

## RETHINKING EMIGRANT CITIZENSHIP

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*The relationship between states and absent citizens is an object of increasing interest in law, history, and the social sciences. On a world-historical scale, what appears unprecedented is the legitimate prevalence of dual nationality, and in many source countries, the government's active promotion of dual nationality and dual cultural nationalism. While interest in extraterritorial citizenship fades over time and the course of generations, there are important exceptions for a core of activists whose trans-state political participation actually increases over time spent outside the home country and for migrants in contexts where the relative fortunes of sending and receiving countries reverse over longer time frames. An increasingly common way of framing a sending "nation" is to include members living outside the state's territory in a way that reinforces the domestic and even international capacity of the sending country's government. This Article argues that most legal means by which emigrants are incorporated maximize individual liberty, but their extraterritorial political participation comes at the cost of allowing members to make policies to which they are not directly subject and to tilt citizenship towards claiming rights rather than fulfilling obligations.*

Kim Barry's *Home and Away*<sup>1</sup> makes an important contribution to the growing literature on citizenship and international migration by showing how international mobility ruptures the neat coincidence of territorial presence and state membership. Migrants are often citizens of a country in which they do not reside, and reside in a country in which they are not citizens, raising normative and sociological questions about citizenship in both destination and source countries. Immigrant citizenship has received far more attention than emigrant citizenship, probably because the dominant organs of international academia are located in countries of immigration. Barry's paper addresses this deficit by attending to citizenship in the context of emigration. By moving deftly between the contours of nationality law and the actual content of political participation through voting, lobbying, and cross-border financial contributions, Barry's paper joins the formal and substantive practices of citizenship without conflating them. The paper focuses on the critical case of Mexican emigration to the United States, "the largest sustained flow of migrant workers in

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<sup>1</sup> Kim Barry, *Home and Away: The Construction of Citizenship in an Emigration Context*, 81 N.Y.U. L. REV. 11 (2006).

the contemporary world,”<sup>2</sup> while situating Mexico in a broader context of contemporary states of mass emigration.

This Comment seeks to build on Barry’s work by posing four major questions about the broader field of extraterritorial citizenship, providing answers where possible, and sketching out a research agenda where the answers are not yet clear. By extraterritorial citizenship, I mean both the citizenship of emigrants and the ancestral citizenship of their descendants. First, I expand on the analysis of Mexican emigration that Barry introduces by deepening the historical context of Mexican and older European emigrations to determine what is “new” about extraterritorial citizenship in Mexico and on a broader global stage. Second, I demonstrate the difficulty of establishing the extent to which legal and substantive practices of citizenship will appeal to emigrants and their descendants over various time frames. In the Mexican case, and in keeping with received wisdom, it appears that interest in extraterritorial citizenship fades over time and generations, but there are important exceptions for a core of activists whose trans-state political participation actually increases over time spent outside the home country. Third, after probing the utility of existing conceptualizations of how labor emigration changes the relationship between nation and state, I advance an alternative framework in which states enhance their internal capacity and geopolitical position through discursive and legal maneuvers that embrace as nationals members living both inside and outside the state’s territory. Finally, I question the extent to which expanding extraterritorial citizenship should be considered a clear-cut advance for liberalism by discussing its contentious quality in source and destination countries, the range of violent and peaceful means employed in migrant trans-state political action, the different goals of source states in their incorpora-

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<sup>2</sup> DOUGLAS S. MASSEY ET AL., *WORLDS IN MOTION: UNDERSTANDING INTERNATIONAL MIGRATION AT THE END OF THE MILLENNIUM* 73 (1998). The 9.9 million Mexico-born people living in the United States in 2003 was the equivalent of 9.5% of the population living within Mexico’s borders. CONSEJO NACIONAL DE POBLACIÓN, *MIGRACIÓN MEXICANA HACIA ESTADOS UNIDOS* [NATIONAL POPULATION CENSUS, MEXICAN EMIGRATION TO THE UNITED STATES], [http://www.conapo.gob.mx/mig\\_int/03.htm](http://www.conapo.gob.mx/mig_int/03.htm) (last visited Sept. 15, 2005). An additional 16.8 million persons born in the United States claimed Mexican ancestry. *Id.* The United States is the destination of 98.7% of Mexican emigrants. INSTITUTO FEDERAL ELECTORAL, *INFORME FINAL DE LA COMISIÓN DE ESPECIALISTAS QUE ESTUDIA LAS MODALIDADES DEL VOTO DE LOS MEXICANOS EN EL EXTRANJERO* [FEDERAL ELECTORAL INSTITUTE, FINAL REPORT OF THE SPECIAL COMMISSION STUDYING VOTING TRENDS BY MEXICANS ABROAD] (1998), <http://www.ife.org.mx/InternetCDA/HOME/home.jsp> (follow “IFE Internacional” hyperlink; then follow “Voto en el Extranjero” hyperlink; then follow “Informe Final de la Comisión de Especialistas que estudia las modalidades del Voto de los Mexicanos residentes en el Extranjero” hyperlink).

tion of emigrants, and the place of emigrant citizenship in competing classical models of citizenship.

## I

### WHAT'S NEW ABOUT EMIGRANT CITIZENSHIP?

Most post-war discussions of citizenship and international migration have focused on the rights and responsibilities of immigrants in countries of destination. It was only in the 1990s that the issue of emigrant citizenship reemerged to receive the attention it deserves in contemporary legal and social scientific scholarship. Yet emigrant citizenship has represented a set of normative, legal, and administrative problems since the dawn of the modern nation-state, problems which at times have achieved prominence in international relations. Until the latter part of the nineteenth century, most European states adopted a zero-sum mercantilist logic of hoarding population in competition with other states. Aristide Zolberg relates that, in the eighteenth century, most German principalities, Swiss cantons, and the Austrian empire “made it extremely difficult to dispose of property in preparation for leaving, prevented the sending of financial aid to those who departed, and cut emigrants off from their inheritances by depriving them of their nationality—in effect, a form of social death.”<sup>3</sup> The Napoleonic Code stripped Frenchmen of their nationality if they settled abroad without intending to return.<sup>4</sup> The phrase “emigrant citizenship” in these settings would border on the oxymoronic.

During the mass transatlantic migrations of the nineteenth century, the citizenship status of international migrants was a major source of tension between European source states seeking to maintain a claim on their absent citizens and New World destination states bent on assimilating them. Most European states did not recognize New World naturalizations. One of the proximate causes of the War of 1812 was British impressment into its navy of British subjects who had become naturalized U.S. citizens.<sup>5</sup> The United States did not resolve this issue with many European source countries until the series of

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<sup>3</sup> Aristide R. Zolberg, *The Exit Revolution*, in *CITIZENSHIP AND THOSE WHO LEAVE: THE POLITICS OF EMIGRATION AND EXPATRIATION* (Nancy L. Green & Francois Weil eds., forthcoming 2006) (manuscript at 35–36, on file with the *New York University Law Review*).

<sup>4</sup> CODE CIVIL [CODE NAPOLÉON] art. 17 (Fr.) (George Spence trans., Charles Stocking 1824) (1804).

<sup>5</sup> Peter J. Spiro, *Embracing Dual Nationality*, in *DUAL NATIONALITY, SOCIAL RIGHTS AND FEDERAL CITIZENSHIP IN THE U.S. AND EUROPE: THE REINVENTION OF CITIZENSHIP* 19, 23 (Randall Hansen & Patrick Weil eds., 2002) [hereinafter *REINVENTION OF CITIZENSHIP*].

bilateral Bancroft treaties in the 1860s and '70s.<sup>6</sup> The U.S. experience was hardly exceptional. Italy vehemently protested Brazil's 1891 constitutional provisions that automatically naturalized residents living in the territory at the moment of independence. By 1912, Italy implicitly recognized *de facto* dual nationality in an effort to continue to lay claim to Italians who would otherwise be "lost" altogether to their host countries. Indeed, Italian and Spanish nationality laws have been principally shaped by attempts to maintain links to emigrants who would otherwise have been lost to destination countries like Argentina.<sup>7</sup>

In the Mexican case, a *longue durée* perspective reveals that the idea of extraterritorial national inclusion has deep historical precedent. Since 1836, children born abroad to a Mexican father have been considered Mexican nationals by law,<sup>8</sup> a privilege granted to children of Mexican mothers with decreasing restrictions since 1886,<sup>9</sup> suggesting that political elites have long conceived of the Mexican nation in the narrowest legal sense as extending beyond the state's territory. At the same time, absence from the territory has been grounds for national exclusion in different ways. The most extreme example, the 1886 Law of Alienage and Naturalization, provided for the denationalization of Mexicans who were absent from the country for extended periods without due cause, a provision that was stripped from the 1917 Constitution.<sup>10</sup> Armando Gutierrez claims that until World War II, Mexican consulates in the United States made little distinction between U.S. citizens of Mexican origin and Mexican citizens when it came to the protection of civil and human rights.<sup>11</sup> At the same time, the Mexican government went to great lengths to distinguish between Mexico-born nationals and U.S.-born people of Mexican origin for the purposes of providing consular protection during World War I, when Mexico City received guarantees from the U.S. government that Mexican nationals would not be subject to conscription if they could

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<sup>6</sup> *Id.*

<sup>7</sup> Ferruccio Pastore, *Nationality Law and International Migration: The Italian Case*, in *TOWARDS A EUROPEAN NATIONALITY: CITIZENSHIP, IMMIGRATION, AND NATIONALITY LAW IN THE EU* 95, 95–103 (Randall Hansen & Patrick Weil eds., 2001); David A. Cook, *Making and Unmaking Nationals: 150 Years of Migration Among Argentina, Italy, and Spain* 62–64 (2005) (unpublished Ph.D. dissertation, University of California, Los Angeles) (on file with the *New York University Law Review*).

<sup>8</sup> LEY PRIMERA, LEYES CONSTITUCIONALES [CONST.] art. 1, 30 de Diciembre de 1836 (Mex.), available at <http://www.juridicas.unam.mx/infjur/leg/conshist/pdf/1836.pdf>.

<sup>9</sup> David Fitzgerald, *Nationality and Migration in Modern Mexico*, 31 J. ETHNIC & MIGRATION STUD. 171, 175–76 (2005).

<sup>10</sup> *Id.* at 176.

<sup>11</sup> Armando Gutierrez, *The Chicano Elite in Chicano-Mexicano Relations*, in *CHICANO-MEXICANO RELATIONS* 47, 47 (Tatcho Mindiola, Jr. & Max Martinez eds., 1986).

prove their Mexican birth.<sup>12</sup> Further historical research is needed to identify the variable relevance of legal Mexican nationality and country of birth in the Mexican government's substantive relationship with Mexicans and Mexican Americans during the early twentieth century.

Mexican political elites in the 1920s and '30s viewed emigration as a threat to the building of the nation-state. Faced with the humiliating repatriations and deportations sponsored by the U.S. government and Mexico's failure to attract mass European immigration, the Mexican government and most politicians encouraged emigrants to return. A 1939 amendment to the Law of Nationality and Naturalization allowed returning emigrants who had lost their Mexican nationality by naturalizing abroad to recover it by reestablishing residence in Mexico.<sup>13</sup> However, a 1937 proposal by the legislature of the border state of Tamaulipas to allow preferential naturalization for second, third, and fourth generation U.S.-born Spanish-speakers of Mexican origin was rejected unanimously by the federal congress. The congressional commission considering the proposal reported that such individuals were "*pochos*"<sup>14</sup> and "*México-Texanos*," which it implied would be as harmful as "the invasion of foreigners who compete with natives in small industry and commerce, with grave harm for natives."<sup>15</sup> Second- and third-generation Mexicans abroad (effectively meaning those in the United States) were not given the same preferential naturalization as citizens of Latin America until 1974.<sup>16</sup> By any ethnic understanding of nationhood, Spanish-speaking children of Mexicans in the United States should have been at least as much a part of the Latin American people as Argentines or Bolivians. The peculiar rejection of descendants of emigrants while first-generation emigrants and other Latin Americans were being legally "embraced"<sup>17</sup> reveals the ambivalent relationship between Mexicans and Mexican Americans.

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<sup>12</sup> FERNANDO SAÚL ALANÍS ENCISO, *EL PRIMER PROGRAMA BRACERO Y EL GOBIERNO DE MÉXICO 1917-1918*, at 89, 102 (1999).

<sup>13</sup> Art. 27 reform, *Ley de Nacionalidad y Naturalización* [Nationality and Naturalization Law], *Diario de los Debates*, 22 de Septiembre de 1939 (Mex.).

<sup>14</sup> *Pochos*, which literally means "spoiled," is a derogatory term often used to refer to "gringoized" Mexicans. Mexicans generally presumed the descendants of Mexicans in the United States had "lost" their Mexican cultural qualities. CLAUDIO LOMNITZ, *DEEP MEXICO, SILENT MEXICO: AN ANTHROPOLOGY OF NATIONALISM* 139 (2001).

<sup>15</sup> *Diario de los Debates*, 16 de Noviembre de 1937 (Mex.) (translated by author).

<sup>16</sup> Fitzgerald, *supra* note 9, at 181.

<sup>17</sup> See JOHN TORPEY, *THE INVENTION OF THE PASSPORT: SURVEILLANCE, CITIZENSHIP AND THE STATE* 2, 10-14 (2000) (describing notion of states first "embracing" population before being able to effectively "penetrate" or "cage" it).

Historically, the law of most countries has been hostile to dual nationality,<sup>18</sup> and Mexican law has been no exception. Naturalizing abroad has been grounds for losing Mexican citizenship or nationality since 1857.<sup>19</sup> Since the adoption in 1886 of a mixed system of attributing nationality based both on descent (*jus sanguinis*) and birth in the territory (*jus soli*), many children born to Mexican nationals in *jus soli* countries like the United States or born in Mexico to foreigners from *jus sanguinis* countries were *de facto* dual nationals.<sup>20</sup> “Voluntary” foreign naturalization was grounds for denationalization beginning in 1934, but the interpretation of “voluntary” narrowed in 1939 and 1993, so that emigrants who adopted a foreign nationality as an employment requirement were considered to have involuntarily naturalized and thus were able to maintain their Mexican nationality. They became *de facto* dual nationals as well.<sup>21</sup> Although 1993 nationality legislation adopted the principle that nationality should be singular and required *de facto* dual nationals to choose a single nationality at the age of majority, just five years later, the 1998 “non-forfeiture” (*no pérdida*) of nationality law protected native Mexicans from mandatory denationalization, though they may still voluntarily expatriate.<sup>22</sup> In effect, the 1998 legislation was a dual nationality law. The term “dual nationality” was likely not adopted in official documents to avoid raising the hackles of those who discursively associate dual nationality with “dual loyalty” and to maintain a semblance of continuity in Mexican law.<sup>23</sup>

The substantive prerogatives of dual nationals remain contested and ambiguous as of this writing. On its face, the Mexican constitution prohibits dual nationals from holding public offices, including those of federal deputy, federal senator, president, and state governor. The 1917 Constitution still in effect specifies that these positions are reserved for “Mexicans by birth,” and Article 32 specifies that positions for which one is required to be Mexican by birth “are reserved for those who have this quality and do not acquire another nation-

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<sup>18</sup> T. Alexander Aleinikoff & Douglas Klusmeyer, *Plural Nationality: Facing the Future in a Migratory World*, in *CITIZENSHIP TODAY: GLOBAL PERSPECTIVES AND PRACTICES* 63, 70 (T. Alexander Aleinikoff & Douglas Klusmeyer eds., 2001).

<sup>19</sup> Fitzgerald, *supra* note 9, at 176.

<sup>20</sup> *Id.* at 183.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 176–77, 183.

<sup>23</sup> See, e.g., Carlos Arellano García, *Inconvenientes y Peligros de la Doble Nacionalidad [Disadvantages and Dangers of Dual Nationality]*, in *LA DOBLE NACIONALIDAD: MEMORIA DEL COLOQUIO, PALACIO LEGISLATIVO*, 8–9 DE JUNIO, 1995, 30, 34 (1995) [DUAL NATIONALITY: COLLOQUIUM REPORT, LEGISLATIVE CENTER, JUNE 8–9, 1995] (equating dual nationality with dual loyalty).

ality.”<sup>24</sup> The question of whether dual nationals can serve as federal deputies has not been resolved conclusively, however. One of the emigrant politicians Barry mentions, Manuel de la Cruz, is a dual U.S. and Mexican national and long-time resident of Norwalk, California, who in July 2003 was believed to have won election to the Mexican Congress’s Chamber of Deputies based on his position in a plurinominal list of the Party of the Democratic Revolution (PRD).<sup>25</sup> Despite the controversy over whether a dual national was legally eligible for the office, none of the Mexican political parties formally challenged de la Cruz’s election with election authorities (likely because they wanted to avoid antagonizing emigrants). At the last moment, after de la Cruz had already been issued a key to his new congressional office, the Federal Electoral Tribunal ruled that to rectify a technical miscalculation, it would reapportion to another party the PRD’s plurinominal seat that de la Cruz thought he had won. De la Cruz never took federal office,<sup>26</sup> but the question of the political rights of dual nationals will likely resurface as it becomes increasingly common for Mexicans residing in the United States to run for office in Mexico.

What is novel, then, about the state-emigrant relationship in the contemporary Mexican case, is the government’s promotion of *legal* dual nationality. When speaking to Mexican-origin audiences in the United States, that novelty extends to promoting a sort of *cultural* and *political* dual affiliation in which Mexican migrants are encouraged to become Americans while maintaining their *mexicanidad*, or “mexicanness.” President Zedillo privately told a group of U.S. Latino leaders in Texas in 1995 that the goal of dual nationality was “to develop a close relationship between his government and Mexican Americans, one in which they could be called upon to lobby U.S.

<sup>24</sup> CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [CONST.], *as amended*, arts. XXXII, LV, LVIII, LXXXII, CXVI, Diario Oficial de al Federación [D.O.], 5 de Febrero de 1917 (Mex.) (translated by author).

<sup>25</sup> In the bicameral legislature’s Chamber of Deputies, three hundred deputies are elected from single-member districts and two hundred deputies are elected from large plurinominal districts, in which members are selected from party lists based on the percentage the party won in that district. Eddie Varón Levy, who does not hold U.S. nationality, became the first Mexican living in the United States to be elected to the Chamber of Deputies in 2000 based on his position in the Institutional Revolutionary Party’s plurinominal list for the Mexico City area. DAVID FITZGERALD, *NEGOTIATING EXTRATERRITORIAL CITIZENSHIP: MEXICAN MIGRATION AND THE TRANSNATIONAL POLITICS OF COMMUNITY* 29 (2000).

<sup>26</sup> Lucero Amador, *Pierde Su Curul un Candidato Migrante* [An Emigrant Candidate Loses His Seat], LA OPINIÓN, Sept. 8, 2003, at 3B. De la Cruz was elected as a deputy in the state legislature of Zacatecas in 2004, following the passage of a law reserving two seats for emigrants. Francisco Robles, *Influencia Política y Económica* [Political and Economic Influence], LA OPINIÓN, Aug. 23, 2004, at 1A.

policymakers on economic and political issues involving the United States and Mexico.”<sup>27</sup> In terms of political culture, Carlos González Gutiérrez, one of the founders of Mexico’s Program for Mexican Communities Abroad (established in 1990), argued that

[I]n the policies of state, the objective is to influence the way first-generation immigrants and their children (the majority of whom are United States–born) assimilate into American society. The idea is not to obstruct or stop their assimilation, because this is not possible; the purpose is rather to foster in Mexican Americans a pluralistic sense of belonging to the Mexican nation, without failing to recognize that the majority are Americans by choice.<sup>28</sup>

In this claim, the “assimilation” of Mexicans into another culture does not necessarily strip them of their *mexicanidad*. Indeed, President Vicente Fox has encouraged Mexicans residing in the United States to become U.S. citizens and integrate themselves into U.S. life. In a November 2000 speech in Los Angeles, Fox told an audience comprised largely of Mexicans that immigrants “want their children to learn English, they want to graduate from college, they want to live in integrated neighborhoods, they want to dream the American dream and wake up as citizens.”<sup>29</sup> After adding that he “share[d] those hopes,” Fox maintained that Mexico has “no desire to interfere in the powerful processes that tie Mexican immigrants to this country.”<sup>30</sup>

The Mexican government may stress that it is not interfering in processes of U.S. integration or naturalization in part as a rhetorical maneuver to protect itself against charges of violating U.S. sovereignty. Nevertheless, nationalism is a discursive formation,<sup>31</sup> and state-sponsored changes in public discourse may alter the form of nationalism. In the national formulations that Fox and González Gutiérrez expressed, the interests of the Mexican state are best served by allowing Mexicans in the United States to adopt not only the legal category of dual nationality, but also the concomitant practical and identifying aspects of dual nationalism. To be an effective ethnic lobby, emigrants must integrate themselves into the U.S. political

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<sup>27</sup> Alfredo Corchado, *Zedillo Seeking Closer Ties with Mexican-Americans*, DALLAS MORNING NEWS, Apr. 8, 1995, at 11A.

<sup>28</sup> Carlos González Gutiérrez, *Fostering Identities: Mexico’s Relations with Its Diaspora*, 86 J. AM. HIST. 545, 559 (1999), available at <http://www.historycooperative.org/journals/jah/86.2/carlos.html>.

<sup>29</sup> Patrick J. McDonnell, *Fox Vows Better Ties with Mexican Immigrants in U.S.*, L.A. TIMES, Nov. 11, 2000, at B1.

<sup>30</sup> *Id.*

<sup>31</sup> CRAIG J. CALHOUN, NATIONALISM 3 (1997).



system. In both regards, this represents a new development in Mexican attempts to embrace emigrants.

The Mexican experience of promoting dual nationality is consistent with a contemporary wave of similar efforts in countries of mass emigration like Turkey, the Dominican Republic, Brazil, and El Salvador.<sup>32</sup> Of course, many countries have recognized dual nationality in some form for generations. As early as 1912, the Italian government in effect *accepted* the reality of mobile Italians' plural ties as a practical concession to maintain some kind of state-emigrant relationship, but they did not *encourage* emigrants also to think and act like Italian nationals.<sup>33</sup> Other European countries like the United Kingdom quietly encouraged dual nationality in administrative practice while publicly and legally condemning it.<sup>34</sup> The novelty of contemporary emigrant citizenship lies in the strengthening of rights of emigrant citizenship in particular countries in which emigrants were previously excluded, the global scale of the acceptance of dual nationality, and in source country governments' *active* promotion of dual nationality and dual nationalism.<sup>35</sup>

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<sup>32</sup> See David A. Martin, *Introduction: The Trend Toward Dual Nationality*, in RIGHTS AND DUTIES OF DUAL NATIONALS: EVOLUTION AND PROSPECTS 3, 7–8 (David A. Martin & Kay Hailbronner eds., 2003) (describing efforts in Turkey); Michael Jones-Correa, *Under Two Flags: Dual Nationality in Latin America and Its Consequences for the United States* 32 (David Rockefeller Ctr. for Latin Am. Studies, Harvard Univ., Working Papers on Latin America, Paper No. 99/00-3, 2000), available at [http://www.fas.harvard.edu/~drclas/publications/PDFs/jones\\_correa.pdf](http://www.fas.harvard.edu/~drclas/publications/PDFs/jones_correa.pdf) (describing efforts in Dominican Republic, Brazil, and El Salvador).

<sup>33</sup> See Cook, *supra* note 7, at 84, 181–82.

<sup>34</sup> Randall Hansen, *The Dog That Didn't Bark: Dual Nationality in the United Kingdom*, in REINVENTION OF CITIZENSHIP, *supra* note 5, at 184–85.

<sup>35</sup> The transnationalism literature has argued that new technologies allow absent migrants to maintain intense ties with people in their source community in a way that is new to the contemporary era. See, e.g., Alejandro Portes et al., *The Study of Transnationalism: Pitfalls and Promise of an Emergent Research Field*, 22 ETHNIC & RACIAL STUD. 222, 223–25, 228 (1999). Skeptical historians reply that nineteenth-century technologies enabled quite intense long-distance ties and were likely more important for achieving that possibility than the new technologies of the late twentieth century. José C. Moya, *Diaspora Studies: New Concepts, Approaches, and Realities?* (Nov. 2004) (conference paper, on file with the *New York University Law Review*). The earliest electronic communications, like the telegraph and telephone, were in use at the time of the great transatlantic migrations, and as Anthony Giddens reminds us, “electronic communication for the first time in history separates ‘immediate’ communication from presence . . . .” ANTHONY GIDDENS, *THE NATION-STATE AND VIOLENCE* 14 (1985). On the other hand, as Barry points out, the costs of these services have decreased dramatically, leading to more widespread access. Barry, *supra* note 1, at 15–16. All agree that technologies like the Internet and jet travel increase the mobility of people, goods, and information, but there are no clear measures by which a quantitative shift can be said to have had a qualitative effect. Rather than the implicit “old vs. new” dichotomous view of technology in the literature, it is more useful to think of technology as a continuum that makes interaction between source and destination successively faster, more frequent, and more intensive. The impor-

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## II

## WHO WANTS TO BE AN EXTRATERRITORIAL CITIZEN?

Studies of transborder nationalism, like studies of nationalism more generally, tend to emphasize the nationalist activities and discourses of political elites and activists without adequately addressing the resonance of nationalism among the general populace.<sup>36</sup> Political entrepreneurs can identify and negotiate the boundaries of a national community, but whether ascribed members will self-identify as members—and the degree to which they will identify—remains uncertain. In the realm of legal nationality and citizenship, few can afford to ignore whether they are citizens of their country of residence, but the same does not hold true for emigrant citizenship. This is especially the case for those born abroad to permanently settled emigrant parents. Given the abundance of nationality regimes recognizing both *jus soli* and *jus sanguinis*,<sup>37</sup> untold millions born abroad could lay claim to a second nationality. The question remains whether subsequent generations care to be nationals abroad or to participate in substantive practices of extraterritorial citizenship. If they have nationality in their country of residence, making themselves extraterritorial citizens becomes a relatively, or even absolutely, voluntary act.

When Mexico implemented its non-forfeiture of nationality legislation in 1998, it also created a five-year window within which Mexicans who had naturalized abroad and the children of Mexican parents born abroad could reacquire their Mexican nationality. Reacquisition involved a simple bureaucratic procedure of submitting basic paperwork and a twelve-dollar fee at a Mexican consulate. At the time the law was passed, Mexican authorities believed that several million people were eligible. Yet in the first five years following the law's implementation, only 67,000 people reacquired their Mexican nationality. The window was then opened indefinitely.<sup>38</sup> In short, the

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tant question of the *extent* to which a basket of communication and transportation technologies alters migrants' ties between source and destination countries will be left unanswered in the absence of more systematic historical research. See KARL W. DEUTSCH, NATIONALISM AND SOCIAL COMMUNICATION: AN INQUIRY INTO THE FOUNDATIONS OF NATIONALITY 121 (2d ed. 1966) (arguing against notion that early twentieth-century technologies increasing communication between Germany and New World Germans limited their assimilation, and noting that Germans in Eastern European villages isolated from communications with Germany had maintained their German identity for centuries).

<sup>36</sup> See Rogers Brubaker, *Myths and Misconceptions in the Study of Nationalism*, in THE STATE OF THE NATION: ERNEST GELLNER AND THE THEORY OF NATIONALISM 272, 273–74 (John A. Hall ed., 1998) (arguing that focus on elites stems from refusal to see national identity and national conflicts as primordial or historically encoded).

<sup>37</sup> Patrick Weil, *Access to Citizenship: A Comparison of Twenty-Five Nationality Laws*, in CITIZENSHIP TODAY: GLOBAL PERSPECTIVES AND PRACTICES, *supra* note 18, at 20.

<sup>38</sup> Fitzgerald, *supra* note 9, at 183, 188 n.32.

Mexican population in the United States expressed minimal interest in obtaining emigrant nationality if the Mexican government did not automatically assign it to them.

In terms of substantive practices of extraterritorial citizenship, the Mexican case suggests considerable interest in participating in cross-border politics among the first generation. However, on the aggregate level, this interest declines over time and generation. In the 1988 National Latino Immigrant Survey, nearly 98% of adult Mexican immigrants either eligible for naturalization or already naturalized said they planned to live permanently in the United States.<sup>39</sup> Fifty-eight percent said their “primary national identification” was with Mexico, although that identification decreased with length of residence in the United States.<sup>40</sup> The survey excluded Mexican immigrants ineligible for U.S. citizenship, a population that is likely to have stronger ties with Mexico. The 1989–1990 Latino National Political Survey found that, among respondents of Mexican origin, “2 percent of U.S. citizens and 20 percent of noncitizens [said] they [were] more concerned with Mexican politics than with U.S. politics, while 90 percent of citizens and 38 percent of noncitizens [said] they [were] more concerned with U.S. politics than with Mexican politics.”<sup>41</sup> Survey data also suggested that Mexican Americans did not have a positive view of the Mexican government in general and Mexican elections in particular.<sup>42</sup> In their analysis of these data, the authors of the study conclude: “Although they have positive feelings for Mexico as a nation, their feelings toward the United States are much stronger.”<sup>43</sup>

On the other hand, a 1982 survey of Mexican citizens in Los Angeles, Chicago, and San Antonio found that 77% of the respondents supported the right to vote from abroad in Mexican elections.<sup>44</sup> In a 1998 Instituto Federal Electoral (IFE) study of naturalized and unnaturalized Mexicans living in the United States, 65% said they

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<sup>39</sup> Rodolfo O. de la Garza & Louis DeSipio, *Interests Not Passions: Mexican-American Attitudes Toward Mexico, Immigration from Mexico, and Other Issues Shaping U.S.–Mexico Relations*, 32 INT’L MIGRATION REV. 401, 405 (1998).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *See id.* at 405–06 (discussing results of 1996 Southwest Voter Research Institute survey of Mexican Americans in California and Texas).

<sup>43</sup> *Id.*

<sup>44</sup> Jorge A. Bustamante, MEXICANOS RESIDENTES EN ESTADOS UNIDOS: INFORMACIÓN Y OPINIONES SOBRE POLÍTICA, RECABADAS EN LOS ANGELES, SAN ANTONIO Y CHICAGO EN FEBRERO DE 1982, A PARTIR DE UNA MUESTRA ALEATORIA POR ESTRATOS DE 1363 CIUDADANOS MEXICANOS [MEXICAN RESIDENTS OF THE UNITED STATES: INFORMATION AND OPINIONS ABOUT POLITICS, GATHERED IN LOS ANGELES, SAN ANTONIO AND CHICAGO IN FEBRUARY 1982 IN A RANDOM STRATIFIED SAMPLE OF 1363 MEXICAN CITIZENS] 6 (1982) (on file with author).

knew there would be a presidential election in Mexico in 2000, and 83% said they would like to vote in that election if they were able to do so via absentee ballots cast in the United States.<sup>45</sup> Fifty-five percent of those who expressed an interest in voting said they would vote if the process took less than an hour, and 21% said they would spend a day or more of their time to vote.<sup>46</sup>

Scholars skeptical of Mexican transborder politics tend to cite survey data that is systematically biased against the undocumented and recent arrivals, who are probably most likely to maintain strong links with Mexico, while those who celebrate the potential participation of emigrants in Mexican transborder politics focus on the Mexico-born. Not surprisingly, Mexico-born immigrants appear much more likely than U.S.-born Mexican Americans to be interested in Mexican politics. Indeed, González Gutiérrez, one of the founders of the Program for Mexican Communities Abroad, has argued that the Mexican government should act quickly to build ties with the Mexican-origin population before Mexico-born immigrants decline as a share of the total Mexican-origin population.<sup>47</sup>

On the aggregate level, while identification with Mexico decreases with length of residence in the United States, there is an important anomaly to this pattern: Most Mexican civic hometown associations are led by immigrants who have lived in the United States for many years.<sup>48</sup> The explanation for this anomaly has not been definitively proven in the Mexican case, but Luis Guarnizo and his colleagues' study of Dominicans, Salvadorans, and Colombians in four U.S. cities shows a pattern that likely applies to the Mexican case as well. In Guarnizo and his colleagues' sample, participation in transborder politics is positively correlated with length of residence in the United States because long-term residents are more likely to enjoy the legal status and level of economic well-being that facilitate cross-

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<sup>45</sup> INSTITUTO FEDERAL ELECTORAL, *supra* note 2.

<sup>46</sup> *Id.*

<sup>47</sup> Carlos González Gutiérrez, *La Organización de los Inmigrantes Mexicanos en Los Angeles: La Lealtad de los Oriundos* [Organization of Mexican Immigrants in Los Angeles: Loyalty of Natives], 46 REVISTA MEXICANA DE POLÍTICA EXTERIOR [MEXICAN JOURNAL OF FOREIGN POLICY] 59, 89 (1995). Mexico-born immigrants were 41.5% of the total Mexican-origin population in the 2000 U.S. census. See U.S. CENSUS BUREAU, NOSOTROS: HISPANOS EN LOS ESTADOS UNIDOS (2005), available at <http://www.census.gov/prod/2005pubs/censr-18sp.pdf>.

<sup>48</sup> Carol Zabin & Luis Escala Rabadan, Mexican Hometown Associations and Mexican Immigrant Political Empowerment in Los Angeles 10 (1998) (unpublished working paper), [http://www.nonprofitresearch.org/usr\\_doc/15909.pdf](http://www.nonprofitresearch.org/usr_doc/15909.pdf).

border travel and political activities.<sup>49</sup> However, the participants in transborder politics are restricted to a narrow slice of the immigrant population. Ten percent of their sample were regular members in a home country political party and some 19% were occasionally members.<sup>50</sup> Seven percent regularly and 12% at least occasionally gave money to a home country political party.<sup>51</sup> Eight percent regularly and 14% at least occasionally took part in home country electoral campaigns.<sup>52</sup> The authors conclude there is a small core of transborder activists with a wider rim of occasional participants, not unlike politics generally, and that immigrant interest or involvement in home country politics actually increases with the length of residence in the U.S.<sup>53</sup> Much comparative empirical work remains to be done to understand what factors condition the variation in the prevalence of transborder political participation and how that prevalence changes across length of residence in the destination country and generation.

Establishing the social significance of emigrant citizenship is even more difficult to forecast in the very long run. Notwithstanding the tendency for the salience of emigrant citizenship to sharply decline between the first and second generations, as demonstrated by the experience of Mexicans and other groups, there are some surprising exceptions. Close to a quarter of a million second- and third-generation Brazilians of Japanese descent have successfully drawn on their Japanese ancestry to gain preferential access to a Japanese labor market that at least formally has long been closed to foreign immigrants.<sup>54</sup> From 1988 to 1997, 2.2 million ethnic Germans from formerly communist countries like Kazakhstan were given preferential access to Germany and substantial resettlement benefits.<sup>55</sup> Many of these “resettlers” had only remote ancestral ties to Germany.<sup>56</sup> As many as a quarter of a million Israelis, either refugees of the Holocaust or descendants of such refugees, have acquired German

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<sup>49</sup> Luis Eduardo Guarnizo et al., *Assimilation and Transnationalism: Determinants of Transnational Political Action Among Contemporary Migrants*, 108 AM. J. SOC. 1211, 1238 (2003).

<sup>50</sup> *Id.* at 1237.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 1238.

<sup>54</sup> Takeyuki Tsuda, *The Motivation to Migrate: The Ethnic and Sociocultural Constitution of the Japanese-Brazilian Return Migration System*, 48 ECON. DEV. & CULTURAL CHANGE 1, 9, 18 (1999).

<sup>55</sup> CHRISTIAN JOPPKE, *SELECTING BY ORIGIN: ETHNIC MIGRATION IN THE LIBERAL STATE* 204 (2005).

<sup>56</sup> *Id.* at 174.

nationality.<sup>57</sup> Now that Poland is a member of the European Union, some Israelis are applying for the Polish nationality of their parents as well.<sup>58</sup> These “rediscovered” Poles and Germans are following an example set by Argentines of Italian and Spanish ancestry, who have drawn on generous *jus sanguinis* provisions extending to multiple generations to escape the economic misfortunes of Argentina for the benefits of living anywhere in the European Union.<sup>59</sup> The lagged importance of emigrant citizenship would have been difficult to predict at the moment of migration, particularly in the case of the Southern Europe/Argentina migration circuit, where the relative economic fortunes of the countries of origin and destination flipped between 1960 and the mid-1970s.<sup>60</sup> Protection of emigrants by states of origin has also taken an unexpected turn, with Spanish and Italian judges pursuing legal charges against military officers from Chile and Argentina’s “dirty wars” more than twenty years after the fact, based on those officers’ persecution of Southern European nationals, including some born in South America.<sup>61</sup> The long-term salience of emigrant citizenship is sensitive to economic and political conditions in both source and destination countries.

### III

#### A NATION OF EMIGRANTS?

The relationship between nation and state lies at the heart of modern conceptions of citizenship. How does emigration complicate that relationship, and what does that say about the nature of understandings of nationhood in emigration contexts? The transnationalism literature in the study of international migration provides one response in its claim that transmigrants “build social fields that cross geographic, cultural, and political borders.”<sup>62</sup> In doing so, transmigrants are said to create new forms of transnational membership.<sup>63</sup> Yet by conflating distinct borders of state, nation, culture, and geog-

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<sup>57</sup> Tom Segev, Commentary, *Twists in the Law of Return*, L.A. TIMES, Jan. 21, 2005, at B11.

<sup>58</sup> *Id.*

<sup>59</sup> Cook, *supra* note 7, at 178.

<sup>60</sup> *Id.* at 205.

<sup>61</sup> Ellen Lutz & Kathryn Sikkink, *The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America*, 2 CHI. J. INT’L L. 1, 1–2 (2001); Gilbert Le Gras, *Death Squad Leader Surrenders to Police; Argentine Wanted by Italian Court*, CHI. TRIBUNE, July 3, 2001, at 7.

<sup>62</sup> LINDA G. BASCH ET AL., NATIONS UNBOUND: TRANSNATIONAL PROJECTS, POSTCOLONIAL PREDICAMENTS, AND DETERRITORIALIZED NATION-STATES 7 (1994).

<sup>63</sup> *Id.* at 8 (describing “new conception of nation-state” in which “migrants continue to be members of the state from which they originated”).

raphy, the concept of transnationalism forecloses the possibility of unpacking state-nation relationships. This conflation is particularly problematic in Linda Basch and her colleagues' claim that nation-states have become "deterritorialized" through the inclusion of emigrants<sup>64</sup>—a claim that Barry rightly suggests is unsustainable,<sup>65</sup> but that bears further analysis given its prevalence in the literature and the need to advance an alternative framework.

The first task in understanding the relationship between emigration and the nation-state is a careful specification of its constitutive parts. Modern states are a set of administrative institutions exercising control over a bordered territory. "Nation" is a notoriously slippery concept signifying a community based on common characteristics and/or a political unit of the citizens of the state. In the former sense, "nation" is virtually indistinguishable from "ethnicity." The many potential markers of ethnicity, such as shared language, history, region, phenotype, and culture, are also potential markers of national inclusion or exclusion. The second meaning of "nation" as a political unit differs from the "ethnic" sense. The self-defined "nation-state" delimits the nation as the body of state-certified national citizens. Contemporary states claim to be nation-states regardless of any subjective or objective relationship between ethnocultural and state borders.<sup>66</sup> By accepted social scientific definition, then, the state cannot be deterritorialized. As Barry summarizes, "[s]tates retain personal jurisdiction over their citizens abroad but without simultaneous territorial jurisdiction." Further, the analytic formulation of *transnational*, which implies a crossing or supersession of the national, is incompatible with nationalisms—which are inherently particularistic—that include emigrants outside *state* borders.<sup>67</sup>

If the nation-state has not been "deterritorialized," how should the relationship between nation and state be conceptualized in Mexico and similar contexts of mass emigration where states seek to incorporate "their" emigrants? The nationalism literature points in a useful direction. Rogers Brubaker distinguishes between *state-framed* and *counter-state* understandings of nationhood. In the former, national

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<sup>64</sup> *Id.*

<sup>65</sup> Barry, *supra* note 1, at 27.

<sup>66</sup> See HUGH SETON-WATSON, *NATIONS AND STATES: AN ENQUIRY INTO THE ORIGINS OF NATIONS AND THE POLITICS OF NATIONALISM* 5 (1977) (concluding that "no 'scientific definition' of nation can be devised"); ANTHONY D. SMITH, *NATIONALISM AND MODERNISM: A CRITICAL SURVEY OF RECENT THEORIES OF NATIONS AND NATIONALISM* 70–96 (1998) (exploring view that modern, bureaucratic state is source and framework of modern nations and nationalism).

<sup>67</sup> David Fitzgerald, *Beyond "Transnationalism": Mexican Hometown Politics at an American Labour Union*, 27 *ETHNIC & RACIAL STUD.* 228, 230 (2004).

and state boundaries are congruent; the state institutionally and territorially frames “the nation.” In the latter, “the nation” is conceived in opposition to the territorial and institutional frame of an existing state.<sup>68</sup> If the distinction between state-framed and counter-state understandings of nationhood captures many configurations, it still does not conceptualize a set of important cases of mass emigration in which states frame “the nation” as extending beyond the state’s territorial borders without trying to change state borders. No significant Mexican politicians are framing nationhood in “counter-state” terms. No one is calling for adjusting the U.S.–Mexico border to fit the imagined boundaries of the nation better. The U.S. conquest of northwest Mexico in the nineteenth century that left 100,000 Mexican nationals in lands ceded to the United States has been a critical factor in the history of Mexican nationalism,<sup>69</sup> but there is no irredentist movement, if only because of the overwhelming power asymmetry with the United States. Neither is Mexican nationhood “state-framed” in the sense that the entire nation is contained within the state’s territory.

I argue that typologies of “state-framed” understandings of nationhood should distinguish between two aspects of “state.” The first aspect of the state is *institutional* and refers to government agencies and the incumbents who control them. The second aspect is the *territory* controlled by state institutions.<sup>70</sup> State actors frame the nation as extending beyond the state’s *territory* to encompass a population in another state, because actors believe such a frame reinforces the institutional capacity of the government to realize its economic and political projects. The conception of nationhood in these high-emigration settings is *government-reinforcing* and *trans-territorially framed*. Countries of former mass emigration like Spain and Italy and contemporary countries of emigration like Mexico, China, India, Cyprus, Turkey, the Philippines, Armenia, Eritrea, Haiti, the Dominican Republic, and El Salvador have invoked a formulation of nationhood that reinforces the institutional power of states by extending ties to nationals living outside state territory.<sup>71</sup> Discourses

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<sup>68</sup> Brubaker, *supra* note 36, at 300.

<sup>69</sup> FREDERICK C. TURNER, *THE DYNAMIC OF MEXICAN NATIONALISM* 38–41 (1968).

<sup>70</sup> See 2 MICHAEL MANN, *THE SOURCES OF SOCIAL POWER* 55–56 (1993) (defining state as “differentiated set of institutions and personnel” covering “territorially demarcated area”).

<sup>71</sup> See generally DONNA R. GABACCIA, *ITALY’S MANY DIASPORAS* 136–52 (2000) (describing Italy); INTERNATIONAL MIGRATION AND SENDING COUNTRIES: PERCEPTION, POLICIES AND TRANSNATIONAL RELATIONS *passim* (Eva Østergaard-Nielsen ed., 2003) (describing India, Cyprus, Turkey, Philippines, Armenia, and Eritrea); Sebastian Balfour, “*The Lion and the Pig*”: *Nationalism and National Identity in Fin-de-Siècle Spain*, in



and laws of emigrant inclusion are aimed at promoting remittances and an emigrant lobby in the receiving country. An emigrant lobby at least hypothetically gives a weak sending state more political leverage with the strong receiving state, precisely where such influence is most valuable. Greater financial resources and political influence make the government of the sending country more powerful domestically and in its relationships with other states.

In sum, the modal relationship between contemporary labor emigrants and their states of origin constitutes a framing of the sending “nation” that includes and extends beyond the state’s territory in a way that reinforces the domestic and even international capacity of the sending country’s government. While this framework linking mobile citizen, state, and nation has historical precedent in earlier cases of mass emigration, its analytical conceptualization is only now being understood as this arrangement has become more common empirically and the theoretical failings of the “deterritorialization” framework become clear.

#### IV

#### IS EMIGRANT CITIZENSHIP LIBERAL?

The fundamental liberal argument for emigrant citizenship is that individual liberty is maximized when all citizens are considered equal and are not penalized simply because they have left the country. The full recognition of the rights of emigrants is often presented as the most recent chapter in a long progression of struggles to expand democratic participation.<sup>72</sup> The normative debate about dual nationality in destination countries need not be rehearsed at length here, but it is

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NATIONALISM AND THE NATION IN THE IBERIAN PENINSULA: COMPETING AND CONFLICTING IDENTITIES 107 (Clare Mar-Molinero & Angel Smith eds., 1996) (describing Spain); David Fitzgerald, *Inside the Sending State: The Politics of Mexican Emigration Control*, 40 INT’L MIGRATION REV. (forthcoming 2006) (describing Mexico); José Itzigsohn, *Immigration and the Boundaries of Citizenship: The Institutions of Immigrants’ Political Transnationalism*, 34 INT’L MIGRATION REV. 1126 (2000) (describing Haiti, Dominican Republic, and El Salvador); Pál Nyíri, *Expatriating is Patriotic? The Discourse on “New Migrants” in the People’s Republic of China and Identity Construction Among Recent Migrants from the PRC*, 27 J. ETHNIC & MIGRATION STUD. 635 (2001) (describing China).

<sup>72</sup> See, e.g., Leticia Calderón Chelius, *Ciudadanos Inconformes. Nuevas Formas de Representación Política en el Marco de la Experiencia Migratoria: El Caso de los Migrantes Mexicanos* [Nonforming Citizens. New Forms of Political Representation in the Context of the Migrant Experience: The Case of Mexican Emigrants], FRONTERA NORTE, Jan.–June 1999, at 117, 139 (1999) (describing how improvements in Mexico’s formerly fraud-ridden electoral process brought about increased interest among emigrants in voting); Nayamín H. Martínez-Cossío, *El Voto Extraterritorial: El Desencuentro Partidista Frente a la Extensión de la Ciudadanía* [The Extraterritorial Vote: The Partisan Resistance Against Extending Citizenship], in MEXICANOS EN ESTADOS UNIDOS; LA NACIÓN, LA POLÍTICA Y EL VOTO

clearly relevant to the question of whether including emigrants in political decision-making is a positive outcome from a liberal standpoint. Proponents argue that dual nationality reflects the political and social commitments of mobile people in a globalizing world and encourages naturalization in the destination country—thus contributing to greater enfranchisement. Opponents argue that dual nationality unfairly allows migrants to vote in two different electoral systems and limits integration into the destination country by keeping the possibility of exit open—an advantage not enjoyed by mononationals.<sup>73</sup>

From the perspective of destination country nationalists, emigrant citizenship raises the specter of “dual loyalty” that impinges on the greater good of the national community.<sup>74</sup> Such fears reach fever pitch during periods of belligerency between source and destination states, resulting in policies that suppress the practice of emigrant and even immigrant citizenship. The forced Anglo-conformity of German Americans during World War I and the internment of Japanese Americans in World War II bear witness to this dynamic.<sup>75</sup> Some civil society actors remain suspicious of foreign attachments even during times of peace, ranging from nativist organizations on the fringe to prominent intellectuals like Harvard political scientist Samuel Huntington, who suggests that the contemporary cross-border politics of Mexicans threatens U.S. “national interests.”<sup>76</sup> Co-ethnic political entrepreneurs worry that immigrant attention to emigrant politics will

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SIN FRONTERAS 217 (Arturo Santamaría Gómez ed., 2001) (describing political events in Mexico leading up to establishment of emigrant voting).

<sup>73</sup> For recent critical reviews of these arguments, see T. ALEXANDER ALEINIKOFF & DOUGLAS KLUSMEYER, *CITIZENSHIP POLICIES FOR AN AGE OF MIGRATION* 36–39 (2002). Aleinikoff and Klusmeyer encourage a general acceptance of plural nationality for persons with genuine links to the countries involved. See also David A. Martin, *New Rules for Dual Nationality*, in *REINVENTION OF CITIZENSHIP*, *supra* note 5, at 35 (opining that globalizing developments that make dual citizenship more likely also suggest limiting principles on such citizenship); Peter H. Schuck, *Plural Citizenships*, in *REINVENTION OF CITIZENSHIP*, *supra* note 5, at 86–91 (suggesting reform of U.S. dual citizenship law by modifying requirement that naturalizing citizens renounce allegiance to other states); Peter J. Spiro, *Embracing Dual Nationality*, in *REINVENTION OF CITIZENSHIP*, *supra* note 5, at 19–20 (arguing that United States should embrace dual nationality in order to encourage immigrant naturalization and spread democracy to countries of origin).

<sup>74</sup> See Mona Harrington, *Loyalties: Dual and Divided*, in *HARVARD ENCYCLOPEDIA OF AMERICAN ETHNIC GROUPS* 676, 686 (Stephan Thernstrom ed., 1980) (concluding that most serious conflict generated by split loyalty is actually within particular ethnic groups rather than between those groups and United States).

<sup>75</sup> Roger Waldinger & David Fitzgerald, *Transnationalism in Question*, 109 *AM. J. SOC.* 1177, 1190 (2004).

<sup>76</sup> SAMUEL P. HUNTINGTON, *WHO ARE WE? THE CHALLENGE TO AMERICA'S NATIONAL IDENTITY* 10, 204–13 (2004).

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distract from their own project of ethnic American politics and stimulate a nativist reaction.<sup>77</sup>

From the perspective of actors in source countries, the liberal effects of emigrant citizenship are also subject to debate. On the hopeful side is the democratic contagion thesis, which has been advanced by authors as diverse as Mexican anthropologist Manuel Gamio in 1930 and Israeli political scientist Yossi Shain in 1999, who argue that the influence of migrants in the United States on their less democratic countries of origin leads to “marketing” the American creed abroad.<sup>78</sup> The sovereign nature of the nation-state system allows the destination country to become an incubator of democratic activity that would have been smothered by repressive governments at home. Examples supporting the democratic contagion thesis include the successful movement by Filipinos abroad to peacefully overthrow Ferdinand Marcos in 1986 and the pressure by Haitian emigrants to restore the elected government of Jean-Bertrand Aristide after he was removed in a 1991 coup.<sup>79</sup> On the other hand, sovereign borders also create potential incubators for all manner of organizations using violence to advance their aims at home, from the Kurdish PKK in Germany to the Irish Republican Army in the United States.<sup>80</sup> Benedict Anderson cautions that long-distance nationalists often adopt more extreme positions than their home country counterparts, because the former do not have to live with the consequences of their decisions and are thus less likely to compromise.<sup>81</sup> The peace and liberty of those at home may actually be jeopardized by the actions of citizens abroad.<sup>82</sup>

Finally, the source country governments seeking to embrace “their” citizens abroad run a broad gamut of regimes. At one extreme are countries like Mexico and the Philippines, which are simply

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<sup>77</sup> David R. Ayón, *Democratization Imperils U.S. Latino Empowerment*, L.A. TIMES, May 26, 1996, at M1.

<sup>78</sup> See MANUEL GAMIO, *MEXICAN IMMIGRATION TO THE UNITED STATES* 173 (1930) (recounting how ex-immigrants led revolutions to improve conditions in Mexico after having seen prosperity in United States); YOSHI SHAIN, *MARKETING THE AMERICAN CREED ABROAD: DIASPORAS IN THE U.S. AND THEIR HOMELANDS* 8 (1999) (arguing that “one of the clearest indications that an ethnic community has ‘arrived’ in American society” is its willingness to promote “American values such as democracy and pluralism” abroad).

<sup>79</sup> SHAIN, *supra* note 78, at 70–80.

<sup>80</sup> See Myron Weiner, *Security, Stability, and International Migration*, 17 INT’L SECURITY 91, 106–08 (1992) (arguing that internal controversies become internationalized when country has significant overseas population which seeks to undermine home regime).

<sup>81</sup> BENEDICT ANDERSON, *Long-Distance Nationalism*, in *THE SPECTRE OF COMPARISONS: NATIONALISM, SOUTHEAST ASIA, AND THE WORLD* 58, 73–74 (1998).

<sup>82</sup> *Id.*

attempting to attract economic and lobbying resources from their citizens abroad while making some effort to protect their human rights. At the other extreme are Italy and Germany during the fascist dictatorships, which aggressively sought to include their “diasporas” in a decidedly illiberal project of world domination. The migration literature has focused on the more peaceful manifestations of contemporary emigrant politics, but carving out only the most normatively appealing aspect of the phenomenon limits understanding of the many reasons that states may embrace emigrants and of the varied channels of trans-state political action.<sup>83</sup>

Political actors who feel threatened by transborder migrant political participation, particularly in source countries, object to that participation to protect their immediate interests. Nevertheless, they raise questions that transcend tactical politics. The controversies over emigrant citizenship resonate with some of the oldest differences over citizenship in classical political philosophy and practice. Specifically, the differences between Greek and Roman models of citizenship throw into sharp relief the fundamental tensions about the proper relationship between citizen, government, and territory that continue to define debates about emigrant rights.

Extraterritorial citizenship resonates with a Roman model of citizenship. Citizenship for those physically present inside a state’s territory, which I will call resident citizenship, resonates with a Greek tradition of civic republicanism.<sup>84</sup>

Similar features of the extraterritorial and Roman models include passivity, citizenship as right, and differentiation.<sup>85</sup> By passivity, I mean that emigrant citizenship requires little in the way of active participation in political life. Although the legitimizing discourse of extraterritorial citizenship is based on the periodic performance of membership claims through remittances or public displays of a shared identity with co-nationals in the homeland, extraterritorial citizenship is relatively inactive on a regular basis. Emigrants are considered citizens because of who they *are*, not what they *do*. The inclusion of emigrants and their descendants in the national “we” often is based on essentialist and even racist notions that reds have always been reds, and reds they will always be, even if they live in a country full of blues. Adolf Hitler’s 1934 political program proclaimed: “We do not surrender a single German who lives beyond the frontiers of the German

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<sup>83</sup> See Waldinger & Fitzgerald, *supra* note 75, at 1186.

<sup>84</sup> See FITZGERALD, *supra* note 25, at 14.

<sup>85</sup> See generally J.G.A. Pocock, *The Ideal of Citizenship Since Classical Times*, in *THE CITIZENSHIP DEBATES* 31, 31–41 (Gershon Shafir ed., 1998) (detailing classical Greek and Roman ideals of citizenship).

State and within the frontiers of another civilized State or colony, as regards his national membership with the German Reich.”<sup>86</sup> This ascriptive quality of emigrant inclusion, particularly beyond the first generation,<sup>87</sup> has given pause to even the most outspoken proponents of extraterritorial citizenship.

On the other hand, *reacquiring* emigrant citizenship or nationality after it has been lost presents some philosophical advantages for a liberal polity. Most citizens are members of a polity by accident of birth and have never made an affirmative act to claim their basic membership, thus exposing as mythical the putative “social contract” between government and the governed. The decision *not to* expatriate could imply consent to be governed, but although most states allow expatriation, it is not an ordinary democratic option. In any case, a decision not to expatriate is a passive rather than an affirmative act. In contrast, some political philosophers see immigrant naturalization as especially appealing because the individual’s membership in a polity is achieved rather than ascribed, consensual rather than forced, and active rather than passive.<sup>88</sup> Likewise, the voluntaristic act of regaining emigrant citizenship expresses a much more consensual membership contract with the polity than typical resident citizenship, which is assigned and practiced as an accident of birth.

In the extraterritorial model that resonates with classical Roman citizenship, citizenship is a right that is “owned.” Citizens are owed protection by their community, and that right to be protected can be transported. Barry rightly points out that according to the logic of international law, intervention by states of origin to protect citizens abroad “is not a *right* of the citizen abroad, but rather is a prerogative of that citizen’s state” because “the state has been injured via the alleged harm to its citizen and is asserting its own right by protecting its citizens.”<sup>89</sup> Yet public discourse and even some constitutional law imply an emigrant’s right to protection by the home state. For example, in a passage that enshrines its labor-export policy in consti-

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<sup>86</sup> DEUTSCH, *supra* note 35, at 121.

<sup>87</sup> See, e.g., NINA GLICK SCHILLER & GEORGES EUGENE FOURON, GEORGES WOKE UP LAUGHING: LONG-DISTANCE NATIONALISM AND THE SEARCH FOR HOME 120–21 (2001) (describing how Aristide reclaimed all Haitians living abroad, and their descendants, as part of Haitian nation-state).

<sup>88</sup> See PETER H. SCHUCK & ROGERS M. SMITH, CITIZENSHIP WITHOUT CONSENT: ILLEGAL ALIENS IN THE AMERICAN POLITY 116–40 (1985) (arguing for development of mechanisms to make American citizenship more consensual than ascriptive). For a critical response, see Bonnie Honig, *How Foreignness “Solves” Democracy’s Problems*, 16 SOC. TEXT 1, 1–4 (1998), arguing against the notion that immigrants who choose to naturalize thereby reinvigorate the host country democracy.

<sup>89</sup> Barry, *supra* note 1, at 22 & n.30.

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tutional law, the Philippines Constitution specifies that “[t]he State shall afford full protection to labor, local and overseas”<sup>90</sup> and the 1978 Spanish Constitution stipulates that “[t]he state shall pay special attention to safeguarding the economic and social rights of Spanish workers abroad . . . .”<sup>91</sup>

Like Roman citizenship, which distinguished between the rights of those whose citizenship was ascribed or purchased, emigrant citizenship is often differentiated as well. Barry notes that migrant citizens can only vote from abroad like their resident counterparts in about half of the world’s countries.<sup>92</sup> The rights of dual nationals may be similarly restricted to prevent dual nationals from voting, running for office, or holding sensitive military and government positions. Turkey has what Barry calls an “intermediate membership tier”<sup>93</sup> for Turks forced to relinquish their Turkish nationality in order to naturalize in their country of immigration. India has gone so far as to restrict dual citizenship to Indians in specific countries.<sup>94</sup> Emigrant citizenship that is differentiated from resident citizenship by eligibility and specific rights, like forms of immigrant citizenship that have gradations of rights distinguishing the naturalized from the naturals, violates the liberal norm that all citizens should be equal.

The arguments of resident citizens who reject extraterritorial citizenship claims resonate with a Greek model of citizenship in which citizenship is participatory, is centered on duties as well as rights, and is territorially bound.<sup>95</sup> In this model, citizenship is based on daily participation in the *polis*. Although modern technologies facilitate emigrant political participation (long-distance lobbying by telephone, fax, or email; absentee voting by mail; and flying home for quick trips

<sup>90</sup> CONST. (1987), art. XIII (Phil.) (translated by author).

<sup>91</sup> CONSTITUCIÓN [C.E.], art. 42 (Spain) (translated by author).

<sup>92</sup> Barry, *supra* note 1, at 51–58.

<sup>93</sup> *Id.* at 50.

<sup>94</sup> While Barry emphasizes the economic motivations of the 2004 law limiting eligibility for dual citizenship to Indians in sixteen countries where they are more likely to be high-skilled workers, probably more important in this regard are geopolitical considerations that have led India to exclude citizens from rivals Pakistan and Bangladesh from eligibility for dual citizenship. See Fitzgerald, *supra* note 9, at 187 (arguing generally for attention to geopolitical determinants of nationality law). In January 2005, the Indian government announced that all People of Indian Origin (PIOs) who emigrated after 1950 and whose countries of destination allow dual citizenship would be eligible for dual citizenship, with the continued exception of Pakistan and Bangladesh. Editorial, *Extending Nationhood*, HINDUSTAN TIMES, Jan. 9, 2005, available at 2005 WLNR 296007. Pakistani Prime Minister Pervez Musharraf, who was born in New Delhi prior to the 1947 partition of the subcontinent, is clearly not the sort of dual citizen the Indian government would want. Paul Watson, *India-Pakistan Talks Yield Hope*, L.A. TIMES, Apr. 18, 2005, at A3.

<sup>95</sup> See generally Pocock, *supra* note 85, at 31–41 (tracing how ideal of citizenship has evolved from classical era of Athenians and Romans to modern times).

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to campaign for a given issue), physical separation continues to restrict emigrants' capacity to participate fully in political and public life relative to that of resident citizens.

In a Greek-like model of civic-republicanism, political participation cannot be a right without commensurate public duties. In Aristotle's words, citizenship consists of both "ruling and obeying."<sup>96</sup> The coercive capacity of a state to make its citizens fulfill duties like military service is severely restricted once those citizens leave the state's territory. Indeed, avoiding conscription has historically been an important motivation to emigrate in many settings, from Spaniards and Italians moving to the New World at the turn of the twentieth century to Americans dodging the Vietnam draft by moving to Canada.<sup>97</sup> Even the source state's non-coercive relations with emigrants, conducted through its fictive extraterritorial extensions of embassies and consulates, depend on the acquiescence of the host government as specified through bilateral and multilateral agreements between host and source states. Barry observes that, as a result of this sovereign system, states must rely on the coercive intervention of the state of immigration or the voluntary cooperation of emigrants, or they must wait until emigrants return to the source country and again make themselves available to the state's embrace.<sup>98</sup> Some emigrants may voluntarily return to their countries of origin to perform the duties of citizenship or send their "voluntary taxes" from abroad, as in the exceptional case of the Eritreans discussed by Barry,<sup>99</sup> but emigrants' escape from a state's embrace that is ultimately enforced through coercion inherently tilts the balance of rights and duties towards the former. While it might be possible to make political rights contingent on the fulfillment of obligations in individual cases, the administrative challenge of doing so would be immense for states such as India, the Philippines, and Mexico, each of which has millions of citizens abroad. Disenfranchisement for an emigrant failing or refusing to fulfill the state's obligations of citizenship would also create further philosophical problems for a liberal polity by creating a hierarchy of citizens and treating emigrant and resident citizens differently. In the meanwhile, emigrants can enjoy the substance of their homeland citizenship *à la carte* from a menu of rights and obligations.

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<sup>96</sup> ARISTOTLE, POLITICS 132 (Benjamin Jowett trans.) (1943).

<sup>97</sup> Cook, *supra* note 7, at 146; *see also* GERALD E. DIRKS, CANADA'S REFUGEE POLICY: INDIFFERENCE OR OPPORTUNISM? 236-38 (1977) (discussing factors influencing resettlement of Americans in Canada during 1960s and 1970s).

<sup>98</sup> Barry, *supra* note 1, at 35-42.

<sup>99</sup> *Id.* at 38-40.

Extraterritorial citizenship violates the territorial residence that is a necessary, but not sufficient, basis for citizenship in a classical Greek model. In the context of international migration, there is a double territorial disjuncture from the Aristotelian ideal of the ruled being the rulers. Most attention has focused on the first problem, in which non-citizen residents do not have a voice in the ruling of the state in whose territory they reside, which therefore rules them in the most direct sense of exercising territorial sovereignty.<sup>100</sup> From the perspective of extraterritorial citizenship, there is a second problem. To the extent that emigrants are among the rulers of their home polity, they make rules to which they are not directly subject. Residents of the home state, who are directly subject to the rule of their state of residence, do not enjoy this emigrant advantage. Emigrant citizenship thus introduces a measure of political inequality.

One of the most common arguments emigrants make to legitimate their claims to emigrant citizenship is that their economic contributions to the homeland via remittances justify their political participation. This claim is frequently accepted by state incumbents, explicitly so in the Mexican debates about dual nationality.<sup>101</sup> Luin Goldring has called this a form of “market membership” particular to a neoliberal economic regime in which membership rights are legitimated based on one’s market position expressed through remittances, investment, and consumption.<sup>102</sup> The underlying principle has a much longer illiberal pedigree within the tradition of Western citizenship, however, dating back to classical restrictions of citizenship rights to propertied males. Women and slaves have historically been ineligible for citizenship rights in a wide range of settings based on their economic dependency on free males. Contemporary emigrants are not seeking to disenfranchise non-emigrants, but the economic dependency of non-emigrants living in “remittance economies” is cited as justifying emigrant political participation. Whatever its tactical merits as an argument, the remittance justification for emigrant citizenship is based on illiberal reasoning.<sup>103</sup>

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<sup>100</sup> See Tomas Hammar, *State, Nation, and Dual Citizenship*, in *IMMIGRATION AND THE POLITICS OF CITIZENSHIP IN EUROPE AND NORTH AMERICA* 81, 84 (William Rogers Brubaker ed., 1989) (outlining concept and practice of “denizenship,” in which limited membership is granted to long-term residents of country who are not national citizens).

<sup>101</sup> Fitzgerald, *supra* note 9, at 185.

<sup>102</sup> Luin Goldring, *The Mexican State and Transmigrant Organizations: Negotiating the Boundaries of Membership and Participation*, 37 *LATIN AM. RES. REV.* 55, 69 (2002).

<sup>103</sup> See JUDITH N. SHKLAR, *AMERICAN CITIZENSHIP: THE QUEST FOR INCLUSION* 63–101 (1991) (detailing ways in which earnings historically were precondition of citizenship in United States); Jonathan Fox, *Unpacking “Transnational Citizenship,”* 8 *ANN. REV. POL. SCI.* 171, 191 (2005) (arguing that “although basing claims for political rights on remit-



Even if all emigrants employed peaceful methods of participating in the political life of democratic states of origin, there are structural features of the nation-state system that make emigrant citizenship a double-edged sword for the advance of liberalism. At first glance, equal rights for citizens regardless of their mobility would seem to be an advance for individual liberty, even if transborder ties or pluralities of ties discomfit nationalists. However, there is also a case to be made that because of the sovereign nature of the nation-state, emigrant citizenship is unfair to resident citizens who must face the consequences of emigrant actions in a more direct way than emigrants, and who are forced to carry the obligations of citizenship while emigrants are free to focus on emigrant rights rather than duties.

Finally, *all* forms of national citizenship have both an inclusionary and exclusionary face.<sup>104</sup> Membership in any organization at a lower level of aggregation than universal humanity is an oppositional category based on the notion that there are members and non-members. As one such manifestation, national citizenship is inherently illiberal in its creation of community boundaries.<sup>105</sup> Extraterritorial citizenship is as susceptible as resident citizenship to this fundamental philosophical problem of the liberal nation-state.

#### CONCLUSION

Establishing what is different now about state-emigrant relationships is a treacherous question whose answer varies depending on what is often an unspecified point of comparison. In the Mexican case, the government's embrace of Mexicans abroad beginning in the late 1980s reached an intensity that provided a sharp contrast with the immediately preceding decades. Yet deepening the historical perspective to the 1920s and 1930s uncovers many similarities in the state's embrace of emigrants between then and now. When the point of comparison becomes all countries of emigration at all times, it is even more difficult to identify novel features of contemporary emigrant citizenship. On a world-historical scale, what appears unprecedented in the contemporary period is the *legitimate prevalence* of dual nation-

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tances has obvious instrumental political advantages, it risks contradicting such basic democratic principles as birthright citizenship and freedom of movement").

<sup>104</sup> ROGERS BRUBAKER, *CITIZENSHIP AND NATIONHOOD IN FRANCE AND GERMANY* 21 (1992).

<sup>105</sup> See Joseph H. Carens, *Membership and Morality: Admission to Citizenship in Liberal Democratic States*, in *IMMIGRATION AND THE POLITICS OF CITIZENSHIP IN EUROPE AND NORTH AMERICA*, *supra* note 100, at 31 (defending positions that those allowed to reside and work in nation should be granted citizenship, and that children of resident aliens should be granted citizenship).

ality, and in many source countries, the government's *active* promotion of dual nationality and dual cultural nationalism.

It is one thing for source country governments to promote dual nationality and dual nationalism. It is quite another for emigrants to respond favorably. Mexicans in the United States have shown minimal interest in acquiring dual nationality. Survey data indicate that on the whole, identification with Mexico decreases with length of residence in the United States and between the first and subsequent generations.<sup>106</sup> An important exception to the pattern of decreasing interest in Mexican politics over time within the first generation is the fact that most Mexican civic hometown associations are led by long-time residents of the United States.<sup>107</sup> Survey evidence from Salvadorans, Dominicans, and Colombians in the United States suggests the same holds true for a core of transborder activists in those cases.<sup>108</sup> Over the course of many decades, emigrants that once seemed to have severed their hometown ties, and even their children and grandchildren born in the destination country, may respond to major changes in the economic and political conditions of source and/or destination countries by seeking to reacquire their birth or ancestral nationality. These may be the exceptions that prove the rule of general decline in the formal standing and practice of extraterritorial citizenship over the course of generations, but the examples are so surprising and include such a wide variety of migration streams that they merit further study to establish more precisely the conditions under which extraterritorial citizenship fades, is sustained, or reemerges.

Governments of migrant source countries increasingly claim that the nation extends beyond the state's territory. This discourse, sometimes accompanied by legal reforms that offer emigrants a real political voice, intends to attract remittances and the political support of emigrants in domestic homeland politics and as a homeland lobby in the case of migrations to powerful destination countries like the United States and the United Kingdom.<sup>109</sup> By definition, this development does not signal the "deterritorialization" of the nation-state, because the state remains a territorially bounded entity whose

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<sup>106</sup> See *supra* footnotes 39–47 and accompanying text.

<sup>107</sup> See *supra* footnote 48 and accompanying text.

<sup>108</sup> See *supra* footnotes 48–53 and accompanying text.

<sup>109</sup> See Eva Østergaard-Nielsen, *Continuities and Changes in Sending Country Perceptions, Policies and Transnational Relations with Nationals Abroad*, in INTERNATIONAL MIGRATION AND SENDING COUNTRIES: PERCEPTION, POLICIES AND TRANSNATIONAL RELATIONS, *supra* note 71, at 220 (highlighting increased interest of source countries in emigrants who have settled in powerful countries).

capacity to embrace emigrants abroad is sharply restricted by the Westphalian system of sovereign states. The conception of nationhood in these high-emigration settings is *government-reinforcing* and *trans-territorially framed*. International migrants inclined to see themselves as members of their nation-state of origin accept the trans-territorial aspect of the frame, but the extent to which they seek to reinforce the capacities of the source country or affect regime change is contextually variable.

The nature of the home regime and of the political toolbox employed by emigrants should figure prominently in discussions of whether a trans-territorial framing of the nation and its attendant practices represents liberal progress. To the extent that emigrants are able to express their ongoing interests in the homeland through the absentee ballot, lobbying, and legal financial mechanisms, individual liberty appears to be maximized. At the same time, their extraterritorial political participation comes with two inherent costs for liberalism. First, emigrants make policies to which they are not as directly subject as resident citizens. Second, it is much easier for emigrants to claim rights of citizenship than for states to enforce the duties of emigrant citizenship. In the face of the resilience of the nation-state as the sovereign entity that principally “cages” relations between the ruled and the rulers,<sup>110</sup> these structural features of emigrant citizenship are unlikely to change soon.

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<sup>110</sup> Michael Mann, *Has Globalization Ended the Rise and Rise of the Nation-State?*, in *INTERNATIONAL ORDER AND THE FUTURE OF WORLD POLITICS* 237, 240–41 (T.V. Paul & John A. Hall eds., 1999).