

# UC San Diego

## UC San Diego Previously Published Works

### Title

Citizenship à la Carte: Emigration and the Strengthening of the Sovereign State

### Permalink

<https://escholarship.org/uc/item/4wz419s2>

### ISBN

9780231702782

### Author

FitzGerald, David

### Publication Date

2012

Peer reviewed

TERRENCE LYONS AND PETER MANDAVILLE

POLITICS FROM AFAR

*Transnational Diasporas  
and Networks*



Columbia University Press  
New York

ocratic theory—are related and change across historical periods. The current wave of globalization has led the Dominican Republic—as well as Mexico and other migrant sending states of the periphery and the semi-periphery of the world system—to develop bold political initiatives to tap into the resources of migrant communities, culminating in a state-driven reimagining of the nation along transnational lines. Migrant communities, particularly first-generation migrants, have acted as partners with states in their country of origin in this process. The outcome of these efforts has been an undeniable expansion of the boundaries of belonging and rights beyond territorial borders. As a result, it is no longer possible to confine the study of the policies of the sending states or of the lived experiences of the migrant communities within the narrow boundaries of either the sending or the receiving state. We therefore need to go beyond the sending and receiving states as different units of analysis and recognize that sending states and immigrants engage each other in an emerging transnational field of rights.

The development of this transnational field of rights does not mean that the state and its boundaries are irrelevant in terms of belonging and rights. For migrants, the main locus of rights in everyday life is still the place—and the states—in which they reside. Although migrant-sending states have had to relinquish some power, they also remain in control of important processes in the creation of the transnational politics. While the Dominican Republic expanded citizenship and political rights to include its migrant population, the Dominican “transnational nation” is a state-driven project, as this chapter shows. States continue to maintain internal boundaries to belonging and control full membership in the national political community. Profound internal boundaries of exclusion still exist in the Dominican Republic, despite the recent institutionalization of liberal democracy, and this exclusion still affects important segments of the population, as is the case in Mexico. Indeed, the lack of correspondence between belonging, territory, and rights is systemic and remains one of the main sources of tension and exclusion in the contemporary world system.

10

## CITIZENSHIP À LA CARTE EMIGRATION AND THE STRENGTHENING OF THE SOVEREIGN STATE

*David Scott FitzGerald*

One of the most critical issues in contemporary politics is the extent to which the nation-state can control the forces of globalization that threaten to overwhelm it. People, goods and ideas are on the move. Multilateral treaties and transnational norms progressively constrain the authority of states to act as they please domestically. The fumbling efforts of governments to coordinate a response to the global financial crisis beginning in 2008 seemed like yet more evidence that states are “losing control”. Many scholars surveying the speed and volume of these movements have argued that a new era of globalization is eroding the sovereignty of the nation-state. Scholars of transnationalism in particular argue that countries of emigration have become “deterritorialized” as the members of the nation spread beyond the territorial borders of the state to form a “global nation”.<sup>1</sup> This chapter argues that far from undermining the sovereignty of nation-states, efforts by governments of migrant source countries to institutionally embrace their citizens and co-ethnics abroad highlight the robustness



of the nation-state system based on the Westphalian principle of territorial sovereignty. Indeed, Westphalian sovereignty at the turn of the twenty-first century is strengthening in ways that cause many source country governments to renegotiate the terms of the social contract between emigrants and the sending state. This new social contract emphasizes voluntaristic ties rather than being coercively "ruled", a menu of options for expressing membership, an emphasis on rights over obligations, and the legitimacy of plural legal and affective national affiliations.

### *The erosion of sovereignty?*

Sovereignty can be defined in many ways. The most common definition of sovereignty refers to the autonomy of governments to make decisions about governance within their territory without the intervention of other states. Sovereignty as autonomy is conventionally dated to the 1648 treaty of Westphalia that ended the Thirty Years War and ushered in the modern international system. Sovereignty can also be thought of as less about the autonomy of states, and more about state capacity to control flows of goods, capital and people across its borders. A third sense of sovereignty is state jurisdiction over a particular person (Kratochwil, 1986; Krasner, 1995; Hollifield, 2005; Barry, 2006). Many globalists see the erosion of sovereignty in all uses of the term.

There are domains in which sovereignty appears to be weakening. Transnational corporations move their operations and assets around the world to avoid taxes and force concessions from national governments. Committing "crimes against humanity"—even against a government's own citizens—increasingly has become grounds for legitimate intervention by other states. "Extraordinary renditions" of suspected terrorists and extraterritorial prosecutions of pedophiles and persons accused of committing crimes against humanity further erode the principle of territoriality (Held and McGrew, 2000; Urry, 2000; Sassen, 2006; Blakesley and Stigall, 2007). Weak states in the shadow of powerful neighbors are effectively constrained in the autonomy they are able to exercise. At the opposite end of the geo-political hierarchy of power, the European Union is the most prominent example of partly pooling sovereignty at a supranational level in areas as diverse as banking, environmental regulation and asylum policies—all of which were formerly the exclusive competence of each nation-state. The EU allows free migration within its

boundaries for nationals of member states and has increasingly shaped their immigration and asylum policies towards nationals of non-EU countries.<sup>2</sup>

Nowhere are questions of sovereignty more important than in the study of international migration. Sociologists Yasemin Soysal and David Jacobson argue that immigrants enjoy universal rights of personhood that minimize the importance of national citizenship for enjoying human and civil rights, and even the welfare benefits of social rights (Soysal, 1994; Jacobson, 1996). Based on a review of every major migration system around the world, Douglas Massey and his colleagues call international migration "inevitable", and in a 2004 survey of eleven countries, Wayne Cornelius and his co-authors highlight the growing gap between the intent of immigration control policies and their failures in practice (Massey et al., 1998, p. 290; Cornelius et al., 2004). Surveying all these changes, Saskia Sassen (1996; 1998) concludes that national governments are "losing control" over the flows of goods, ideas and people across their borders.

Scholars of migrant "transnationalism" share the globalists' goal of understanding processes that transcend the boundaries of the nation-state. While globalization and transnationalism are not necessarily synonymous, and the latter is often restricted to regional rather than worldwide processes, both concepts share an emphasis on social processes that cross or go beyond borders between states. Transnationalists call for a reconceptualization of terms such as community, citizenship and the nation-state. Many claim that countries of emigration are becoming "deterritorialized nation-states" as citizens abroad are incorporated by their homelands through a range of activities beyond the usual consular services. "Deterritorialization" signifies the uncoupling of residence in a territory with membership in a political community; and the relentless supersession of political, cultural and geographic borders.<sup>3</sup> In short, globalists and transnationalists contend that the sovereignty of nation-states is being dramatically eroded through the undermining of each state's autonomy to conduct its affairs within its territory without external interference, the decline in its capacity to control flows across its borders, and emigrants's uncoupling of membership in the policy and presence in the territory.

Skeptics of globalization argue that little is fundamentally new in the international system. And if there is something new, it is that with the end of colonialism and the collapse of the Soviet Union, the political



map of the world increasingly resembles the Westphalian ideal-type. The supranational institutions of the EU are the exceptions that prove the national rule everywhere else. When it comes to international migration, there is much talk about states losing control over their borders, but in general, states are establishing a semblance of control for the first time. Unlike the open immigration of the nineteenth century, immigration since World War I has become restricted by an unprecedented system of passports, visas, fences and naval interdictions that stop most potential migrants from approaching their intended destination (Krasner, 1995; Zolberg, 1999). The population of international migrants relative to the populations of their countries of origin and destination was smaller at the turn of the twenty-first century than it was a century before (Hatton and Williamson, 1998).

### *States and emigrants*

Against the globalization skeptics who insist on continuity, I argue that many states are creating novel ways of institutionally embracing emigrants abroad. Yet claims that migrant-sending states are becoming deterritorialized and that the sovereignty of both sending and receiving states is weakening are unfounded. Sovereignty is not only robust, but it is also becoming stronger in the domain of migration. It is the strengthening of Westphalian sovereignty in particular that is one of the major factors driving the reconfiguration of relationships between many states and mobile citizens.

Attempts by sending states to embrace their emigrants abroad as critical actors in the home country's political, legal and economic arenas is only partially because of the on-going endurance of legal territorial sovereignty. Sending states cannot act towards emigrants as they would towards resident citizens, because the former are living within the borders of another state. Efforts at emigrant inclusion—like extending the right to vote *en absentia*—have created a distinct form of extraterritorial citizenship precisely because the territoriality of the nation-state system prevents the functioning of “normal” residential citizenship. While states may make claims on citizens outside the territory—a process that appears to suggest an extension of sovereignty over people at the expense of Westphalian territorial sovereignty—the nature of many states’ claims to represent citizens abroad fundamentally demonstrates their weakness to

project their power outside their territories. States cannot effectively rule citizen subjects who are abroad. State jurisdiction over particular persons outside of the state's territory as a matter of practice depends on the acquiescence of host states.

Emigrants and many of their countries of origin are negotiating a new relationship that I call *citizenship à la carte*, which is changing state/member relationships toward a broad menu of options for partial participation; a much more voluntaristic relationship in which the balance between rights and obligations tilts even more sharply towards rights; and a situation in which plural national affiliations are legitimate and sometimes even desirable. As states become more secure in their effective territorial integrity, the country of origin's sovereignty over particular emigrants is weakening even while the Westphalian sovereignty of the system gains strength in important ways.

### *Mexico and the United States*

More than 200 million international migrants lived around the world in 2010 (United Nations, 2010). The Mexican case merits special attention on both substantive and theoretical grounds. First, Mexican migration to the United States is the “largest sustained migration circuit in the world” (Massey et al., 1998, p. 73). In 2009, roughly 11.5 million Mexicans, representing 11 percent of Mexico's population, lived in the United States. They accounted for 98 percent of all Mexican emigrants. More Mexicans live in the United States than the total number of immigrants in any other country in the world. Another 16.8 million people of Mexican origin were born in the United States.<sup>4</sup> The Mexican case is also useful on theoretical grounds because of the high salience of the question of sovereignty. The seeming inability of the US or Mexican governments to control the illegal flow of people across the border is regularly cited as evidence of states losing control over their sovereignty.

In Mexico, experiences and fears of foreign political, economic and military intervention have dominated the national history. The American Southwest was once Mexico's Northwest. Since independence, Mexico has suffered military invasion from France, Spain, the United Kingdom, and the United States, in the last case as recently as 1919.

In the United States, many immigration restrictionists claim that Mexico is engaged in a *reconquista*, a non-violent “reconquest” through immi-

gration of territories lost in 1848. When the Mexican government in 2005 began distributing a million copies of a guide for migrants that included a section with practical advice about how to safely cross the desert without legal papers, US restrictionists were furious, claiming that Mexico was undermining US law. Likewise, efforts by the Mexican government and other institutions to embrace Mexicans in the United States have also raised the hackles of nativists (FitzGerald, 2009).

Writers such as former Republican presidential candidate Patrick Buchanan, frame the Mexican government's relationships with its emigrants as an assault on US sovereignty:

This then is the Aztlán Strategy: endless migration from Mexico north, the Hispanicization of the American Southwest, and dual citizenship for all Mexican-Americans. The goals: Erase the border. Grow the influence, through Mexican-Americans, over how America disposes of her wealth and power. Gradually circumscribe the sovereignty of the United States... Stated bluntly, the Aztlán Strategy entails the end of the United States as a sovereign, self-sufficient, independent republic, the passing away of the American nation. They are coming to conquer us (Buchanan, 2006).

These statements are obviously fear-mongering, and much of it is patently false, but they reveal a sense of what is at stake politically in the ongoing theoretical debates. Strikingly, even though Buchanan and most of the scholars of transnationalism are diametrically opposed in their ideology, they share an understanding that the practices of migrant citizenship are undermining state sovereignty in new and dramatic ways. Many transnationalists continue to celebrate it, the nativists are apologetic, but they both agree that it is happening. This chapter posits that the nature of migrant citizenship is being transformed, but that this is the result of the strengthening rather than the weakening of state sovereignty.

### *Methods*

There are lively debates in the transnationalism and globalization literatures about the extent to which the phenomena seen today are actually new. Many of the scholars in these discussions fail to specify the metric for establishing novelty. The first metric is deviations from the nation-state as an ideal type, in which the entire nation of people and the territorial and organisational structure of the state nearly overlap. As this is an ideal-type, it is not difficult to find empirical deviation. More diff-

cult is to identify novelty within the historical practices of a particular migration system. The most difficult metric is to establish that a phenomenon has never appeared before anywhere else.

This chapter draws on several methods aimed at identifying the practices of migrant citizenship, understanding how and why they have changed historically, and assessing their effects on configurations of citizenship and sovereignty. I examine the last 150 years of Mexican migration and nationality law; fifty-eight congressional debates of nationality law from 1917–1998; government archives on emigration and emigrant policy at federal, state and municipal levels (with a focus on the state of Jalisco and Michoacán in the heart of the historic migrant-sending region of the Central West, but with comparative studies of indigenous migrant communities in the states of Oaxaca and Yucatán); 180 in-depth interviews with migrant activists and Mexican elites and policy-makers in Mexico and California from 1999 to 2009; and ethnographic observations of state-emigrant interactions in Mexico and California over the same period. Comparisons with other countries of origin draw on a rich secondary literature.<sup>5</sup>

### *Citizenship à la carte*

What is the problem that sending states face when trying to embrace emigrants in a Westphalian environment? The context in which the term “embrace” is utilized in this chapter follows John Torpey’s (2000) metaphor, which describes how states bring people within their grasp to extract their resources as well as to protect them. The problem for states is that their monopoly on legitimate coercion ends at the water’s edge. What do states do when citizens leave? To use coercion requires relying on authorities in the country of destination, taking action against the families or property that emigrants leave behind, or waiting for emigrants to return and make themselves available for coercion. None of this is to claim that coercion is the daily mode of state action anywhere. Even the most totalitarian states find that the constant use of force is expensive and ineffective. Government works much more efficiently through the exercise of ideological power, in which citizens not only accept taxation, conscription, and the like, but also see these activities as moral obligations. Governments often use carrots rather than sticks to obtain the cooperation of citizens. The problem for governments of migrant send-



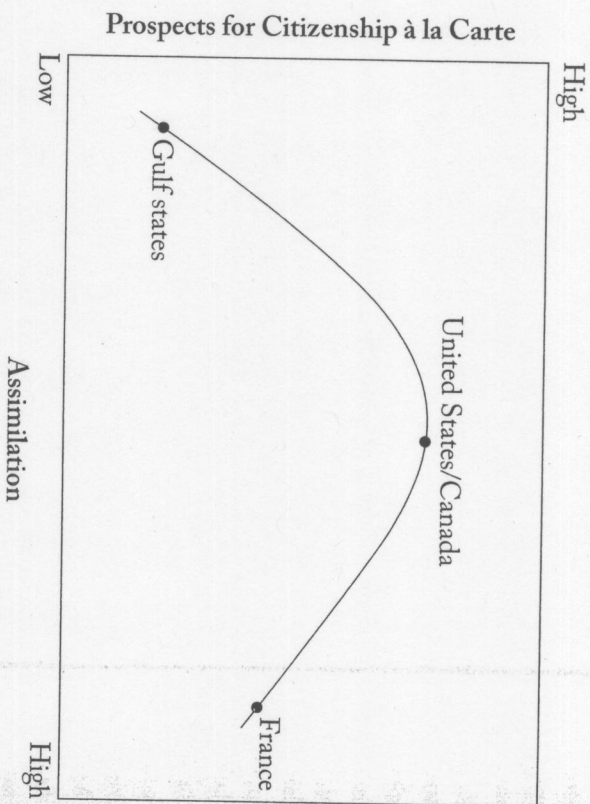


Figure 1. Destination Country Effects on Level of Citizenship *à la Carte*.

ing countries is that they usually have too few carrots to offer, which is one of the reasons that migrants leave in the first place.

While resident citizens can make only narrow choices about the share of their resources they are willing to exchange for benefits from the state, emigrants have much more flexibility. Emigrants can take their business elsewhere and vote with their feet, giving them leverage to demand new terms of exchange. The new exchange is based on a much more flexible menu of voluntary options for partial participation as a citizen—a kind of citizenship *à la carte*. The menu includes collective remittances, the expatriate vote, extra-territorial election districts, emigrant candidacy, emigrant lobbying, yielding to the homeland government's documentary embrace and the legitimacy of plural affiliations, such as dual nationality.

#### Remittances

Recorded remittances sent home by migrants from developing countries in 2009 reached an estimated \$316 billion, an amount equivalent to three-

fourths of Foreign Direct Investment (FDI) and more than three times as large as official development assistance. Remittances have the added advantage of being less volatile than FDI. Mexico was the third largest recipient of remittances in absolute terms, following India and China. Mexico received \$22 billion in remittances in 2009. In relative terms, countries such as Tajikistan and Moldova are far more dependent on remittances, with remittances constituting a third or more of their GDP (Banco de México, 2009; Ratha, Mohapatra and Silwal, 2010).

Remittances tend to be private, household-level transfers that can only be taxed when they circulate in the local economy. Many governments have tried to channel remittances toward collective projects. Hometown Associations (HTAs) are one vehicle for channelling these funds and institutionalizing ties between migrants and the Mexican government. Each year, HTAs send about \$22 million for infrastructure and productive projects in their hometowns through the 3 for 1 programme, which matches migrant donations with funds from municipal, state, and federal governments, for a total investment of \$88 million (Bada et al., 2006; Williams, this volume). Levels of collective remittances are modest overall, though they can improve the quality of life in impoverished rural areas. Most importantly, collective remittances strengthen the more diffuse hometown ties that channel the massive volume of household remittances.

Remitting migrants are in some ways perfect citizens who give their resources while demanding little in return, but participate in the homeland economy when it serves their own interests. By sponsoring philanthropic projects in their hometowns, migrants enhance their status and make claims to being good members of the community despite their absence. In promoting remittances, the Mexican state has followed the membership model of the Catholic Church, where members voluntarily yield a share of their resources through tithing. Migrants often finance church projects back home, like paying for a new chapel or renovations. Now the state is trying to encourage a sort of "secular tithing" to pay for hometown projects, like paving roads (FitzGerald, 2009).

#### Expatriate voting

Countries increasingly allow their citizens to vote by absentee ballot from abroad. By 2007, 115 independent countries and territories had adopted such a provision (Ellis, 2007). Mexico allowed expatriate voting for the



first time in its 2006 presidential election. Roughly 30 percent of the 10 million Mexicans in the United States were eligible to vote. Yet only 57,000 tried to register, and less than 33,000 cast a valid ballot. Why did so few vote? Part of the reason is that emigrant interest in Mexican politics is widespread but shallow. The ongoing relevance of the international border is also part of the explanation. Mexican authorities did not carry out voter registration abroad. Voting was only allowed by mail, in the first instance to deliberately suppress turnout, but also to avoid provoking a potential nativist backlash in the United States. Presidential campaigning abroad was banned under the logic that the Mexican electoral authorities would not be able to supervise their electoral laws if candidates campaigned in another country (Suro, 2005).<sup>6</sup>

#### Extra-territorial election districts

The flip side of eligibility to vote from abroad is eligibility to run for election as a representative of voters abroad. Extra-territorial election districts have been created for Colombians, Poles and Italians, in which emigrants elect representatives to their national congresses (Ellis, 2007). Mexican emigrant activists have demanded such a district, but it has only been implemented at the subnational level in the state of Zacatecas, where Zacatecos in the United States have elected two senators to the state congress since 2003 (Moctezuma Langoria, 2003).

#### Emigrant candidacy

Among the most dramatic forms of expatriate political participation is running for public office in their country of origin. Around the world, there have been prominent cases of expatriate candidacies, many of them successful. After nearly fifty years in the United States, Valdas Adamkus returned to Lithuania just months before winning the presidency in 1998. Andrés Bermúdez, the "Tomato King" farmer living in the Sacramento area, was elected mayor of Jerez, Zacatecas in 2001, but was prevented from taking office because he was not a local resident. In response, his allies in the Zacatecas state conference passed a law in 2003 that allows bi-national Zacatecano residents to run for state and local office. The Tomato King was subsequently elected again and served his term (Smith and Bakker, 2007).

#### Emigrant lobbying

The creation of a Mexican lobby in the United States became one of Mexico's primary foreign policy goals beginning with the 1993 campaign to pass the NAFTA in the US Congress. The Mexican consulates also worked with Mexican American political organisations to try to defeat California's 1994 Proposition 187, which would have sharply restricted unauthorized immigrants' access to social services had the proposition not been struck down by the courts after it had passed. In general, there has been little to show for the lobbying effort, in part because Mexicans in the United States tend to be suspicious of the Mexican government. But sending countries around the world continue to promote ethnic lobbies, often holding up the American Zionist lobby as their model (de la Garza et al., 2000; Suro, 2005).

#### Documentary embrace

The business of government requires knowing who the citizens are as well as aggregating information about the population. These data are typically collected through documents such as birth certificates, censuses and identification cards. In most cases, citizens are forced to yield their information. When it comes to citizens abroad, the Mexican government cannot rely on its census, which is obligatory to answer in Mexico, but is not applied to emigrants. An alternative source of information comes from voluntary participation in the consular registry. The Mexican consulates have issued identification cards to several million Mexicans in the United States, most of which are unauthorized. Often forgotten is that Mexico is offering the consular identification document in part because it is one of the best ways to collect aggregate data on its population abroad as well as to document particular persons.

By 2003, a patchwork of 160 US financial institutions and 513 local governments recognized these identity cards, while other agencies of the US government explicitly do not recognize them (*Migration News*, 2003). Harvard political scientist Samuel Huntington (2004, p. 282) has explicitly claimed that acceptance of the consular identification card is eroding US sovereignty.

Acceptance of [the *matricula consular*] by American public and private institutions cedes to the Mexican government the power to give to illegal immigrants

the status and benefits normally available only to legal residents. A foreign government, in effect, determines who is an American.

The success of the consular identification document programme in attracting several million Mexicans to voluntarily participate is particularly striking compared to the low turnout for the vote abroad and the small numbers of Mexicans taking dual nationality. Does the matricula actually weaken, or signal the weakening of US sovereignty? On the contrary, life in the United States is difficult without official documents for entering a government building, proving one's identity to police, or opening a bank account. The United States does not have perfect control over its borders or perfect surveillance over the population living within its borders, but that should not obscure how deeply the US government is developing the capacity to regulate the lives of foreigners and citizens alike. It is the expanding capacity of the US government that is driving the migrant population into the arms of the Mexican government to get one of the most useful resources that the consulates have to offer. The Mexican government can issue those documents because it is party to longstanding international treaties, like the 1963 Vienna Convention on Consular Relations, which circumscribe a set of consular functions that do not violate the sovereignty of the host state.

#### Plural affiliations

Historically, most governments have considered plural nationality anathema. To use Rogers Brubaker's (1992) metaphor, plural nationality upsets the use of nationality as a neat filing system for the world's population. During the nineteenth-century peak of the "perpetual allegiance" model, national loyalties were expected to be enduring and exclusive. For most of the twentieth century, the legitimacy of changing nationality has been recognized, but the principle of only holding one nationality remained the norm. In many countries, there has been an about-face in attitudes towards dual nationality, especially since the 1990s. In Latin America, only four countries accepted dual nationality before 1991, but six more recognized it in the following six years (Jones-Correa, 2000). Countries of emigration such as Turkey, India, the Dominican Republic, Brazil and El Salvador now promote dual nationality among emigrants and even their descendants abroad (Hansen and Weil, 2002; Faist and Kivisto, 2007).

The United States accepts dual nationality in practice, notwithstanding the oath in the naturalization ceremony whereby the new citizen renounces any loyalty to foreign princes or potentates. The language sounds anachronistic because it is based on concerns that have faded about a fifth column from a foreign country or the Pope. The post-9/11 fears of Islamist terrorists are not so much about the agents of a foreign state, where dual nationality might hypothetically be an issue if mafias had the poor judgment to draw attention to their foreign affiliations, as much as they are fears as about members of explicitly transnational terror organisations.

Since 1998, Mexico has recognized dual nationality for Mexicans who are born or naturalized abroad. The strengthening of Mexico's territorial sovereignty helps explain the change in Mexico's stance towards dual nationality. Constitutions since 1857 have prohibited most cases of dual nationality. Dual nationality has been considered a potential way that foreign-born or "gringoized" Mexicans would intervene in Mexican affairs, buy land and economic concessions in strategic border and coastal areas, and call on the backing of foreign governments in disputes with Mexican authorities (FitzGerald, 2005). These fears were expressed in the sole dissenting voice against dual nationality in Mexican congressional debates:

It is not possible that those who have fought for the agrarian reform, those who have fought for Article 27 of the Constitution, those of us who have been committed to justice for peasants in the country, that now we give up our historical patrimony for all Mexicans so that mexicanos-norteamericanos would also have the opportunity to take in the possibility [of buying] those territories that were reserved exclusively for Mexicans (*Remarks of Party of the Democratic Revolution Deputy Tenorio Adams, Diario de los Debates, 10 December 1996*).

The vote in favor of dual nationality carried 405 to 1 because such arguments were simply no longer as salient given that nationalism directed against the United States has generally faded. Unlike the nineteenth and early twentieth centuries, the Mexican state is now secure from invasions by a foreign power. A similar argument can be made for other Latin American countries, which feel safer offering dual nationality to their emigrants, who often migrate to the United States and Spain, at a time when gunboat diplomacy is no longer the norm. The United States continues to intervene periodically in Central America and the Caribbean,



but the recurring outright occupations of the first three decades of the twentieth century would now be considered aberrant.

Of course, dual nationality is not entirely new. Many countries have recognized some form of dual nationality for generations. As early as 1912, the Italian government accepted the reality of mobile Italians' plural ties as a practical concession to maintain some kind of state-emigrant relationship, but it did not encourage emigrants to adopt dual ties (Pastore, 2001). The novelty of contemporary emigrant citizenship lies in the strengthening of emigrant rights in particular countries, the global scale of the acceptance of dual nationality, and source country governments' active promotion of dual nationality.

#### *Rights over obligations*

Emigrant citizenship is based on the notion dating back to Roman times that citizenship is a right that is "owned" (Pocock, 1998). Citizens are owed protection by their community, and that right to be protected can be transported. The legal scholar Kim Barry (2006, p. 23) 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". Yet public discourse and even some constitutional laws imply an emigrant's right to protection by the home state. For example, in a passage that enshrines its labor-export policy in constitutional law, the 1987 Philippines constitution specifies, "The State shall afford full protection to labor, local and overseas...". The 1978 Spanish constitution stipulates, "The state shall pay special attention to safeguarding the economic and social rights of Spanish workers abroad...".<sup>7</sup> Moreover, both the right to exit one's country of citizenship and the right to return to it are enshrined in international law. While countries of emigration are obliged to let returnees back in, citizens have a recognized human right to leave their countries of origin and in many cases renounce their nationalities (Hannum, 1987). Westphalian sovereignty creates a structural imbalance favoring the rights owned by emigrants over their obligations.

In a context of international migration, there is a double disjuncture between the Aristotelian principle that the ruled should be the rulers.

Most attention has focused on the problem of residents of a territory who do not have a voice in ruling the state because they are not citizens (Hammar, 1989). A second disjuncture arises from the perspective of extra-territorial citizenship: emigrants who can vote, lobby or run for office can still make rules to which they are not directly subject. Resident citizens must face the consequences of emigrant actions in a more direct way than emigrants, whose escape from the state's embrace inherently tilts the balance of rights and duties towards the former. Emigrants can enjoy the substance of their homeland citizenship *à la carte* from a menu of rights and obligations, whereas residents must take the rights and obligations together at a relatively fixed price. Communitarians following the political philosophy of Rousseau have long complained that citizenship is generally tilted too far away from collective obligations. This tilt becomes even more pronounced in the state's social contract with emigrants.

#### *Conclusion*

New, more flexible features of emigrant citizenship have been institutionalized in Mexico and many other countries of emigration. These features are not universal, however. What factors inhibit citizenship *à la carte*?

At the source country level, strong state-led nationalism and an antagonistic relationship with destination countries makes it more difficult for source country governments to accept dual citizenship in particular. For example, India allows dual citizenship for Americans, but not Pakistanis (Varadarajan, 2010). As shown in Figure 1, in the destination country there is a curvilinear relationship between the degree of assimilationism and the flexibility of migrants to pick and choose from a large menu of practices. For example, in the Persian Gulf, naturalization and most forms of social assimilation are all but impossible for most migrants, so they are not able to easily parlay having their feet in two countries to their advantage. On the other extreme, the political culture of highly assimilationist countries such as France renders ethnic lobbies of the American sort illegitimate. The United States, and Canada, to an even greater degree, encourages a pluralistic form of assimilation that has an elective affinity with dual nationality and dual affiliations (FitzGerald, 2004; Morawska, 2003). At the individual level, migrants who are unauthor-



ized, live under "Temporary Protected Status" or some other liminal legal category, or who have low levels of various kinds of capital, have less flexibility to define their citizenship. Conversely, professionals and entrepreneurs are best positioned to take out multiple citizenships and to seek out tax advantages and as an "insurance policy" in case conditions deteriorate in a given country. They diversify their portfolio of visas and passports as a measure of protection against the risk of economic and political turmoil in a given country.<sup>8</sup>

Still, policies in many migrant-sending countries are converging towards this more voluntaristic and pluralistic model of emigrant citizenship. These shifts have not been driven by the impending demise of the nation-state system, as some globalist and transnationalist scholars have argued. Rather, new forms of citizenship and strategies for embracing emigrants are the product of an international system that limits the reach of states vis-à-vis citizen-subjects outside their territory. And as both sending and receiving states become more secure in their own territorial integrity, they are willing to entertain and even promote more flexible models of membership.

11

## CITIZENSHIP AND DIASPORA

## A STATE HOME FOR TRANSNATIONAL POLITICS?

*Peter J. Spiro*

This chapter explores the legal status of citizenship as a vehicle for diaspora and globalized forms of community. On the one hand, the increasing detachment of citizenship from territory evidences the "continuity of social relations across space rather than abrupt ruptures between 'here' and 'there'" (Lyons and Mandaville, this volume). On the other hand, it is unclear whether extending the boundaries of citizenship to include external populations will translate into state framings of diaspora community, or whether the trend represents a doomed defensive strategy on the part of states to reclaim institutional hegemony. Will citizenship and the state be a home for diaspora going forward?

This chapter focuses on two related developments respecting citizenship in the wake of globalization: the rise in the acceptance of plural citizenship and the expansion of external citizen rights, especially political rights. In contrast to strong historical disfavor, most states now tolerate dual citizenship and many have come to embrace it. The trend has been especially pronounced among immigrant-sending states, among which