a legal being, existing in a world of persons, actions and things regulated by law». *Id.* at 36. In this view, as Walzer puts it, «the citizen is not himself an authority; rather, he is someone to whose protection the authorities are committed». Walzer, *Citizenship*, *supra* note 4, at 215.

⁹⁴ See BENJAMIN BARBER, *STRONG DEMOCRACY* (1984); CAROLE PATEMAN, *THE PROBLEM OF DEMOCRATIC THEORY: A CRITICAL ANALYSIS OF LIBERAL THEORY* (1979); SANDEL, *DEMOCRACY'S DISCONTENT*, *supra* note 82; BEINER, *supra* note 16; OLDFIELD, *supra* note 88.

⁹⁵ See CAROLE PATEMAN, *PARTICIPATION AND DEMOCRATIC THEORY* (1970); see also Sheldon Wolin, *What Revolutionary Action Means Today*, in *DIMENSIONS OF RADICAL DEMOCRACY*, *supra* note 82, at 240, 242 (urging a «democratic conception of citizenship» according to which «the citizen is supposed to exercise his rights to advance or protect the kind of polity that depends on his being involved in its common concerns»); DAVID HELD, *MODELS OF DEMOCRACY* (1987); Chantal Mouffe, *Democratic Citizenship and the Political Community*, in *DIMENSIONS OF RADICAL DEMOCRACY*, *supra* note 82, at 225.

ment by members of a polity. Just as often, however, they deploy the term as a normative ideal.⁹⁶ As one republican theorist recently wrote, citizenship is, ideally, «active membership in a political community where the very fact of such membership empowers those included in it to contribute to the shaping of a shared collective destiny».⁹⁷ In this usage, citizenship is a state of being that is «not just a means to being free; it is the way of being free itself».⁹⁸ And it is a way of being free in a collective form.⁹⁹

⁹⁶ Civic republicans and participatory democrats are not alone in employing the concept of citizenship as a descriptive term to denote political activity and participation. Liberal thinkers sometimes invoke the concept of citizenship for this purpose as well. What distinguishes republicans and participatory democrats from liberals is that the former additionally regard active engagement in political life as a core normative ideal.

⁹⁷ BEINER, *supra* note 16, at 105.

⁹⁸ Pocock, *supra* note 87, at 34. See also Walzer, *Citizenship*, *supra* note 4, at 212 (describing Rousseau's view that «the republic would be successful only if each citizen found the great proportion of his happiness in public rather than in private activity»).

Note, however, that while both civic republicans and participatory democrats share a desire to revalue political activity and engagement, they do not see eye-to-eye on all issues. Participatory democrats are often particularly wary of republicanism:

There are indeed serious problems with the liberal conception of citizenship but we must be aware of the shortcomings of the civic republican solutions, too. It does provide us with a view of citizenship much richer than the liberal one, and its conception of politics as the realm where we can recognize ourselves as participants in a political community has obvious appeal for the critics of liberal individualism. Nevertheless there is a real danger of coming back to a pre-modern view of politics, which does not acknowledge the novelty of modern democracy and the crucial contribution of liberalism. The defense of pluralism, the ideal of individual liberty, the separation of church and state, the development of civil society, all these are constitutive of modern democratic politics. They require that a distinction be made between the private and the public domain, the realm of morality and the realm of politics. Contrary to what some communitarians propose, a modern democratic political community cannot be organized around a single substantive ideal of the common good. The recovery of a strong participatory idea of citizenship should not be made at the cost of sacrificing individual liberty.

Mouffe, *supra* note 94, at 227.

⁹⁹ Cf. Adrien Oldfield, *Citizenship and Community*, in *THE CITIZENSHIP DEBATES*, *supra* note 63, at 79 («Civic republicanism... holds that political life—the life of a citizen—is not only the most inclusive, but also the highest, form of human living-together that most individuals can aspire to...»). See also Mouffe, *supra* note 94, at 238 («By combining the ideal of rights and pluralism with the ideas of public spiritedness and ethico-political concern, a new modern democratic conception of citizenship could restore dignity to the political and provide the vehicle for the construction of a radical democratic hegemony»); BENJAMIN BARBER, *THE CONQUEST OF POLITICS 200-01* (1988) («The most important fact about citizens is that they are defined by membership in a political community and enact

But what sort of collectivity do republicans and participatory democrats imagine will serve as the site of citizenship? A *political* collectivity, or community, to be sure; but of precisely what nature?¹⁰⁰ At its inception, citizenship was understood to be located within the Greek city-state; in Roman times, its site was the empire. In the modern age, however, the territorial nation-state became the paradigmatic political community, and citizenship today is almost invariably presumed to be a creature of such an entity. More often than not, the national premise framing the republican or participatory democratic projects is regarded as entirely self-evident and remains unspecified.¹⁰¹ But it is not uncommon for theorists to employ the terms «state» and «political community» interchangeably,¹⁰² and a few theorists affirmatively identify the nation-state as the necessary and appropriate locus of citizenship.¹⁰³

In recent years, however, dissenting voices have increasingly challenged the nationalist and statist premises that characterize this work. On one side, commentators have invoked the concept of «local citizenship» as a preferred alternative. Local citizenship—often at the municipal level—is sometimes portrayed as the fulfillment of the republican ideal, entailing the face-to-face contact and common experience and interests among community members necessary to enable true collective action.¹⁰⁴ In more functional terms, local

their civic identities only to the extent that they interact with other citizens in a mutualistic and common manner... [I]n assuming the mantle of citizenship, the I becomes a We»).

¹⁰⁰ See generally Walzer, *Citizenship*, *supra* note 4, at 212 («Only the political community provides a suitable arena for [the] ethical self-creation» entailed in citizenship). For further discussion as to precisely what constitutes the domain of the «political», see discussion accompanying *infra* notes 114-25.

¹⁰¹ It was not always so. For a discussion of the «democratic transformation» in which «the idea of democracy was transferred from the city-state to the much larger scale of the nation-state», see ROBERT DAHL, *DEMOCRACY AND ITS CRITICS* 2 (1989).

¹⁰² E.g., BEINER, *supra* note 16, at 107.

¹⁰³ See, e.g., *id.* at 11-14; George Armstrong Kelly, *Who Needs A Theory of Citizenship?* 108 *DAEDALUS*, Fall 1979, at 21-36; *DIVERSITY AND CITIZENSHIP: REDISCOVERING AMERICAN NATIONHOOD* (Gary Jeffrey Jacobsohn & Susan Dunn eds., 1996).

¹⁰⁴ E.g., Warren Magnusson, *The Reification of Political Community*, in *CONTENDING SOVEREIGNTIES: REDEFINING POLITICAL COMMUNITY* 46 (R.B.J. Walker & Saul H. Mendlovitz eds., 1990) [hereinafter *CONTENDING SOVEREIGNTIES*]:

As a venue for everyday life, [the locality] is the site for face-to-face contact, immediate economic and social relations, immediately shared experience and interests. It is on the scale that the Greeks imagined was necessary for politics: not so large as to be beyond the scope of ordinary citizens and not so small as to be absorbed into familial and neigh-

citizenship is said to combat the «widening sense of powerlessness» people experience in the face of economic and cultural globalization—an experience that reduces the «capacity of citizens to exercise control over matters of vital importance to them».¹⁰⁵

On the other side, and more relevant here, analysts maintain that citizenship today increasingly traverses national boundaries. There is by now a burgeoning literature on «new transnational forms of political organization, mobilization, and practice»¹⁰⁶ which have emerged in the wake of accelerating processes of globalization. This work addresses the proliferation of transnational political activity in the form of non-governmental organizations (NGOs), grassroots social movements, and other cross-border organizing efforts in the areas, for example, of human rights, the environment, arms control, women's rights, labor rights, and the rights of national minorities.¹⁰⁷

borly relations. It is, rather, of a scale that permits and demands politics as a collective activity involving relations among equals.

See also BENJAMIN BARBER, *STRONG DEMOCRACY: PARTICIPATORY DEMOCRACY FOR THE NEW AGE* (1984); JANE MANSBRIDGE, *BEYOND ADVERSARY DEMOCRACY* (1980).

¹⁰⁵ DAHL, *supra* note 100, at 319, 320, 321. Dahl proposes enhancing democratic life in smaller communities below the nation-state... [C]itizens can exercise significant control over decisions on the smaller scale of matters important in their daily lives: education, public health, town and city planning, the supply and quality of the local public sector, from streets and lighting to parks and playgrounds the like.

Id.

¹⁰⁶ Michael Peter Smith, *Can You Imagine? Transnational Migration and the Globalization of Grassroots Politics*, 39 *SOC. TEXT* 15 (1994).

¹⁰⁷ For a comprehensive study of this phenomenon, see MARGARET E. KECK AND KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* (1998) (describing such movements as «transnational value-based advocacy networks»). See also Magnusson, *supra* note 103; Andre Drainville, *Left Internationalism and the Politics of Resistance in the New World Order*, in *A NEW WORLD ORDER: GLOBAL TRANSFORMATION IN THE LATE TWENTIETH CENTURY* (David A. Smith & J. Borocz eds., 1995); Cecilia Lynch, *Social Movements and the Problem of Globalization*, 23 *ALTERNATIVES* 149 (1998); Paul Wapner, *Politics Beyond The State: Environmental Activism and World Civic Politics*, 47 *WORLD POL.* 311 (Apr. 1995); Peter Spiro, *New Global Communities: Nongovernmental Organizations in International Decision-Making Institutions*, 18 *WASH. Q.*, Winter 1995, at 45; JEREMY BRECHER & TIM COSTELLO, *GLOBAL VILLAGE OR GLOBAL PILLAGE: ECONOMIC RECONSTRUCTION FROM THE BOTTOM UP* 81- 118 (1994).

It should be noted that while much of the focus in the above sources is on the increasing transnationalization of progressive social movements, many right-wing movements can be described in these terms as well. See, e.g., Lynch, *supra*, at 150.

Several observers have characterized these practices as entailing the practice of citizenship beyond the nation. Richard Falk, for example, describes transnational activism as a mode of «global citizenship».¹⁰⁸ Warren Magnusson similarly points out that transnational social movements «involve people in active citizenship and thus lay claim to a political space that may or may not conform to the spaces allowed by the existing system of government».¹⁰⁹

It seems reasonable to characterize the various practices described above as political in nature;¹¹⁰ we could say they amount to «popular politics in its global dimension».¹¹¹ Yet, many would object to characterizing the activities of such movements as a form of citizenship. The principal objection to the claim would be that citizenship can only be meaningfully practiced within a distinct institutional context, that of the *political community*—a formal, organized, territorially-based community with some degree of sovereign selfgovernance.¹¹² These are requirements that participation in the largely anarchic international or global political arenas plainly cannot fulfill.¹¹³ The nonexistence of an established global polity would seem, on

¹⁰⁸ Richard Falk, *The Making of Global Citizenship*, in GLOBAL VISIONS: BEYOND THE NEW WORLD ORDER 39 (Jeremy Brecher et al. eds., 1993).

¹⁰⁹ E.g., WARREN MAGNUSSON, THE SEARCH FOR POLITICAL SPACE 9-10 (1994).

¹¹⁰ This is so at least to the extent politics is understood as an activity rather than a fixed domain. The distinction comes from Mary Dietz, who points out that Aristotle's concept of the political is interpreted in two different senses: some read him as treating politics as a distinct realm, while others take him to have been designating «a special kind of human activity». See Mary G. Dietz, *Citizenship With a Feminist Face: The Problem With Maternal Thinking*, in FEMINISM, THE PUBLIC AND THE PRIVATE 45, 53 (1998).

Theorists of high citizenship seem to approach citizenship as a mode of political activity. On the other hand, I argue in the text that they also ordinarily assume that this activity can only take place in a fixed domain—that of the state (usually the national state). For further discussion, see text accompanying notes 111-31, *infra*.

¹¹¹ Magnusson, *supra* note 103.

¹¹² See, e.g., Chandran Kukathas, *Liberalism, Communitarianism and Political Community*, 13 SOC. PHILOSOPHY & POL'Y. 80, 88 (1996) (arguing that a political community, as distinct from other forms of community, «has a territorial base», and that «[t]he most significant institution of a political community is its government»).

¹¹³ R.B.J. Walker and Saul Mendlovitz write:

[T]he history of Western political thought has been written as a tale of two traditions. The most familiar part of the story is a celebration of the polis and, subsequently, of the state. It tells of the establishment of a secure basis for political community—and thus the possibility of freedom, industry, and progress—within states. The less familiar and less edi-

this view, to eliminate the possibility of citizenship beyond the nation-state altogether—the admirable political engagement of cross-border activists notwithstanding.

This state-centric approach to citizenship, as I have said, is widespread among proponents of republicanism and democratic citizenship.¹¹⁴ One might respond, however, by invoking some of the rich anti-statist conceptions of the political that have been developed by political theorists in recent decades. Theorists on both the left and right have sought to reclaim domains of social life that are often excluded from conventional conceptions of the political as sites of citizenship. This literature urges recognition of citizenship and its practices in the workplace,¹¹⁵ in the economy at large,¹¹⁶ in the neighborhood, in the cultural domain, in professional associations, and in the family.¹¹⁷ This is a pluralist conception of politics and of citizenship, one which rejects confining «the definition of political action to formal interactions between citizens and the state»,¹¹⁸ and holds that citizenship is «rooted in the groups and communities within which human beings actually live».¹¹⁹

fying part tells us of the consequences of an absence of political community, and thus of mere relations, fragile accommodations, and, inevitably, war.

R.B.J. Walker & Saul Mendlovitz, *Interrogating State Sovereignty*, in *CONTENDING SOVEREIGNTIES*, *supra* note 103, at 4.

¹¹⁴ See, e.g., BEINER, *supra* note 16. Note, however, that advocates of active citizenship don't necessarily treat citizenship as identical with statecraft. See Jeff Weintraub, *The Theory and Politics of the Public/Private Distinction*, in *PUBLIC AND PRIVATE IN THOUGHT IN PRACTICE I*, 10-16 (Jeff Weintraub & Krishnan Kumar eds., 1997) (pointing out that the civil republican tradition usually treats political community as distinct from the administrative state). I use the word «statist» to refer not to state administration but to modes of thought that treat the nation-state as the analytical and normative center of political life.

¹¹⁵ PATEMAN, *supra* note 94, at 45-102; DAHL, *supra* note 100, at 324-32.

¹¹⁶ See DAHL, *supra* note 100.

¹¹⁷ CAROLE PATEMAN, *THE DISORDER OF WOMEN: DEMOCRACY, FEMINISM AND POLITICAL THEORY* (1989); Susan Moller Okin, *Women, Equality and Citizenship*, 99 *QUEENS Q.*, Spring 1992, at 56, 69 («Power (and therefore politics) exists in both domestic and non-domestic life»).

¹¹⁸ Kathleen B. Jones, *Citizenship In a Woman-Friendly Polity*, in *THE CITIZENSHIP DEBATES*, *supra* note 63, at 233. See also Cass Sunstein, *Beyond the Republican Revival*, 97 *YALE L.J.* 1539, 1573 (1988) («Citizenship, understood in republican fashion, does not occur solely through official organs»).

¹¹⁹ ROBERT NISBET, *THE TWILIGHT OF AUTHORITY* 286-87 (1975). See also PATEMAN, *supra* note 94, at 43 (the «participatory theory of democracy [rejects traditional democratic theory's] definition of the 'political,' which in the participatory theory is not confined to

Many of these alternative sites of political life have been characterized by scholars as constituting part of the domain of «civil society».¹²⁰ Though a contested concept itself, civil society is often described as the sphere of association or sociability—the sphere in which people engage with one another and forge «relational networks» independent of the demands of polity governance.¹²¹ While some theorists presume or posit a contrast between the

the usual national or local government»); Wapner, *supra* note 106, at 339, («[P]olitics in its most general sense concerns the interface of power and what Cicero called *res publica*, the public domain. It is the employment of means to order, direct, and manage human behavior in matters of common concern and involvement. Generically, at least, this activity has nothing to do with government or the state»).

Among other things, civil society theorists reject the notion, central to civic republican and participatory democratic thought, that participation in the life of the demos is the highest human value. They seek to revalue participation in the multiple associations of civil society, including unions, churches, neighborhood associations, political parties, etc., in part because, as they plausibly argue, most people are *in fact* much more engaged in civil society than in the demos. As Michael Walzer writes, «despite the singlemindedness of republican ideology», active involvement in the state «isn't the 'real life' of very many people in the modern world... They have too many other things to worry about». Michael Walzer, *The Civil Society Argument*, in *DIMENSIONS OF RADICAL DEMOCRACY*, *supra* note 82, at 89, 92. Civil society theorists thus advance a pluralist conception of good, one in which participation in various sorts of communities is valuable in itself. However, civil society advocates diverge from the political pluralists described in the text in that they often maintain a statist conception of both politics and citizenship; they continue to treat both as entailing activity in the domain of the state. Walzer, for example, assumes that political activity is directed at «taking power», *id.* at 103, and defines citizenship as involvement in «the affairs of state». *Id.* at 105.

¹²⁰ The precise parameters and nature of the sphere of civil society are subject to much dispute. For example, most liberal theorists include the market within the sphere of civil society; civil society thus represents aspects of social life not encompassed by the state. Many leftidentified theorists, however, distinguish civil society from both the state and the economy in what one analyst has called a «three-part model» deriving from Gramsci. See Jean Cohen, *Interpreting the Notion of Civil Society*, in *TOWARD A GLOBAL CIVIL SOCIETY* 35, 36 (Michael Walzer ed., 1995).

At the same time, many civil society theorists exclude the family from the domain of civil society. Thus, civil society is understood to lie «in a conceptual space distinct from, and between, the state and the at least supposedly private sphere of the family and spousal arrangements and the like». Kai Nielson, *Reconceptualizing Civil Society For Now: Some Somewhat Gramscian Turnings*, in *TOWARD A GLOBAL CIVIL SOCIETY*, *supra*, at 41, 42. The «three-part model» described above, in contrast, includes the family within the realm of civil society. See Cohen, *supra*, at 37.

¹²¹ For the «relational networks» phrase, see Walzer, *The Civil Society Argument*, *supra* note 118, at 89.

life people engage in within civil society and their practice of citizenship,¹²² others increasingly recognize that politics is not confined to the domain of the state,¹²³ and that «citizenship shades off into a great diversity of (sometimes divisive) decision-making roles» within civil society.¹²⁴ The growth and influence of the «new social movements» are the most salient expression of this trend;¹²⁵ they represent the practice of citizenship in the heart of civil society.¹²⁶

Most of the literature on civil society presumes, without discussion, that civil society is a nationally-demarcated space or set of relationships framed by the boundaries of the modern nation-state.¹²⁷ There is, however, a grow-

¹²² See, e.g., Michael Walzer, *Introduction*, in *TOWARD A GLOBAL CIVIL SOCIETY*, *supra* note 119, at 1 (stating that civil society «incorporates many of the associations and identities that we value outside of, prior to, or in the shadow of state and citizenship»).

¹²³ Jean Cohen is one theorist who rejects those «model[s] that oppose[] civil society to the state». See Cohen, *supra* note 119, at 35. Cohen urges a «politics of civil society [that] can try to change the institutions of civil society in a direction away from the hierarchical, inegalitarian, patriarchal, nationalist, racist versions toward egalitarian, horizontal, non-sexist, open versions based on the principles of individual rights and democratic participation in associations, and public». *Id.* at 36.

¹²⁴ Walzer, *The Civil Society Argument*, *supra* note 118, at 99. I find Walzer somewhat ambiguous on the question of the relationship between civil society and citizenship. On the one hand, he usually seems to equate citizenship with participation in governance at the level of the state, and contrasts citizenship to life in civil society. See *supra* text accompanying note 118. Occasionally, however, he seems to recognize that the concept of citizenship can be read to incorporate activism within the sphere of civil society, via «the associational networks of civil society, in unions, parties, movements, interest groups, and so on», and through «the new social movements in the East and the West—concerned with ecology, feminism, the rights of immigrant and national minorities, workplace and product safety». Walzer, *The Civil Society Argument*, *supra* note 118, at 99, 103. As he puts it, even when not participating in affairs of state, «people make many smaller decisions and shape to some degree the more distant determinations of state and economy». *Id.* at 99. He ultimately leaves open the question of whether the «local and small-scale activities [of civil society can] ever carry with them the honour of citizenship». *Id.* at 106.

¹²⁵ See SYDNEY TARROW, *POWER IN MOVEMENT: SOCIAL MOVEMENTS, COLLECTIVE ACTION AND POLITICS* 3-4 (1994) (defining social movements as «collective challenges by people with common purposes and solidarity in sustained interaction with elites, opponents and authorities»).

¹²⁶ See WARREN MAGNUSON, *THE SEARCH FOR POLITICAL SPACE* 9-10 (1994) («[Social] movements involve people in active citizenship and thus lay claim to a political space that may or may not conform to the spaces allowed by the existing system of government»).

¹²⁷ See, e.g., Walzer, *supra* note 121, at 3 («Civil society is usually thought to be contained within the framework of the state: it has the same boundaries as the political community»).

ing literature concerned with the development of what some have described as a nascent international or transnational civil society—an associational space, as Paul Wapner has written, which exists «above the individual and below the state, but also across national boundaries».¹²⁸ It is this domain of global civil society that serves as the site of the forms of transnational activism described above and which could be said to provide the locus for citizenship beyond the nation-state.¹²⁹

To accept claims that transnational activism represents a form of citizenship beyond the nation-state thus requires accepting both an extra-statist view of citizenship, and the transnational civil society thesis. From a purist's perspective, doing this will be seen as taking us too far afield from the republican and participatory democratic traditions, which regard citizenship and polity as tightly bound-up together.¹³⁰ On the other hand, these approaches place engagement in public life at the center of their understand-

¹²⁸ See, e.g., Wapner, *supra* note 106, at 312-13 («Global civil society as such is that slice of associational life which exists above the individual and below the state, but also across national boundaries»).

¹²⁹ See, e.g., Michael Walzer, *Between Nation and World*, *Economist*, Sept. 11, 1993, at 49, 51 (describing emergence of an «international civil society»); RICHARD J. BARNET & JOHN CAVANAUGH, *GLOBAL DREAMS: IMPERIAL CORPORATIONS AND THE NEW WORLD ORDER* 429-30 (1993) («More and more people who are bypassed by the new world order are crafting their own strategies for survival and development, and in the process are spinning their own transnational webs to embrace and connect people across the world. On dreams of a global civilization that respects human diversity and values people one by one, a global civil society is beginning to take shape—mostly off camera»); RUTH LISTER, *CITIZENSHIP: FEMINIST PERSPECTIVES* 63 (1997) («[I]t is through international civil society that people can best act as global citizens»). See also Spiro, *The Citizenship Dilemma*, *supra* note 51, at 625-630; RONNIE D. LIPSCHUTZ, *GLOBAL CIVIL SOCIETY AND GLOBAL ENVIRONMENTAL GOVERNANCE* (1996).

Some scholars have sounded a more cautionary note, however, arguing that claims of an emerging global civil society may be premature. See M.J. Peterson, *Transnational Activity, International Society and World Politics*, 21 *MILLENNIUM* 371, 377 (1992); KECK & SIKKINK, *supra* note 106, at 32-34.

¹³⁰ As political theorist David Miller writes, the «citizenship» many now ascribe to activists' participation in transnational organizations like Greenpeace is simply «not citizenship in any recognizable sense». Miller asks:

In what sense is the Greenpeace activist a citizen? There is no determinate community with which she identifies politically, and no one, except perhaps other members of her group, with whom she stands in relations of reciprocity. So there is no group of fellow citizens with whom she is committed to seeking grounds of agreement.

David Miller, *The Left, the Nation State and European Citizenship*, *DISSSENT*, Summer 1998, at 49, 51.

ing of citizenship.¹³¹ In this respect, one could argue that «transnational activism as transnational citizenship» fulfills the normative requirements of the theory of political citizenship very well. For here, citizenship does not suffer the thinness and passivity of status-based and rights-based conceptions; it is robust and engaged, reflecting «commitment to the common good and active participation in public affairs».¹³² It is simply that the notions of «common good» and «public domain» are drawn more expansively than they usually are within the tradition.

D. Citizenship as Identity/Solidarity

Beyond citizenship as a status, as a set of entitlements, or as a mode of political participation and activity, citizenship possesses another dimension, one that concerns people's collective experience of themselves. I refer to citizenship's psychological dimension,¹³³ that part of citizenship that describes the affective ties of identification and solidarity that we maintain with groups of other people in the world. The term citizenship here is deployed to evoke the quality of belonging—the felt aspects of community membership.

Unlike the dimensions of citizenship outlined earlier, citizenship's affective dimension has not been associated with any particular political or disciplinary tradition. In fact, citizenship-as-identity, or citizenship-as-solidarity, is often approached as derivative of citizenship's other dimensions. The various discourses on citizenship status, rights, and politics all include attention to the emotive significance of this citizenship for the holder—the idea being that the way in which these institutions are organized all have a critical bearing on our sense of collective identity and on the solidarities that we maintain.

Yet the «feeling of citizenship»¹³⁴ that we experience is not merely a product of the ways in which citizenship is conceived and practiced in our legal and political worlds. The practice of citizenship is, in turn, shaped by

¹³¹ Assuming, that is, that one's definition of civil society places it within the domain of the «public». See *supra* note 119 for a discussion on the ambiguities that arise on this question.

¹³² RICHARD DAGGER, *CIVIC VIRTUES: RIGHTS, CITIZENSHIP AND REPUBLICAN LIBERALISM* 99 (1997).

¹³³ Carens, *supra* note 21, at 113.

¹³⁴ HEATER, *supra* note 4, at 182. See also Conover, *supra* note 22, at 134 (characterizing citizenship's «psychological meaning for the individual citizen» as his or her «sense of citizenship»).

the quality of our citizenly sentiment, which has independent sources in society and culture. Focusing on this sentiment and its sources is viewed by many analysts as necessary in order to understand how individuals who engage in the practices of citizenship are constituted as a self-identified people in the first instance. These scholars are concerned to investigate, in the words of one theorist, «the channels that connect personal identity to collective identity».¹³⁵

But what is the nature of the collectivity in relation to which the feeling of citizenship is ordinarily experienced? Overwhelmingly, the literature on citizenship in its psychological dimension addresses the nature of the identifications and solidarities that individuals maintain with the nation-state and its members.¹³⁶ This is hardly surprising given the presumptive nationalism that informs most current thinking about citizenship and about political identity in general. There is nothing necessary about this nationalist presumption, of course: the affective aspect of citizenship, like citizenship's other dimensions, has not always been linked to the national polity.¹³⁷ In the present period, however, citizenship identities and solidarities are routinely treated as tantamount to national identities and solidarities. More often than not, work on the subject is reduced to the study of what we now call patriotism,¹³⁸ a term denoting identification with and loyalty to one's country and compatriots.

¹³⁵ WILLIAM E. CONNOLLY, *IDENTITY/DIFFERENCE: DEMOCRATIC NEGOTIATIONS OF POLITICAL PARADOX* 198 (1991).

¹³⁶ On this point, see WIENER, *supra* note 17, at 29. «Studies on citizenship have mostly referred to citizen identity by using the terms of 'national identity' or 'nationality,' that is, by simply adding either an adjective or replacing it with a noun to clarify its meaning... [Yet] belonging cannot be fixed. It is contested and reflects shifting patterns of identity». *Id.*

¹³⁷ Prior to the modern era, citizenship was understood to entail identity/solidarity with the city-state, or, alternatively, with cosmopolis (per the Stoics), or with Christendom at large. For an account of the emergence of nation-states as the central site of political identity in the modern, industrial era, see ERNEST GELLNER, *NATIONS AND NATIONALISM* (1983).

¹³⁸ But see Mary G. Dietz, *Patriotism*, in *POLITICAL INNOVATION AND CONCEPTUAL CHANGE*, *supra* note 4, at 177, for a fascinating conceptual history of the term, in which the author points out (among other things) that «patriotism» was understood at one time to refer not to identification and solidarity with the country, but to «opposition to the increasingly centralized state and the growing capitalist economic order». It was only in the late nineteenth century that «patriot rhetoric became increasingly assimilated into the emerging vocabulary of 'state' and 'nation,' and its central ideal underwent a transference to the national... doctrines of the modern age». *Id.* at 189.

The literature on patriotism —on its incidence and its character— is both substantial and varied, and there are important differences among analysts' accounts of patriotic feeling.¹³⁹ Nevertheless, the very notion of patriotism takes as given that members of the nation experience themselves as part of a collective whole, part of a shared national culture or project. As Charles Taylor has written, patriotism is «strong citizen identification around a sense of common good» among members of a republic.¹⁴⁰

But to what extent do people, in fact, maintain such identifications? Some scholars concerned with citizenship have begun to question the presumption that national identity fundamentally characterizes people's sense of citizenship in liberal democratic nation-states. They point out that people often maintain greater allegiances to and identifications with particular cultural and social groups within the nation than they do with the nation at large.¹⁴¹ Some further charge that the very notion of a common national identity is a chimera, one dependent upon the suppression and marginalization of social and cultural difference.¹⁴² These and other critics have called for recognition of a «differentiated citizenship»,¹⁴³ according to which «members of certain groups would be incorporated into the political community not only as individuals but also through the [cultural] group».¹⁴⁴

¹³⁹ For a handful of recent discussions of the subject, see Taylor, *supra* note 82, at 170, 173 (arguing that «the essential condition of a free (nondespotic) regime» is «strong citizen identification around a sense of common good», which Taylor calls «patriotism»). See also GEORGE FLETCHER, *LOYALTY* (1993) (treating political loyalty as tantamount to loyalty to nation, or patriotism); Stephen Nathanson, *In Defense of 'Moderate Patriotism,'* 99 *ETHICS* 535 (1989); Paul Gomberg, *Patriotism Is Like Racism,* 101 *ETHICS* 144 (1990).

¹⁴⁰ Taylor, *supra* note 82, at 173.

¹⁴¹ Young, *supra* note 83. Young defines a social group as involving: an affinity with other persons by which they identify with one another, and by which other people identify them. A person's particular sense of history, understanding of social relations and personal possibilities, his or her mode of reasoning, values and expressive styles are constituted at least partly by her or his group identity. *Id.* at 259.

¹⁴² *Id.*; Marilyn Friedman, *Feminism and Modern Friendship: Dislocating the Community,* 99 *ETHICS* 275 (1989).

¹⁴³ Young, *supra* note 83, at 251.

¹⁴⁴ Kymlicka & Norman, *supra* note 81, at 370. See also Conover, *supra* note 22, at 139 (writing that a differentiated citizenship would replace both the I-identities of liberal theory and the we-identities of communitarian thought with citizen identities that are still we-identities, but the 'we' would not longer be the single 'we' defined by the entire political community; it would, instead, be many different 'we's' defined by the various social

This «cultural pluralist», or multiculturalist position on citizenship,¹⁴⁵ offers a powerful challenge to the default presumption in much political and social theory that people's foremost collective identifications and solidarities are going to be bound up with the state or with their compatriots at large.¹⁴⁶ Yet its departure from the nationalist vision of citizenship is only partial. For despite their critique of a presumed national identity, cultural pluralists continue to posit the nation-state as the discussion's normative frame. The social and cultural groups that are said to ground people's fundamental identifications and solidarities are presumed to be constituent parts of a national civil society.¹⁴⁷ And when proponents propose «democratizing the public sphere» by taking into account the identities and perspectives of excluded social groups via modes of group representation,¹⁴⁸ the public sphere they have in mind is a national one.¹⁴⁹ While cultural pluralists reject the presumption of citizenship identity as unitary, in this respect they continue to regard its fragments as situated within national boundaries.

This (often-unspoken) nationalist presumption in the pluralist literature has itself been subject to challenge by some analysts concerned with citizenship identity and solidarity. These analysts have begun to stress the «rise of transnational identities» among increasing numbers of people in the current period.¹⁵⁰ They invoke the notions of global or transnational or postnational

groups that populate the region between the individual and the political community as a whole).

¹⁴⁵ Kymlicka & Norman, *supra* note 81, at 370 («cultural pluralist»); JEFF SPINNER-HALEV, *THE BOUNDARIES OF CITIZENSHIP: RACE, ETHNICITY, AND NATIONALITY IN THE LIBERAL STATE* («multiculturalist»).

¹⁴⁶ For critiques of the position, see SPINNER-HALEV, *supra* note 144.

¹⁴⁷ See, e.g., Walzer, *supra* note 121, at 3 («Civil society is usually thought to be contained within the framework of the state: it has the same boundaries as the political community»); Maria de los Angeles Torres, *Transnational Political and Cultural Identities: Crossing Theoretical Borders*, in *BORDERLESS BORDERS: U.S. LATINOS, LATIN AMERICANS AND THE PARADOX OF INTERDEPENDENCE* 169, 181 (Frank Bonilla et al. eds., 1998) («[T]he multicultural paradigm in its first instance proposed a transformation of the public space within the confines of the nationstate, leaving unchallenged the notion of the nation-state itself»).

¹⁴⁸ Young, *supra* note 83. See also KYMLICKA, *supra* note 67, at 131-51 (advocating forms of group representation to ensure a voice for minorities).

¹⁴⁹ For Young, this conception is implicit. Kymlicka makes his view plain, however. See KYMLICKA, *supra* note 67, at 194 (arguing that «political life has an inescapably national dimension»).

¹⁵⁰ Torres, *supra* note 146. See also Robin Cohen, *Diasporas and the Nation-State: From Victims to Challenges*, 72 *INT'L AFF.* 507, 517 (1996) («[N]ational identities are under

citizenship to characterize the collective identifications and commitments that people maintain with others across national boundaries.¹⁵¹ As they see it, «the nation-state is by no means the only game in town as far as translocal loyalties are concerned».¹⁵²

The transnationalized citizenship identity claim takes several forms. One common version points to the growing sense of European-wide citizenship—sometimes called a «Euro-consciousness»—said to be developing as part of the European Union’s integration process.¹⁵³ The development of such identities has been characterized by some as signaling the denationalization of citizenship identities more generally. As one prominent sociologist recently wrote: «There is a growing cultural awareness of a ‘European identity’ which challenges nationalistic conceptions of political citizenship».¹⁵⁴

In another version, the focus is on the affective connections that people establish and maintain with one another in the context of a burgeoning transnational civil society.¹⁵⁵ Citizenship here is said to reside in identities and commitments that arise out of cross-border affiliations of various kinds, especially those associated with oppositional political and social movements.¹⁵⁶ Some commentators have described the emergence of new forms

challenge from de-territorialized social identities»); Thomas M. Franck, *Community Based on Autonomy*, 36 COLUM. J. TRANSNAT’L L. 41, 43 (1997) («Dramatically multiplied transnational contacts at all levels of society have not only resulted in a greater awareness of the global context, but also have created new commonalities of identity that cut across national borders and challenge governments at the level of individual loyalties»).

¹⁵¹ Torres, *supra* note 146, at 182.

¹⁵² ARJUN APPADURAI, *MODERNITY AT LARGE* 165 (1996).

¹⁵³ Cf. Stephen Howe, *Citizenship In the New Europe: A Last Chance For the Enlightenment?* in *CITIZENSHIP*, *supra* note 20, at 123 (citing «Mikhail Gorbachev’s idea of the ‘common European home’»); Martin Kettle, *A Continent With An Identity Crisis*, in *CITIZENSHIP*, *supra* note 20, at 115, 117-18 (describing «rapid growth of a very positive though extremely inchoate sense of Europeanism, especially among young people and the well-educated», though ridiculing the notion that «Europe is now emerging into a wholly new identity, governed by peace, not war, and by common aspirations rather than sectional concerns»).

¹⁵⁴ Turner, *supra* note 20, at 157.

¹⁵⁵ See Cohen, *supra* note 119 (elaborating on the concept of a transnational civil society). See also discussion accompanying *supra* notes 126-28.

¹⁵⁶ According to Richard Falk, «the emergence of transnational activism» in the 1980s represented a form of global citizenship. In this conception, politics consist[s] more and more of acting to promote a certain kind of political consciousness transnationally that c[an] radiate influence in a variety of directions, including bouncing back to the point of origin. Amnesty International and Greenpeace are emblematic of this

of common identity within transnational corporate culture in the language of citizenship as well.¹⁵⁷

Still another version of the claim invokes the development of transnational social and political communities arising from transborder migration as the basis for new forms of citizenship identity.¹⁵⁸ An important part of the account concerns the extent to which members of these communities maintain identifications and solidarities with one another across state-territorial divides. These people, as sociologist Alejandro Portes observes, «lead dual lives. Members are at least bilingual, move easily between different cultures, frequently maintain homes in two countries, and pursue economic, political and cultural interests that require a simultaneous presence in both».¹⁵⁹ The result of this process, on one reading, is a growing class of citizens «who are, in a very real sense, neither here nor there».¹⁶⁰ Stated more affirmatively, however, the making of transnational communities has resulted in the construction of citizenship identities that arise out of «networks, activities, pat-

transnational militancy with an identity... that can't really be tied very specifically to any one country or even any region... These networks of transnational activity, conceived both as a project and as a preliminary reality, are producing a new orientation toward political identity and community. Cumulatively, they can be described as rudimentary, generally unacknowledged forms of participation in a new phenomenon, global civil society. Falk, *The Making of Global Citizenship*, *supra* note 107, at 47-48.

¹⁵⁷ Falk describes one image of the global citizen «as the man or woman of transnational affairs», one who participates in a «deterritorialized and elite global culture». This understanding of global citizenship focuses upon the impact on identity of the globalization of economic forces... Its guiding image is that the world is becoming unified around a common business and financial elite, [one] that shares interests and experiences [and] comes to have more in common within its membership than it does within the more rooted, ethnically distinct members of its own particular civil society; the result seems to be a denationalized global elite that is, at the same time, virtually without any sense of global civic responsibility».

Id. at 43-44.

¹⁵⁸ There is a growing empirical literature in anthropology and sociology on such communities. See, e.g., LINDA BASCH ET AL., *NATIONS UNBOUND: TRANSNATIONAL PROJECTS, POSTCOLONIAL PREDICAMENTS AND DETERRITORIALIZED NATION-STATES* (1994); Robert C. Smith, *Transnational Localities: Community, Technology and the Politics of Membership Within the Context of Mexico and U.S. Migration*, in *TRANSNATIONALISM FROM BELOW* 196-240 (Michael Peter Smith & Luis Eduardo Guarnizo eds., 1998); Alejandro Portes, *Global Villagers: The Rise of Transnational Communities*, *AM. PROSPECT*, Mar.-Apr. 1996, at 74; Soysal, *Changing Parameters*, *supra* note 15, at 519-21.

¹⁵⁹ Portes, *supra* note 157, at 76.

¹⁶⁰ *Id.* at 77.

terns of living and ideologies that span the[] home and the host society». ¹⁶¹ This is citizenship identity which is not confined within the parameters of the nation-state but which, instead, «transgresses borders and boundaries both of the state and of the conceptual terrain mapped by states». ¹⁶²

In a final version of the transnational citizenship identity claim, some commentators point to an experience of identification and solidarity that many persons feel with other individuals at the planetary level. The «sense of global citizenship» ¹⁶³ to which they refer arises, in part, out of humanitarian convictions; ¹⁶⁴ it draws «upon a long tradition of thought and feeling about the ultimate unity of human experience, giving rise to a politics of desire that posits for the planet as a whole a set of conditions of peace and justice and sustainability». ¹⁶⁵ It derives as well from more practical considerations: in particular, increasing worldwide ecological interdependence, heightened globalization of the economy, and the rapid transnationalization of communications media and commercial culture, all of which create structural linkages that provide a concrete basis for people's experience of themselves as engaged in a common global enterprise. ¹⁶⁶ Many go on to urge that global citizens have important «responsibilities» to help construct an

¹⁶¹ BASCH ET AL., *supra* note 157, at 3-4.

¹⁶² Nina Glick Schiller & Georges Fouron, *Transnational Lives and National Identities: The Identity Politics of Haitian Immigrants*, in TRANSNATIONALISM FROM BELOW, *supra* note 157, at 130, 156. This citizenship identity could be said to be located within the space of «transnational social fields». See, e.g., Roger Rouse, *Mexican Migration and the Social Space of Postmodernism*, 1 DIASPORA 8 (1991) (discussing the «transnational social field» concept); Luin Goldring, *The Power of Status in Transnational Social Fields*, in TRANSNATIONALISM FROM BELOW, *supra* note 157, at 165. Note, however, that some scholars specifically reserve the concept of «citizenship» for nation-state-based notions of belonging, and counterpose these to «postnational» models of membership. See e.g., Smith, *supra* note 157, at 198-200. See also discussion in Part I E, *infra*. It is the latter concept Smith employs to characterize transnational migrant communities. *Id.*

¹⁶³ ROBERT REICH, *THE WORK OF NATIONS* 309 (1991).

¹⁶⁴ See Ed Wingenbach, *Justice After Liberalism: Democracy and Global Citizenship*, in CITIZENSHIP AFTER LIBERALISM 147, 160 (Karen Slawner & Mark E. Denham eds., 1998) («Global citizenship implies... a recognition of cross-border and cross-cultural responsibilities we all share regarding the condition in which people find themselves»); JOSEPH ROTBLAT, *WORLD CITIZENSHIP: ALLEGIANCE TO HUMANITY* (Joseph Rotblat ed., 1997).

¹⁶⁵ Falk, *The Making of Global Citizenship*, *supra* note 107, at 41.

¹⁶⁶ See, e.g., ROTBLAT, *supra* note 163, at x («The fantastic progress in communication and transportation has transformed the world into an intimately interconnected community, in which all members depend on one another for their well-being»).

«authentic global community»,¹⁶⁷ and more fundamentally, to help ensure survival of life on earth.¹⁶⁸

Each version of the postnational citizenship identity claim points to the fact that as ties increase across national borders, people are increasingly taking on commitments and identities that exceed the bounds of the national society and its members. Globalization, in this account, reconstitutes us in the deepest personal ways; it has important imaginative and emotional and moral effects on all of us.

Whether such experiences should be characterized in the language of citizenship, however, is a different question. The European case seems fairly uncontroversial; but if «Euro-consciousness» can easily be described as a form of postnational citizenship identity,¹⁶⁹ this is surely related to the EU's development of a formal European citizenship status to which the change in consciousness can be linked. Where there is no such status foundation for the claimed transnational citizenship identities, using the language of citizenship to describe these recent developments will likely meet with far more resistance. Many theorists of citizenship identity will advance the argument that the foregoing identities and solidarities, important though they may be, are simply insufficiently political to be characterized in terms of citizenship.¹⁷⁰ One might respond by reiterating the argument, outlined above, that politics are not confined to the state but are enacted as well in

¹⁶⁷ Falk, *The Making of Global Citizenship*, *supra* note 107. See also ROTBLAT, *supra* note 163, at xi-xii (In order to develop world citizenship, «we have to develop in ourselves the feeling of belonging to the world community, and be beholden to it as we are now to our family and our nation»).

¹⁶⁸ See David B. Hunter, *Toward Global Citizenship in International Environmental Law*, 28 WILLAMETTE L. REV. 547, 552 (1992) («[W]e must begin to think of ourselves as global citizens, having primary responsibility and fidelity to the planet»). See also Falk, *The Making of Global Citizenship*, *supra* note 107, at 42 («This spirit of global citizenship... [involves]... feeling, thinking and acting for the sake of the human species»); Van Steenberg, *supra* note 58, at 146 (urging «extension of th[e] responsibility [associated with citizenship] to the natural world»); Held, *supra* note 20, at 25 («The threat of ecological disaster creates the conditions for giving priority to the claims of humanity and its needs, the language of the citizens of 'Planet Earth,' rather than the language of the nation-state democracies»); Fred Steward, *Citizens of Planet Earth*, in CITIZENSHIP, *supra* note 20, at 65, 75 (urging development of a «green global citizenship»).

¹⁶⁹ See Roger Cohen, *A European Identity? Nation-State Losing Ground*, N. Y. TIMES, Jan. 14, 2000, at A3.

¹⁷⁰ See, e.g., Conover, *supra* note 22, at 134 («[C]itizen identity' is the affective significance that people give their membership in a particular political community»).

various sites in civil society.¹⁷¹ It would seem to follow that at least some of the politically-inflected communities that comprise global civil society can be characterized as sites of citizenship identity and solidarity as well. It is not implausible, it seems to me, to speak of the «sense of citizenship»¹⁷² a person might experience as part of the transnational environmental or women's rights movements, an international union, a professional association, or another non-state institution.

Furthermore, not all understandings of citizenship are political in nature. One could draw upon the more sociologically-oriented conceptions of citizenship to counter the political objection. For example, T.H. Marshall defined citizenship as «full membership of a community»;¹⁷³ and more recently, Bryan Turner has defined citizenship as «a set of practices which constitute individuals as competent members of a community».¹⁷⁴ There are, of course, many definitions of community in the social science literature, and some of these are exceptionally broad. In one understanding, community encompasses «groups related... simply by shared interests».¹⁷⁵ Relying upon such a definition of community to serve as the site of citizenship identity obviously threatens to collapse it into meaninglessness, since a nearly endless array of human associations can be characterized as communities in these terms.¹⁷⁶ If, on the other hand, one defines communities as «types of population settlements»,¹⁷⁷ or as «social networks whose members

¹⁷¹ See text accompanying *supra* notes 113-26.

¹⁷² Conover, *supra* note 22, at 134.

¹⁷³ MARSHALL, *supra* note 55, at 8.

¹⁷⁴ Turner, *supra* note 20, at 159 (specifically «avoid[ing] an emphasis on juridical or political definitions of citizenship»). See also Held, *supra* note 20, at 20 («Citizenship has entailed membership, membership in the community in which one lives one's life»).

¹⁷⁵ Chandran Kathukakis, *Liberalism, Communitarianism and Political Community*, 13 Soc. Phil. & Pol'y 80, 84 (1996) (internal citation omitted).

¹⁷⁶ I don't know that most exponents of postnational citizenship themselves would want to claim that the citizenship concept can or should extend so far as to cover the sense of committed membership people experience in, say, an international association of stamp collectors. (Peter Spiro offered me this example to get at the *reductio ad absurdum* problem). But see DAVID J. ELKINS, *BEYOND SOVEREIGNTY: TERRITORY AND POLITICAL ECONOMY IN THE TWENTY-FIRST CENTURY* 39 (1995) («Virtually all observers now assume that citizenship is tied to a territorial nation-state. Why must they assume that? What is the harm in saying that I am a citizen of a professional organization? Or of a sports team? Or a religious order?»).

¹⁷⁷ OXFORD CONCISE DICTIONARY OF SOCIOLOGY 73 (Gordon Marshall ed., 1994) (The term «community» «has been used in the sociological literature to refer directly to types of population settlements»).

share some common characteristic apart from or in addition to a common location»,¹⁷⁸ then the kinds of cross-border social formations established by «transmigrants»¹⁷⁹ would surely qualify. In turn, the migrants' emotive connections to these communities could reasonably be expressed in the language of citizenship, at least within the sociological understanding of the term.

As for claims that a «sense of global citizenship» is beginning to emerge among many of the earth's inhabitants, this is not the first time that the concept of citizenship has been used to designate an experience of imaginative fellowship extending to people outside one's national community. The cosmopolitan who classically claimed that she was a «citizen of the world» intended to communicate that her allegiances reached beyond national boundaries to embrace humanity at large. Such apparently utopian uses of the term citizenship have been criticized, as occurred in Nussbaum's case,¹⁸⁰ but they are nevertheless part of the word's conceptual history and cannot be willed away. Employing the term to convey an aspirational sense of identification with other participants in a global commons is simply an updated version of this conventional usage.

Perhaps more than the other dimensions of citizenship, talking about the «feeling of citizenship» in ways that extend it beyond the parameters of the nation-state or other formal political community runs the risk of producing a concept of citizenship that begins to mean very little since it can so readily mean so much. Proponents of the transnational or postnational citizenship position will no doubt be challenged by critics to delineate the boundaries of the concept by specifying the kinds of communities that they understand can and cannot serve as locations of citizenship identity. But it should not be necessary, it seems to me, to establish precisely where the outer boundaries lie in order to plausibly argue that at least *some* politically and socially-based non-state communities—including some that have taken form across national boundaries—can serve as sites of citizenship identity and solidarity.

E. Locating Citizenship

If citizenship is an intrinsically national project, as Nussbaum's critics maintain, then recent claims by social theorists and political activists to the

¹⁷⁸ *Id.*

¹⁷⁹ BASCH ET AL., *supra* note 157.

¹⁸⁰ See discussion accompanying *infra* notes 1-5.

effect that citizenship is taking increasingly postnational forms would seem, necessarily, to be incoherent and implausible. Yet this incoherence claim depends upon a conception of citizenship that assumes its national location *a priori*. I have proposed beginning the inquiry by treating citizenship as a core political concept that is conventionally used to designate a variety of different social practices and experiences, and then asking whether the practices and experiences named by citizenship are, in fact, confined to the national sphere. Taking this latter approach seems preferable because citizenship has not always been linked to the nation-state, and the necessity of its relationship to the state would therefore seem to need to be established, rather than presumed.

Of course, even if we are willing to ask about citizenship's location, we may still determine that citizenship remains a national affair and that claims of denationalization are not convincing. Some will argue that the empirical evidence fails to establish the widespread transnationalization of social and political life invoked by postnationalists as the basis for their claim. In my view, however, there is a reasonable case to be made that the experiences and practices conventionally associated with citizenship do in some respects exceed the boundaries of the territorial nation-state—though the pervasiveness and significance of this process varies depending on the dimension of citizenship at issue. Neither the organization of formal status, the protection of rights, the practice of political participation, nor the experience of collective identities or solidarities are entirely confined to the territory or community of the nation-state (if they ever were), but are sometimes, and now increasingly, enacted beyond it.

Others will no doubt object to the use of the word «citizenship» to characterize these developments. Even if they concede that substantial transnationalization of statuses, rights, politics, and identities have occurred, they will contend that these various developments do not signal the denationalization of citizenship so much as citizenship's displacement or decline in the face of other forms of collective organization and affiliation, as yet unnamed. Once again, however, it seems to me that we are faced with a choice: we can either presume that citizenship is necessarily a national affair, so that these developments cannot be captured in the language of citizenship by definition, or we can approach the question of where citizenship is enacted as one to be determined in light of developing social practices.

The fact that we are faced with this choice makes clear that there is no objective definition of citizenship «out there» to which we can refer to authoritatively resolve any uncertainties about citizenship's usage. Citizenship's meaning has always been contested and is sure to remain so. Exponents of post- or transnational citizenship have simply opened a new front in the long struggle to define the concept. Their work reminds us of the broad diversity of criteria in virtue of which the term citizenship can reasonably be said to apply; they seek to argue that «the ordinary criteria for applying [the] term are present in a wider range of circumstances than has commonly been allowed».¹⁸¹ And in so doing, they have plausibly challenged the prevailing assumption that citizenship is reducible to nation-state membership.

II. DENATIONALIZATION AS ASPIRATION

But why should it matter whether we decide to describe these recent transnationalizing developments in the language of citizenship? What is at stake in this debate? Parties on both sides are clearly concerned with getting the facts and the categories right, of course. But correspondence and coherence are not the only objectives; there is, ultimately, more at issue. For «citizenship» is not merely a word that describes the world. It is also a powerful term of appraisal, one which performs an enormous legitimizing function. To characterize a set of social practices in the language of citizenship is to honor them with recognition as politically and socially consequential—as centrally constitutive and defining of our collective lives. To refuse them the designation is, correspondingly, to deny them such recognition.¹⁸²

In this respect, the postnational citizenship position can and should be read not merely as an assertion of «fact», but as an act of political advocacy.¹⁸³ It represents an effort to claim attention and significance and legiti-

¹⁸¹ Skinner, *supra* note 9, at 15.

¹⁸² For a discussion of the way in which key appraisive political terms perform powerful legitimizing functions, see *id.* at 21 («[O]ne of the most important uses of evaluative language is that of legitimating as well as describing the activities and attitudes of dominant social groups»). For further discussion, see *id.* at 20-22.

¹⁸³ Farr, *Understanding Conceptual Change Politically*, *supra* note 13, at 26-27 (arguing that «an enormous number of political actions are carried out (and can only be carried out) in and through language»).

[Views which] consider only the descriptive function of language... radically underestimate the politics of language. Only in the rarest of circumstances—or language-games, as Wittgenstein would say— does language function apolitically as a neutral

macy for certain recent transnational political and social practices that have often been overlooked or otherwise neglected in mainstream political and social thought. It is, in other words, a demand for their recognition.

This is not to say that the demand for recognition is made explicit in the postnationality literature. Indeed, most articulations of the claim are framed in descriptive terms; their message is that, as an empirical matter, citizenship is increasingly taking postnational forms. When Soysal addresses what she calls the «postwar reconfiguring of citizenship»,¹⁸⁴ for example, her projected stance is that of the cool, impartial observer. While occasionally, analysts make their normative endorsement of postnational forms of citizenship quite clear—Falk, for example, affirmatively embraces the development of «global citizenship» to the extent it is organized by commitments to democratic and human rights norms¹⁸⁵—most purport to be proceeding strictly empirically (though it is not hard to detect an undertone of approbation for postnational developments in some of the literature as well).

Yet whether or not endorsement of postnationality is made explicit or is even consciously embraced, the designation of nonnational social and political arrangements in the language of citizenship is necessarily a normative claim to some degree. In a world in which citizenship's national character is authoritatively presumed, the very idea of «postnational citizenship» pointedly disrupts this expectation. The apparent paradox embodied by the idea serves to convey at least some criticism of prevailing, nationally-defined conceptions of community membership, and by implication, some approval of, or aspiration toward, plural and denationalized membership forms.¹⁸⁶

Of course, if the postnational citizenship position is intrinsically normative in character, so too is the claim that citizenship is, by its nature, a

medium for expressing ideas or describing things. Rather, language generally functions in overtly and covertly political ways by playing (or preying) upon the needs, interests, and powers of those individuals or groups who use it. And use it they do for strategic or partisan ends of one kind or another. Most of language, in short, is politically constituted by the ends to which it is intentionally put or by the consequences which it is subsequently seen to entail. Understanding what we might call, then the 'political constitution of language' is crucial for understanding conceptual change politically.

Id. at 26.

¹⁸⁴ Soysal, *Changing Parameters*, *supra* note 15, at 513.

¹⁸⁵ Falk, *The Making of Global Citizenship*, *supra* note 107, at 50.

¹⁸⁶ On the other hand, the basis for postnationalists' criticism of national citizenship and for their celebration of the postnational is difficult to pin down precisely because the normative message in this literature is so often cloaked in a discourse of «fact».

national enterprise. Any declaration to the effect that the term citizenship possesses «little meaning except in the context of a state»¹⁸⁷ may apparently be directed against a perceived incoherence in the use of this important political term. But given the appraisive power the term possesses, the nationalist claim on citizenship should be read as an expression of normative conviction as well. To maintain that the term cannot sensibly extend beyond the national is, in effect, to promote a conception of citizenship that is both statist and unitary.

Any debate over the possibility of citizenship beyond the nation is thus, in part, a debate over its desirability. Advocates of the concepts of postnational and transnational citizenship have sought to loosen the grip that the national state has maintained on the conventional political imagination by advancing conceptions of citizenship that are located beyond it. But in doing so, they run up against the prevailing view in political thought which holds not only that citizenship is national by definition, but that any effort to locate citizenship beyond the nation-state is misguided, and even affirmatively dangerous.

A. Postnational Assessments

But is the idea of citizenship beyond the nation-state in fact normatively indefensible? I would argue that it is not, at least not in principle. In fact, it seems to me that in at least some circumstances, principles of social justice and democratic equality (however precisely these are defined) point clearly in the direction of citizenship's denationalization. For example, from the perspective of a person concerned with ensuring the protection of human rights, it is indisputably good that the kinds of rights traditionally associated with citizenship are increasingly being guaranteed at the international level because, quite simply, it means that more people are likely to enjoy more protection more of the time. Likewise, from the perspective of a proponent of democratic theory, it is surely good that people are engaged in cross-border political activity of the kind ordinarily associated with active citizenship within the demos, since such activity is the only means of ensuring democratic engagement and representation in the many aspects of contemporary life that lie beyond the bounds and reach of the territorial nation-state.

¹⁸⁷ Himmelfarb, *supra* note 2, at 74.

On the other hand, the fact that some good normative arguments are available on behalf of citizenship-beyond-the-nation should not, it seems to me, lead to an indiscriminate celebration of things postnational. There is a strain of thought in the field of cultural studies that has tended in this direction; Arjun Appadurai's essay on «postnational patriotism» is a prominent example.¹⁸⁸ But it is not hard to point to examples of postnational developments that could plausibly be described in the language of citizenship which many (including postnationalism's usual celebrants) would presumably not want to support at all. The denationalized fellowship and commonality that link many members of the transnational capitalist and managerial classes, for example, is not likely to be celebrated among those concerned with the economically marginalized.¹⁸⁹ And while the case of the emerging European citizenship arguably has the potential for expanded democratic protections, many commentators have expressed concern that, as currently designed, Europeans face a «democracy deficit» in light of the lack of popular representation and participation in EU governance.¹⁹⁰ Others stress that the Europeanization of citizenship entails the creation of new inequalities and exclusions for those designated as Europe's outsiders.¹⁹¹

¹⁸⁸ ARJUN APPADURAI, *MODERNITY AT LARGE: CULTURAL DIMENSIONS OF GLOBALIZATION*, Ch. 6 (1996).

¹⁸⁹ See, e.g., Falk, *The Making of Global Citizenship*, *supra* note 107, at 44 (describing as one form of citizenship the unification of the world around a common business and financial elite, [one] that shares interests and experiences [and] comes to have more in common within its membership than it does with the more rooted, ethnically distinct members of its own particular civil society; the result seems to be a denationalized global elite that is, at the same time, virtually without any sense of global civic responsibility).

See also Richard Falk, *Revisioning Cosmopolitanism*, in *FOR LOVE OF COUNTRY*, *supra* note 1, at 53, 57 (arguing that market-driven globalism entails «a perspective of the whole [world] that is totally oblivious to the ethical imperatives of human solidarity»).

¹⁹⁰ JURGEN HABERMAS, *THE INCLUSION OF THE OTHER: STUDIES IN POLITICAL THEORY* 155-61 (1998). See also Seyla Benhabib, *European Citizenship*, *DISSENT*, Fall 1998, at 107 («There is a democracy deficit in the European Union... because a whole range of issues and policies is being settled without open, cross-national information and debate»); David Miller, *The Left, The Nation-State, and European Citizenship*, *DISSENT*, Summer 1998, at 47, 50 («[T]he wider the scope of citizenship is drawn, and the more publics it therefore has to embrace, the weaker its democratic credentials become»).

¹⁹¹ See, e.g., Jacqueline Bhabha, 'Get Back to Where You Once Belonged: Identity, Citizenship, and Exclusion in Europe', 20 *HUM. RTS. Q.* 592, 608-25 (1998) (criticizing Europe's exclusionary treatment of third country nationals).

The point is that citizenship beyond the nation is neither desirable nor dangerous per se. Postnational citizenship takes many forms (as does citizenship itself); and even assuming as a normative benchmark a broad commitment to principles of democratic equality, we will inevitably find that some postnational developments further these normative goals, while others threaten them fundamentally.

Once we move beyond sweeping condemnations and celebrations of post and transnational conceptions of citizenship, however, there remains much to say about the question of where citizenship *ought* to be located. But exactly what kind of discussion will we have? Its nature and direction will obviously be shaped by the way in which we frame the issue in the first instance. It may seem natural, given the continued authority of national conceptions of collective life, to proceed by seeking to identify and assess normative justifications for claims that would denationalize citizenship in one way or another. Citizenship's nationality would provide the starting point in this approach, and we would focus our attention on recent efforts to depart from the norm. As someone sympathetic to the postnational project, however, I am inclined to turn the tables and ask instead whether national conceptions of citizenship deserve the presumptions of legitimacy and primacy that they are almost always afforded. Posing the question this way denaturalizes conventional political thought by treating the prevailing national presumption as worthy of interrogation in its own right.¹⁹² In practical terms, it shifts the burden of justification to those who assume without question that the national should continue to dominate our conceptions of collective public life.

While in theory, the nationalist premise can be challenged in relation to all of citizenship's dimensions, the discussion will be most productive, it seems to me, in the context of a consideration of citizenship in its «psychological dimension». Focusing on this aspect of citizenship makes sense, first of all, because of its constitutive relationship with citizenship in its other aspects. Citizenship as status, as rights, and as political activity are

¹⁹² The term «denaturalization», as is well known, has a technical legal meaning that describes the procedure of stripping citizenship from a person who acquired citizenship via naturalization. I use the term here, instead, to convey the process of «mak[ing] unnatural» something that we ordinarily regard as natural or otherwise given. *THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE* 352 (1969). For a statement that national citizenship constitutes part of a person's «natural identity», see Himmelfarb, *supra* note 2, at 77.

all fundamentally grounded in experiences of collective identification with, and attachment to, others, and all evoke emotional responses from their participants as well. Furthermore, and perhaps more importantly, it is only in relation to citizenship in its psychological dimension that normative theorists have addressed the matter of citizenship's location in any systematic way. Questions concerning the proper site of political identity and solidarity have long been central problems in political theory.

Theorists have, in fact, devoted increasing attention to the locus of political identity and solidarity in recent years, spurred at least in part by emerging claims in the social sciences and elsewhere that nation-state citizenship is being displaced by other, nonnational modes of identity and belonging. Much recent work in the area is concerned with defending the continued centrality of national affiliations and solidarities in the face of recent globalizing and localizing trends. Self-described «liberal nationalists», in particular, have mounted a concerted effort to dispel the view that national citizenship matters progressively less *vis-à-vis* the challenges it faces from both above and below.

Since most exponents of postnational citizenship have not directly engaged in these normative debates, we cannot know precisely how they would answer the liberal nationalist challenge.¹⁹³ To the extent they seek to denaturalize normative nationalism, however, they will eventually need to develop a response. While full elaboration of such a response is a long-term project, which is beyond the scope of this article, it seems worthwhile to at least begin to imagine its outlines.

B. The National Argument

Classically, the debate over the proper locus of citizenship identity and solidarity in political thought has taken the form of a debate between advocates of cosmopolitanism and patriotism. While this debate is wide-ranging and includes a variety of positions on both sides, it is centrally defined by a controversy over the relative merits of ethical universalism and particularism. The ethical cosmopolitan view,¹⁹⁴ in its classical form,

¹⁹³ An exception is Spiro, *The Citizenship Dilemma*, *supra* note 51.

¹⁹⁴ The tradition of ethical cosmopolitanism I am addressing here can be usefully distinguished from what might be called «cultural cosmopolitanism». According to Bernard Yack, the latter is «the broadened perspective we associate with individuals who move comfortably within the standards of more than one culture». Bernard Yack, *Cosmopolitan*

rejects particularist loyalties in favor of an impartial moral stance; it is a perspective committed to the well-being of humanity at large, rather than any particular community of persons.¹⁹⁵ Cosmopolitans embrace a moral universalist outlook, one which gives «equal consideration to all people who might be affected by an action».¹⁹⁶ In such a view, therefore, grounding one's solidarity in the nationstate is unacceptably narrow and parochial. It is in this respect that the cosmopolitan sometimes describes herself as a «citizen of the world».¹⁹⁷

Critics of cosmopolitanism, on the other hand, regard the state of moral detachment presumed in this vision as both implausible and undesirable. Individuals are never truly detached, in the critics' view;¹⁹⁸ they are una-

Humility, BOSTON REV., Feb.- Mar. 1995, at 17. The former, by contrast, is «the higher loyalty to humanity defended by individuals who claim to be citizens of the world». *Id.*

¹⁹⁵ Some observers have noted the diversity of cosmopolitan positions, even within the ethical debate. Amanda Anderson, for example, contrasts «exclusionary cosmopolitanism» in which «little to no weight is given to exploration of disparate cultures: all value lies in an abstract or 'cosmic' universalism», with «inclusionary cosmopolitanism», in which «universalism finds expression through sympathetic imagination and intercultural exchange». Cosmopolitanism's «contemporary articulations», Anderson writes, «tend to argue for a redefined dialectic between the two». Amanda Anderson, *Cosmopolitanism, Universalism and the Divided Legacies of Modernity*, in COSMOPOLITICS: THINKING AND FEELING BEYOND THE NATION 265, 268 (Pheng Chea & Bruce Robbins eds., 1998) [hereinafter COSMOPOLITICS].

¹⁹⁶ Paul Gomberg, *Patriotism Is Like Racism*, 101 ETHICS, Oct. 1990, at 144. See also Thomas W. Pogge, *Cosmopolitanism and Sovereignty*, 103 ETHICS, Oct. 1992, at 48, 49 («The central idea of moral cosmopolitanism is that every human being has a global stature as an ultimate unit of moral concern»). According to Pogge, «cosmopolitan morality... centers around the fundamental needs and interests of individual human beings, and of all human beings...». *Id.* at 58. See also Robert E. Goodin, *What Is So Special About Our Fellow Countrymen?* 98 ETHICS, July 1998, at 663, 664 (linking moral universalism with the principle of impartiality).

For a perspective which contrasts universalism with cosmopolitanism, see, e.g., DAVID A. HOLLINGER, POST-ETHNIC AMERICA: BEYOND MULTICULTURISM 84 (1985) («We can distinguish a universalist will to find common ground from a cosmopolitan will to engage human diversity... For cosmopolitans, the diversity of humankind is a fact; for universalists, it is a potential problem»).

¹⁹⁷ For a recent defense of the neo-Kantian concept of «world citizenship», see Andrew Linklater, *Cosmopolitan Citizenship*, in COSMOPOLITAN CITIZENSHIP 35, 35-59 (Kimberly Hutchings & Ronald Dannreuther eds., 1999).

¹⁹⁸ See, e.g., DAVID MILLER, ON NATIONALITY (1995) (criticizing cosmopolitan notion that «human beings [are] so constituted that they can set aside their sense of identity and sense of belonging and act simply on the basis of a rational conviction about what morality requires of them»).

voidably «situated-selves»,¹⁹⁹ whose moral commitments are necessarily constituted by and within the communities in which they live.²⁰⁰ Nor are people, by nature, actually capable of identifying with humanity at large, because the category is too big and too abstract to serve as the object of political love and identification.²⁰¹ Peoples' political and moral allegiances are, instead, necessarily more local and particular.²⁰² As well they should

¹⁹⁹ E.g., MICHAEL SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* (2d ed. 1998) (1984) (counterposing the «situated self» to the «unencumbered self» of liberal theory). See Himmelfarb, *supra* note 2, at 77 («We do not come into the world as free-floating, autonomous individuals. We come into it complete with all the particular, defining characteristics that go into a fully formed human being, a being with an identity. Identity... is given, not willed»).

²⁰⁰ Charles Taylor characterizes this position as «holist», and counterposes it to the «atomism» of methodological individualism. See generally Taylor, *supra* note 82, at 159-82. It is this same conviction, that people are inevitably socially-situated, that gives rise to the metaethical critique commonly directed against cosmopolitanism. Cosmopolitanism's humanitarian commitments are often said to be required by universal and transcendental norms of justice; Nussbaum, for instance, maintains that cosmopolitan ethics is required by «the substantive universal values of justice and right». See Nussbaum, *supra* note 1, at 5. This notion is regarded by some critics as rationalist nonsense. The norms of justice are not impersonal or objective; they can only be the product of shared «social meanings», since communities are the ultimate source of the values and moral commitments that individuals maintain. See, e.g., MICHAEL WALZER, *THICK AND THIN: MORAL ARGUMENT AT HOME AND ABROAD* (1994) (contending that morality is grounded in the shared understandings of particular communities rather than any notion of «God or Nature or History or Reason»); Richard Rorty, *Justice as a Larger Loyalty*, in *COSMOPOLITICS*, *supra* note 193, at 45, 48 (endorsing «non-Kantian», non-rationalist views of morality which hold that «one's moral identity is determined by the group or groups with which one identifies»). As Alisdair MacIntyre writes, «the questions of *where* and *from whom* I learn my morality turn out to be crucial for both the content and the nature of moral commitment». Alisdair MacIntyre, *Is Patriotism A Virtue?* The Lindley Lecture, University of Kansas, 1984, at 7-8. For a critique of Nussbaum along these lines, see Hilary Putnam, *Must We Choose between Patriotism and Universal Reason?* in *FOR LOVE OF COUNTRY*, *supra* note 1, at 91.

²⁰¹ See, e.g., Nathan Glazer, *Limits of Loyalty*, in *FOR LOVE OF COUNTRY*, *supra* note 1, at 61, 63 (arguing that cosmopolitans are often unrealistic about «how far bonds of obligation and loyalty can stretch»). But see Bruce Robbins, *Introduction, Part I: Actually Existing Cosmopolitanism*, in *COSMOPOLITICS*, *supra* note 193, at 6 («If cosmopolitanism were really too big, then the nation would be too big as well»). See also NORMAN GERAS, *SOLIDARITY IN THE CONVERSATION OF MANKIND* 77 (1995).

²⁰² Some critics likewise dismiss the cosmopolitan notion that humanity, at its core, shares «a commonality of 'aims, aspirations and values'» as little more than a utopian fantasy. Himmelfarb, *supra* note 2, at 76. The commitments to universalist justice and right characterized by Nussbaum as the foundation of cosmopolitan sentiment are, Himmelfarb writes, «predominantly, perhaps even uniquely, Western values». *Id.* at 75.

be, many critics insist, since human meaning is found not in the cold, «thin» abstractions of universalism,²⁰³ but in particular, local sites of relationship and community in which we reside. «Our attachments start parochially and only then grow outward», Benjamin Barber writes. «To bypass them in favor of an immediate cosmopolitanism is to risk ending up nowhere—feeling at home neither at home nor in the world».²⁰⁴

Of course, the claim that people are inextricably imbedded in the communities in which they live is not, by itself, a claim on behalf of patriotism. Many critics of cosmopolitanism identify family, neighborhood, and locality as communities that provide the sense of «home» that universalism is said to be unable to offer. But in addition, most either presume or assert that the national state is the fundamental political home,²⁰⁵ and that «love of homeland» is the highest form of political attachment.²⁰⁶

It is to this extent that the critics of cosmopolitanism could be said to embrace a form of patriotism. There are, of course, a variety of patriotisms, some quite virulent.²⁰⁷ But in academic circles, one is more likely to find versions of what might better be called tempered or «moderate patriotism».²⁰⁸

²⁰³ Benjamin R. Barber, *Constitutional Faith*, in *FOR LOVE OF COUNTRY*, *supra* note 1, at 30, 33-34.

[T]he idea of cosmopolitanism offers little or nothing for the human psyche to fasten on. By [Nussbaum's] own admission, it «seems to have a hard time gripping the imagination». Not just the imagination: the heart, the viscera, the vitals of the body that houses the brain in which Nussbaum would like us to dwell.

Id. See also Robbins, *supra* note 200, at 3-4 (Critics allege that «cosmopolitan identification with the human race serves as the thin, abstract, undesirable antithesis to a red-blooded, politically engaged nationalism»).

²⁰⁴ Barber, *supra* note 202, at 34. See also Walzer, *The Civil Society Argument*, *supra* note 118, at 126 («My allegiances, like my relationships, start at the center [of a set of concentric circles]. Hence we need to describe the mediations through which one reaches the outer circles, acknowledging the value of, but also passing through, the others»).

²⁰⁵ See BONNIE HONIG, *NO PLACE LIKE HOME* (forthcoming), for a critical examination of the conception of the nation-state as political home. See also WILLIAM E. CONNOLLY, *THE ETHOS OF PLURALIZATION* 136-37 (1995) (describing certain recent nationalisms as reflecting «the politics of homesickness, [a politics which] laments the loss of place by comparing this experience to a fulsome past that probably never was; and it demands return of that past through the vocabulary of community, nation, or people»).

²⁰⁶ *E.g.*, Barber, *supra* note 202, at 35-36 (counterposing to Nussbaum's «rationalist utopia» the virtues of «love of homeland»).

²⁰⁷ See generally Gomberg, *supra* note 195.

²⁰⁸ Stephen Nathanson, *In Defense of «Moderate Patriotism»*, 9 *J. ETHICS*, Apr. 1989, at 535. See also Sanford Levinson, *Is Liberal Nationalism an Oxymoron? An Essay For Judith*

Indeed, many of those who invoke the patriotic mantle are at pains to distance themselves from the more excessive varieties. Charles Taylor urges that we «fight for the kind of patriotism that is open to universal solidarities against other, more closed kinds».²⁰⁹ Barber asserts that «[t]he question is not how to do without patriotism and nationalism but how to render them safe»;²¹⁰ and according to Anthony Appiah, patriotism is defensible only so long as it is «cosmopolitan» in character.²¹¹

Until recently, most defenders of liberal patriotism presumed that the only alternative to patriotism was some version of world citizenship. The possibility that citizenship could be located beyond the nation, but short of «the world», was not directly considered. However, a new wave of patriotic scholarship has emerged in the past few years that takes such claims very seriously.²¹² Broadly characterized by a commitment to «liberal nationalism»,²¹³ these scholars do not see themselves as responding to ethical cosmopolitan claims so much as to two other challenges faced by national conceptions of citizenship. From below, national identity is said to be threatened by fragmentation in the form of divisive multiculturalist politics in liberal democratic states, and fundamentalist ethnocultural rivalries elsewhere. From above, national identity is undermined by accelerated processes of globalization, which, if it is maintained, reify

Shklar, 105 *ETHICS*, Apr. 1995, at 626 (attributing the notion of «restrained patriotism» to Judith Shklar).

²⁰⁹ Charles Taylor, *Why Democracy Needs Patriotism*, in *FOR LOVE OF COUNTRY*, *supra* note 1, at 119, 121.

²¹⁰ Barber, *supra* note 202, at 36.

²¹¹ Kwame Anthony Appiah, *Cosmopolitan Patriots*, in *FOR LOVE OF COUNTRY*, *supra* note 1, at 21.

²¹² Robert Reich uses the term «new patriotism» to describe an ethic founded «upon loyalty to the nation» in a world in which economic «borders are ceasing to exist». REICH, *supra* note 162, at 301, 302.

²¹³ The phrase seems to have originated with Yael Tamir, *Liberal Nationalism* (1993). Many others have since made use of the term. See, e.g., Michael Lind, *The Next American Nation: The New Nationalism and the Fourth American Revolution* (1995); Hollinger, *Post-Ethnic America*, *supra* note 195; Miller, *On Nationality*, *supra* note 197. The liberal nationalist literature is wide-ranging, but broadly contains two principal strands. The first is concerned with questions of national self-determination; the second focuses on questions of national identity and transnational ethics. It is mainly the latter stream of scholarship which interests me here. For a selection of commentary on this latter aspect of liberal nationalism, see, e.g., Judith Lichtenberg, *How Liberal Can Nationalism Be?* 28 *PHIL. FORUM* 53 (1996-97); Levinson, *supra* note 207.

the values of the market and deracinate us from our communities of origin.

Liberal nationalists are worried about the undermining effects that they believe these devolutive and world-homogenizing trends (what Benjamin Barber has called the twin threats of «Jihad» and «Macworld»)²¹⁴ are having on liberal democratic communities. Yet liberal nationalists often recognize the enormous pull that both subnational and transnational connections have on people's affiliative experiences. They acknowledge that most of us maintain a variety of significant collective identifications and commitments both below and across state lines.²¹⁵ Some even make a point of recognizing the value of such attachments.²¹⁶

Most liberal nationalists deny, however, that subnational and transnational commitments have to any great degree displaced national ones as a matter of fact. They argue, moreover, that national commitments *must not* be displaced: while plural commitments should be recognized, national identities and solidarities need to remain primary.²¹⁷ Liberalism itself depends on it, they maintain; for as David Miller has written, «the welfare state—and indeed, programmes to protect minority rights—have always been *national* projects, justified on the basis that members of a community must protect one another and guarantee one another equal respect».²¹⁸ Distributive justice and equality of treatment are likely to remain national projects as well because, globalization notwithstanding, we still lack institutional arrangements at the transnational level that can command the solidarity and deploy the resources and authority necessary to ensure their

²¹⁴ BENJAMIN R. BARBER, *Jihad vs. McWorld* (1995).

²¹⁵ See MILLER, ON NATIONALITY, *supra* note 197, at 178 («There is no realistic alternative to the long-standing project of nation-building, but it must now be carried out in circumstances where the national identities have to compete with a wider range of other potential objects of loyalty»); David Hollinger, *How Wide the Circle of the We? American Intellectuals and the Problem of the Ethnos Since World War II*, 98 AM. HIST. REV. 317, 330 (1993). See also Aleinikoff, *supra* note 41, at 85 (allegiance to the nation «need not be exclusive, but it must be paramount»).

²¹⁶ See Mitchel I Cohen, *Rooted Cosmopolitanism*, DISSENT, Fall 1992, at 478, 482-83 (urging that we accept and value «the principle of plural loyalties»); Hollinger, *How Wide the Circle of the We?*, *supra* note 214, at 330.

²¹⁷ See, e.g., Hollinger, *How Wide the Circle of the We?*, *supra* note 214, at 335, n.59 (defending «[t]he value of locating primary solidarity in citizenship within a democratic nationstate»).

²¹⁸ MILLER, ON NATIONALITY, *supra* note 197, at 187.

achievement.²¹⁹ For liberal nationalists, in short, cosmopolitan ideals can only be achieved when «rooted» in the bounded setting of the nation-state.²²⁰

In addition to this argument from necessity, proponents sometimes advance another, more affirmative claim on behalf of liberal nationalism: they maintain that the liberal nation-state is the only large-scale contemporary institutional setting in which people may develop the sense of «common good» or «shared fate» which is so vital to collective human flourishing.²²¹ In this fundamentally communitarian view, «having a secure sense of national identity is an important, indeed, a crucially important, element for the very possibility of a full human existence».²²²

Relying on one or both of these arguments, some U.S. liberal nationalists have urged liberals to work together to engage in a project of national «peoplebuilding»²²³ in order to forestall systems of inequality and exclusion of the kind that historically prevailed in the United States.²²⁴ While recognizing that experiences of collective national identity often produce their own exclusions in the form of extremist ethnonationalisms,²²⁵ these schol-

²¹⁹ This is why Richard Rorty concludes in the American context that «the government of our nation-state will be, for the foreseeable future, the only agent capable of making any real difference in the amount of selfishness and sadism inflicted on Americans». RICHARD RORTY, *ACHIEVING OUR COUNTRY* 98 (1998). See also T. Alexander Aleinikoff, *A Multicultural Nationalism?*, *THE AMERICAN PROSPECT*, Jan.-Feb. 1998, at 80, 86 («[F]or the foreseeable future, states will remain the loci of power; both self-government and the protection of individual rights depend almost entirely on states»).

²²⁰ See Cohen, *supra* note 215, at 478. See also Anderson, *supra* note 193, at 279 (writing that David Hollinger «thus articulates a cosmopolitanism that serves as the basis for a specific form of national government, civic democracy»).

²²¹ See Taylor, *supra* note 82, at 170 («[T]he bond of solidarity with my compatriots in a functioning republic is based on a sense of shared fate, where the sharing itself is of value. This is what gives this bond its special importance, what makes my ties with these people and to this enterprise peculiarly binding»).

²²² See Jocelyne Couture & Kai Nielsen (with Michel Seymour), *Afterword*, in *RETHINKING NATIONALISM* 593 (Jocelyn Couture et al. eds., 1996).

²²³ See SMITH, *supra* note 61, at 470-506. See also HOLLINGER, *How Wide the Circle of the We?*, *supra* note 214; Noah Pickus, *Hearken Not To the Unnatural Voice: Publius and the artifice of Attachment*, in *DIVERSITY AND CITIZENSHIP: REDISCOVERING AMERICAN NATIONALISM* 63, 68 (Gary Jeffrey Jacobsohn & Susan Dunn eds., 1996). Cf. RORTY, *ACHIEVING OUR COUNTRY*, *supra* note 218, at 91-92 (urging the left to «mobilize what remains of our pride in being Americans»).

²²⁴ See generally SMITH, *supra* note 61.

²²⁵ See, e.g., MILLER, *ON NATIONALITY*, *supra* note 197, at 183-84 (distinguishing his own «discriminating defense of nationality» from «an unthinking nationalism which simply tells

ars, and their counterparts elsewhere, urge the construction and defense of inclusive, liberal forms of nationalism,²²⁶ which, among other things, emphasize civic rather than ethnocultural conceptions of nationality,²²⁷ and display an openness to evolving conceptions of national identity over time.²²⁸ In short, while liberal nationalists share with postnationalists a recognition that collective affiliations and commitments are increasingly pluralized in the contemporary world, they continue to insist on normatively privileging national identities and solidarities above all others. This continued defense of the nation-state as the core site of psychological citizenship, in my view, raises several important concerns.

Chief among them is the problem of exclusion. However «liberal» they may purport to be, nationalist commitments are exclusive and exclusionary by their nature. The very act of normatively privileging identification with, and solidarity toward, compatriots presumes the existence of a class of nonnational others who are necessarily excluded from the domain of normative concern.²²⁹ Some outsiders are located outside the national territory, and indeed, are routinely denied physical access to it.²³⁰ Others reside within the national

us to follow the feelings of our blood wherever they may lead us»). For a critical view, see Jamie Mayerfield, *The Myth of Benign Group Identity: A Critique of Liberal Nationalism*, 30 *POLITY*, Summer 1998, at 555, 559 («Liberal nationalists celebrate national identity, and [incorrectly] believe that it can be dissociated from the evils that have been perpetrated in the name of the nation»).

²²⁶ See Couture & Nielsen, *supra* note 221, at 601 (distinguishing between «bad nationalisms»— ethnic nationalisms that define «membership in the nation in terms of descent: put crudely, in terms of blood», —and «good nationalisms»— liberal nationalisms that define «nationality in terms of sharing a distinctive encompassing and integrative... culture which is both cultural and political»). See also Will Kymlicka, *Misunderstanding Nationalism*, *DISSENT*, Winter 1995, at 130, 132 (distinguishing between nationalisms that «are xenophobic, authoritarian and expansionist», and those which «are peaceful, liberal and democratic»).

²²⁷ See, e.g., SMITH, *supra* note 222; HOLLINGER, *How Wide the Circle of the We?*, *supra* note 214. But see Michel Seymour et al., *Introduction: Questioning the Ethnic/Civic Dichotomy*, in *RETHINKING NATIONALISM*, *supra* note 221, at 1-61.

²²⁸ See, e.g., MILLER, ON NATIONALITY, *supra* note 197, at 180 («Cultural minorities should not be seen merely as the recipients of a [national] identity, but must be expected to play their part in redefining it for the future»).

²²⁹ For another critique of liberal nationalism along these lines, see Gary Gerstle, *Liberty, Coercion, and the Making of Americans*, 84 *AM. HIST.* 524, 554-57 (1997).

²³⁰ Michael Walzer, for instance, argues that nation-states are entitled to deny admission to outsiders in the interests of preserving national identities and solidarities—or national

territory as aliens and/or perceived foreigners. In either case, the question arises as to why the people with whom we happen to share formal nation-state membership and territory should be the objects of our identification and solidarity to a greater extent than others with whom we are joined through other kinds of affiliative ties. Why, in other words, should «compatriots take priority?»²³¹

Nationalism's fundamentally exclusionary character points, at one level, to a contradiction within the heart of liberal nationalism itself. Liberal theory, in all its forms, stands for the universal regard for persons.²³² Nationalism, in contrast, denotes special attachment to particular other persons. The resulting tension between universalism and particularism is endemic to the liberal nationalist project, and has led some observers to suggest that the very notion of liberal nationalism might properly be regarded as an «oxymoron».²³³

Yet the problem is not merely one of internal coherence. Nationalism's exclusionary character can be challenged in substantive ethical terms as well. Nussbaum and other liberal cosmopolitans have eloquently defended the view that, as a matter of justice, nationality should be treated as a «morally irrelevant» feature for distinguishing among persons.²³⁴ I am inclined to approach liberal nationalism from a perspective motivated less by liberal universalism than by an ethical desire to combat domination and marginalization wherever they occur.²³⁵ Like the cosmopolitan view, a critical perspective of this kind regards the privileging of national ties as deeply troubling. For although some forms of nationalism have indeed facilitated social empowerment of the oppressed within individual nations, as liberal

ways of life, as he puts it. See MICHAEL WALZER, *SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY* 31-63 (1983).

²³¹ See HENRY SHUE, *BASIC RIGHTS: SUBSTANCE, AFFLUENCE AND AMERICAN FOREIGN POLICY* 132 (1980) (criticizing what he terms «the priority thesis»).

²³² See, e.g., JOHN RAWLS, *A THEORY OF JUSTICE* 3 (1971) («Each person possesses an inviolability founded on justice»).

²³³ See Levinson, *supra* note 207. See also Judith Lichtenberg, *How Liberal Can Nationalism Be?* 28 *PHIL. FORUM*, Fall-Winter 1996-97, at 53. For a detailed defense against the claim that liberalism and nationalism are intrinsically incompatible, see, e.g., Couture & Nielsen, *supra* note 221, at 579-661.

²³⁴ Nussbaum, *supra* note 1, at 133.

²³⁵ For an important recent example of this kind of ethical stance, see IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* (1990). Note that Young begins to broach the subject of «international justice» in the book's epilogue. *Id.* at 257-260.

nationalists maintain,²³⁶ it is an empowerment that is often achieved at the cost of the exclusion and exploitation of many nonnationals.

Many liberal nationalists, for example, argue that a high degree of solidarity among members of a national community is a necessary precondition for the kinds of redistributive policies in the advanced capitalist countries that liberals usually support.²³⁷ I agree that such redistributive efforts are extremely important and need to be defended. But it is also important not to disregard their costs. National redistributions depend, first of all, upon the policing of territorial boundaries against outsiders far more desperately needy than those who are able to enjoy redistribution's benefits. They depend, as well, on the availability of enormous economic resources, some of which have been amassed at the expense of nationals of former colonies and less developed countries—if no longer through outright plundering, then through more apparently civilized modes of unequal exchange. At the same time, the very national solidarity that arguably enables a society to pursue a redistributive agenda may also lead it to further marginalize those persons residing within the community who are perceived as national outsiders. In the past decade, resident noncitizens have been increasingly shut out from the provision of public benefits in this and other countries, a development which serves to exacerbate their second-class status within the national society.

Against the image of the nation-state as the site in which liberal and egalitarian values may best be realized, therefore, it seems to me one must place another: that of an institution premised upon the marginalization and exploitation of outsiders. Nationalisms may sometimes be enabling, but only for some people some of the time. Much depends on whether one happens to be graced with membership of one of the world's most

²³⁶ See, e.g., HOLLINGER, *POST-ETHNIC AMERICA*, *supra* note 195, at 131-72; David Hollinger, *Nationalism and Cosmopolitanism*, in *IMMIGRATION AND CITIZENSHIP IN THE TWENTYFIRST CENTURY*, *supra* note 25, at 85, 88-89. While generally critical of David Hollinger's liberal nationalist views, historian Gary Gerstle nevertheless concurs with Hollinger that «Progressivism, the New Deal, the civil rights movement, and the Great Society were nationalist movements that derived legitimacy from their claim to speak 'on behalf of the American nation' as a whole». See Gerstle, *supra* note 228, at 555. He argues, however, that the progressive nature of these projects was only made possible by earlier coercive and exclusionary policy and practice. *Id.*

²³⁷ See, e.g., Taylor, *supra* note 82, at 170-78; MILLER, *ON NATIONALITY*, *supra* note 197; LIND, *supra* note 212. See also Hollinger, *Nationalism and Cosmopolitanism*, *supra* note 235, at 88 (writing that achieving «a more equitable distribution of a nation's resources... is the primary justification for viewing sympathetically a sense of solidarity as 'Americans'»).

privileged nations.²³⁸ Those who are not so lucky commonly experience the privileged liberal nationstates as deeply exclusionary and self-aggrandizing and sometimes violent institutions. Historian Gary Gerstle got it right, it seems to me, when he wrote that liberal nationalist thought «downplays the nasty work that building a national community entails».²³⁹

The sort of national solidarity that liberal nationalists invoke as necessary for achieving a more equitable distribution of resources within the national society not only eviscerates the interests of disempowered outsiders, moreover; it may sometimes dramatically undermine the interests of disempowered insiders as well. To the extent U.S. workers define their collective interests in national terms, for example, they will be less likely to make common cause with their counterparts in other countries, and less likely, as a result, to force the transnational corporations that employ them to attend to their redistributive and other demands. The concern that national protectionism actually serves capital's interests by dividing the working class against itself is hardly a new one; but it is surely truer today than it was in Marx's time. When U.S. workers focus on «achieving our country» first and foremost, as some liberal nationalists like Richard Rorty have urged they should,²⁴⁰ they will not make much headway in improving the terms and conditions of their labor in an ever-more globalized economic environment. Much the same dynamic holds true for those people who wish to control corporate behavior in the environmental and human rights contexts. The highly deterritorialized character of corporate activity today means that national protectionist political strategies will often work to the detriment of progressive outcomes in these areas.²⁴¹

²³⁸ In this regard, I agree with Immanuel Wallerstein's response to Nussbaum that «what is needed educationally is not to learn that we are citizens of the world, but that we occupy particular niches in an unequal world». Immanuel Wallerstein, *Neither Patriotism Nor Cosmopolitanism*, in *FOR LOVE OF COUNTRY*, *supra* note 1, at 124.

²³⁹ Gerstle, *supra* note 228, at 555. Gerstle continues: «For «[e]ven where the civic elements of nationalism are exceptionally strong, as in our own society, nationalism demands that boundaries against outsiders be drawn, that a dominant national culture be created or reinvigorated, and that internal and external opponents of the national project be subdued, nationalized, vanquished, and even excluded or expelled». *Id.*

²⁴⁰ See, e.g., RORTY, *ACHIEVING OUR COUNTRY*, *supra* note 218, at 80-107.

²⁴¹ Building and defending a national community often involves other «nasty work» (see Gerstle, *supra* note 228, at 555) as well. In particular, some versions of liberal nationalism would seek a degree of cultural and/or ideological cohesion among nation-state members as the basis for the «sense of peoplehood» (see text accompanying *supra* note 222-23)

There is, finally, an argument to be made against liberal nationalism from the perspective of democratic theory. Given the increasing globalization of economic and social life, privileging national conceptions of citizenship identity cuts against the prospects for achieving robust democratic participation in their shaping and control. Most liberal nationalists seem to presume that democratic participation can be adequately realized in the context of the nation-state. But such a presumption fails to come to grips with the practical limits of the nationstate's power and authority to regulate many of today's most pressing problems, including those associated with globalized corporate activity. As many democratic theorists have recently warned, we face an «ever greater gap» between the transnational conditions that structure our collective lives and the territorially-constrained reach of our political capacities.²⁴² To the extent social empowerment requires that people have a meaningful voice in shaping the world they live in, it seems imperative that we cultivate forms of participatory politics that decenter, and sometimes transcend, national political life.²⁴³

which modern liberal states are said to require. Yet the drive for cohesion entails making some dominant identities culturally and politically authoritative, thereby invalidating and repressing vital differences in experience and self-definition among many national community members. The recent effort by some liberal policymakers to rehabilitate the notion of «Americanization» in United States citizenship policy (see discussion on «Americanization» throughout *IMMIGRATION AND CITIZENSHIP IN THE TWENTYFIRST CENTURY*, *supra* note 25) provides one example. Though today's version of Americanization has a far more «multi-cultural» content than the Americanization drives of the early 1900's, the concept continues to define national belonging by reference to narrow linguistic and ideological criteria.

²⁴² See, e.g., Jurgen Habermas, *Citizenship and National Identity*, in *THE CONDITION OF CITIZENSHIP*, *supra* note 11, at 30 (describing the «ever greater gap [individuals face] between being affected by something and participating in changing it»); Connolly, *supra* note 12, at xv (asserting the increasing «asymmetry between the globalization of life and the confinement of democracy to the territorial state»). See also Jamin B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage*, 141 U. PA. L. REV. 1391, 1458 (1993) (arguing that «the straightjacket of nation-state citizenship may stifle the widely perceived participatory requirements of the time»).

²⁴³ See, e.g., Connolly, *supra* note 12, at xvi, who urges development of «a democratic ethos [that] might exceed the boundaries of particular states». Connolly writes:

During a time when corporate organizations, financial institutions, intelligence networks, communication media and criminal rings are increasingly global in character and when, as a result, a whole host of dangerous contingencies have become global in character, democratic energies, while remaining active below the through the state, might also extend beyond these parameters to crossnational, nonstatist social movements.

C. Pluralizing Citizenship

All told, therefore, the privileging by liberal nationalists of national identities and solidarities over other forms of collective affiliation is deeply problematic from a critical perspective which maintains an ethic of solidarity with the most disempowered, and it is highly problematic in democratic terms as well. Beyond such ethical and political concerns, however, liberal nationalism may face another, more practical problem: the effort to privilege national solidarities and identities may simply be unrealistic. For it is not at all clear that national identities and solidarities are as overridingly important to most people today as liberal nationalists seem to hope or imagine. Many analysts, including analysts of postnational citizenship, have compellingly argued that people locate their fundamental identities in, and solidarities with, a variety of communities that are neither defined nor circumscribed by nation-state boundaries.²⁴⁴ Affiliations based on ethnicity, class, gender, religion, nationality, and political commitment—whether within or across state borders—are often, and increasingly, experienced as primary. Liberal nationalists' claim that the nation-state should serve as the central object and site of people's citizenship identities and solidarities begins to ring rather hollow in this context.

To argue, on the other hand, that national identities and solidarities are not necessarily paramount in many people's experiences is by no means to claim that national affiliations no longer matter; for they clearly do matter to many people in many circumstances. Nor need a critique of liberal nationalism entail the view that all forms of national identity and solidarity *should not* matter in normative terms. The postnationalist claim is best read, it seems to me, not as a claim advocating the demise of nation-states

Id. See also SANDEL, *DEMOCRACY'S DISCONTENT*, *supra* note 82, at 338-39:

In a world where capital goods, information and images, pollution and people, flow across national boundaries with unprecedented ease, politics must assume transnational, even global forms, if only to keep up. Otherwise, economic power will go unchecked by democratically sanctioned political power. Nation-states, traditionally the vehicles of self-government, will find themselves increasingly unable to bring their citizens' judgments and values to bear on the economic forces that govern their destinies.

Id.

²⁴⁴ As Thomas Franck has written, «[w]hat is emerging... is a global system characterized by overlapping communities and multivariiegated personal loyalties yielding more complex personal identities». Franck, *supra* note 149, at 63. Under the circumstances, it is simply too late in the day, in the words of one analyst, to «return the genie of social identity to the bottle of the territorial nation-state». Cohen, *supra* note 149, at 520.

and nationalism altogether, but on behalf of decentering or «demoting» the nation from its privileged status in political thought.²⁴⁵ The idea of «post-national citizenship», in other words, should be read to suggest an aspiration toward a multiple, pluralized understanding of citizenship identity and citizen solidarity.

In such a reading, liberal nationalists' apparent openness to plural identities and solidarities would be deepened, and nationality would be regarded as one among many possible sources and sites of identity.²⁴⁶ We would celebrate not the decline of the nation-state, but the proliferation of a variety of possible sites of identity and solidarity.²⁴⁷ This is an understanding of ethics and affiliation that many theorists have begun to urge with increasing frequency.²⁴⁸

Precisely what the pluralization of citizenship identities and solidarities might come to mean in concrete institutional terms, on the other hand, remains unclear. How such pluralization would shape the organization and practice of citizenship *qua* status and rights and political participation, in particular, can be difficult to imagine. A small handful of scholars have recently sought to sketch out an image of citizenship that is decoupled from the territorial nation-state, but they offer little in the way of blueprint.²⁴⁹

²⁴⁵ Peter Spiro has used the «demotion» language in this context.

²⁴⁶ The effort here would be to «pluralize the pluralizers», in William Connolly's phrase. See CONNOLLY, *supra* note 204, at xix.

²⁴⁷ Cf. Magnusson, *supra* note 103, at 281 («[T]his approach decenters the state as the object of political analysis, [but] it does not ignore the state or pretend that it is about to wither away»).

²⁴⁸ See, e.g., Robbins, *supra* note 200, at 3 (arguing that we need to come to terms with our «complex and multiple belonging[s]»); Sen, *supra* note 2, (emphasizing the «need to accept a multiplicity of loyalties»).

²⁴⁹ Michael Sandel advances a vision of «a multiplicity of communities and political bodies —some more, some less extensive than nations— among which sovereignty is diffused» and «citizenship [is] formed across multiple sites of civic engagement». SANDEL, *supra* note 82, at 345, 347. David Elkins has proposed «unbundling» citizenship from nations, states, and territories. ELKINS, *supra* note 175, at 38-39. See also Pogge, *supra* note 195.

[P]ersons should be citizens of, and govern themselves through a number of political units of various sizes, without any one political unit being dominant and thus occupying the traditional role of state. And their political allegiances and loyalties should be widely dispersed over those units: neighborhood, town, county, province, state, region and world at large. People should be politically at home in all of them, without converging upon any of them as the lodestar of their political identity.

Id. at 58.

This is not surprising; envisioning a postnational institutional framework for citizenship is an exceptionally difficult task. We face an acute imaginative deficit in the current period, it seems to me: We may be convinced, in political theorist R.B.J. Walker's terms, that «questions about political identity, and thus about the legitimation of various forms of inclusion and exclusion, are no longer adequately answered in the territorial terms we have inherited from early-modern Europe and reproduced so readily in the name of state and nation».²⁵⁰ But both the pervasiveness and the authority of the state-centered framework in which we live radically limit our capacity to conceive of concrete alternative arrangements.

The process of pluralization itself raises additional questions. Once we move beyond the presumed predominance of national solidarities, how exactly will we give expression or effect to the various of our commitments which may be implicated in a given situation? How will we accommodate them when they conflict; and how will we address the new exclusions that will certainly arise?²⁵¹ Cultural theorist Bruce Robbins has written that we remain a tremendous distance «from mastering the sorts of allegiance, ethics and action that might go with our complex and multiple belongings».²⁵² Pluralization, in this respect, will present its own political and ethical challenges.

None of the foregoing questions is resolved by the concept of postnational citizenship—though all are implicated by it. Eventually, they will need to be addressed. For now, though, the import of the postnational citizenship claim remains largely rhetorical. By challenging the conventionally-presumed linkage between citizenship and nationality, it exhorts us to think beyond the nationstate, to open our minds to alternative ways of organizing and experiencing our collective lives. Given both the hegemony and the poverty of the prevailing national paradigm, this, by itself, constitutes a powerful message.

The emerging claim in scholarly and political circles to the effect that citizenship is becoming increasingly denationalized represents a fundamental challenge to the conventional understanding of citizenship which presumes, in Gertrude Himmelfarb's words, that the idea of citizenship

²⁵⁰ R.B.J. WALKER, *INSIDE/OUTSIDE: INTERNATIONAL RELATIONS AS POLITICAL THEORY* 21 (1993).

²⁵¹ *C.f.*, Spiro, *The Citizenship Dilemma*, *supra* note 51, at 601 («Just as nations have abused citizens and subordinated others, so non-national groups have the capacity to oppress and illegitimately exclude»).

²⁵² Robbins, *supra* note 200.

can have «little meaning except in the context of a state». I have argued, by contrast, that the denationalized citizenship claim is entirely coherent, and often quite plausible in empirical terms as well. The various legal, political, and social institutions and experiences that the term «citizenship» routinely designates have, in fact, begun increasingly to take nonnational or extranational forms or directions in recent years; and there is no good logical or empirical reason, in my view, to refuse to allow the term «citizenship» to evolve along with its referents.

I have also argued that any dispute that may arise over the question whether «citizenship's» range of reference properly extends to practices and experiences located beyond the nation-state is not merely an empirical or logical one; it is fundamentally political as well. This is because the term citizenship does not merely serve to designate aspects of the world; it is also a powerful expressive term, one which conveys honor and recognition upon the social and political practices to which it is applied. The debate over the term's scope of application is, consequently, a debate over the scope and extent of recognition we will accord various nonnational forms of collective life.

The postnational citizenship claim's implicit demand for recognition of nonnational political forms can be read, I have argued finally, as an important challenge to the prevailing conviction in political thought that the nation-state is the consummate site of collective political identity. There are good reasons, grounded in commitments to social justice and democratic engagement, to challenge the presumed inevitability and desirability of a statist conception of citizenship and to prefer, instead, a multiple, pluralized understanding of citizenship identities and solidarities (however uncertain the precise institutional forms these might take may be).

Beyond all of this, however, it seems necessary to ask whether the idea of a denationalized citizenship is likely to ever take hold and become part of our conventional political understandings. Can advocates of postnational citizenship ultimately succeed in decoupling the concept of citizenship from the nation-state in prevailing political thought? Such a development is certainly possible; the history of language is full of examples of terms whose accepted criteria of application and/or range of reference were dramatically altered over time.²⁵³

²⁵³ For a discussion of conceptual change of this kind, see generally POLITICAL INNOVATION AND CONCEPTUAL CHANGE, *supra* note 4.

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It is also quite possible, however, that the association between citizenship and nation-state will be hard to sever, and that citizenship will remain inextricably linked in the public consciousness with the nation-state and its institutions. This might occur if advocates of nationalism in its various forms are highly successful in defining the terms of the emerging debate. In such circumstances, theorists and activists interested in the denationalization of social and political life might choose to pursue a different rhetorical strategy: rather than arguing that citizenship increasingly extends beyond the nationstate, they might wish to contend that recent denationalizing developments are taking us beyond citizenship altogether.

For now, though, the concept of citizenship remains open and flexible and contested enough to support a range of competing claims. Among these claims are those that seek to overhaul conventional understandings of citizenship's location by challenging citizenship's presumptively national parameters. As to whether the concept will successfully make the postnational transition, only time will tell.