

situation holds out little hope for either possibility. The colonial troops that supported imperialism have gone home. Legislatures in third world countries can do relatively little to prevent exploitation of their working classes. Moves to secure improvement of working conditions and safety in the local plants would be countered by shifting production to more cooperative countries. Solidarity among states on the receiving end of "outsourcing" has not been common. In the 1970s after decolonization and the oil crisis of 1973, the new states were able to attain some measure of collaboration under the slogan of "The New Economic Order" and pushed for greater freedom to expropriate foreign investment and cancel concession agreements. The Group of 77 caucused in GATT to push for trade benefits. Those states are now apt to welcome foreign capital and meekly sign bilateral investment treaties to reassure investors. They failed in the Doha Round to persuade developed countries to stop their most negative contribution to third world welfare, their subsidization of their home farmers.

Marxism has been "historically in tension with" international human rights law (p. 220), as the contributions by Brad Roth and Obiora Okafor show. Marx himself was skeptical of bourgeois rights and feared that they would be used to defend the interests of the possessing classes. Later Marxists saw political rights, when wielded by the possessing classes, as obstacles to the establishment of socialist regimes—a form of "ideology." The dictatorship of the proletariat involved limitation of bourgeois-style rights. Marxist views on human rights intersect in a complicated way with third world approaches to the topic. Both agree in their view of history, arguing that colonialism imposed western values on the third world. But Third World Approaches to International Law (TWAIL) writers put a greater emphasis than Marxists on cultural pluralism, sometimes defending third world practices vis-à-vis women as products of different environments. In general, Marxists have had little to say about the disadvantages suffered by people of differing sexes, genders, castes, etc. as opposed to those suffered by the economically disadvantaged proletariat (pp. 260–61).

In the end, one is left with a sense that the ability of Marxist thought to make a contribution distinct from that of leftism in general is limited. International lawyers both left and right have come to put much more emphasis on the influence of material factors—particularly economics—on their field. More striking and helpful criticisms of economic inequality—and suggestions for its amelioration—are produced by orthodox economists such as Jeffrey Sachs and Joseph Stiglitz. Analysis of the present state of atrophy of the international law relating to security is not enlightened by Marxism; anxiety about security, as experienced after 9/11, is as basic a reaction as a desire for more material things.

The book can be recommended as readable and fairly well integrated, as collective volumes go. It should in particular be read by those who are most in the grip of the ideology that says that this is the best of all possible worlds, that resources are allocated around the globe by the abstract operations of the market, and that there is no need to worry about the north-south crevasse. Alas, they are just the people who will be put off by the title.

DETLEV F. VAGTS  
*Of the Board of Editors*

*Beyond Citizenship: American Citizenship After Globalization.* By Peter J. Spiro. Oxford, New York: Oxford University Press, 2008. Pp. 194. Index. \$29.95.

In *Beyond Citizenship* Peter Spiro advances a bracing premise: American citizenship has lost its meaning. Spiro tells the story of an institution's erosion—by forces from within, including our growing tolerance of dual citizenship and the openness of our naturalization laws, and forces from without, especially the proliferation of transnational identities and the dilution of American identity through the adoption of our culture and ideas around the globe. Spiro's account fits well within the vast literatures exploring the reformulation of the nation-state as a legal and political entity, the rise of a culture of rights that transcends borders, and the related development of trans-

national and diasporic networks.<sup>1</sup> He manages to offer fresh reflections on the supposed decline of the national community by focusing on the law, or on how the legal frameworks that define national membership have eroded in the wake of globalization. His approach is refreshing because he neither laments nor celebrates the transformation that he documents. Instead, he accepts the causes of erosion as inexorable features of modern, globalized society, underscoring the book's ultimate theme: we have entered a new era likely to be marked by instability and conflict over questions of belonging, which will require, in turn, that scholars and statesmen adapt the "lessons and virtues" (p. 7) of citizenship to structure emergent forms of association.

As a scholar of international, immigration, and foreign relations law at Temple University, Spiro is particularly well suited to address how globalization has shaped citizenship practices. And yet, even as Spiro makes the case that many nation-states, including the United States, have altered their citizenship practices in ways that diminish citizenship's power to define a coherent political community, he has not made the case that U.S. citizenship no longer has great significance as a legal status that also shapes a distinctive cultural ideal. The forces of erosion that Spiro describes may have made U.S. citizenship more accessible and may have facilitated the proliferation of multiple loyalties, but those forces have not displaced national citizenship as a valuable and necessary institution, even in a political environment in which national identity has become fluid. In the end, the most important contribution that Spiro makes is not to show the irrelevance of U.S. citizenship, but to highlight how in today's world, political community and formal citizenship do not coincide as well as they once might have. Peo-

ple's important political and social affiliations increasingly do not map onto the formal boundaries demarcated by citizenship. But as Spiro points out, we have barely begun to understand how to give the proper weight and structure to the affiliations that do matter.

To understand why the erosion that Spiro describes is tantamount to neither decline nor obsolescence, and why we need to maintain a robust conception of national citizenship even as we make way for other forms of political association, we must first understand the disparate sources of decline around which his account revolves. He essentially highlights two different forms of erosion—of U.S. citizenship's value as an *exclusive* commodity and of its value as a *unique* commodity<sup>2</sup>—and I will discuss each in turn to put them in their proper perspectives. According to Spiro, by making American citizenship less special, these forms of erosion have deprived citizenship status of the power to forge community among the members of the polity—the sort of community that inspires citizens "to extend [themselves] to protect and provide" (p. 82) or to fight and die for one another.

On the subject of exclusivity, Spiro effectively demonstrates that U.S. citizenship status, as it is currently defined, is dramatically overinclusive. Our *jus soli* birthright citizenship rule, entrenched in the Fourteenth Amendment, extends citizenship to anyone born inside the United States, regardless of where that person makes his permanent home or how long she intends to remain inside the United States, including children born to tourists, sojourners, and temporary or unauthorized immigrants.<sup>3</sup> Our statutory *jus sanguinis* rules permit U.S. citizen parents to transmit their status to their children born abroad with minimal

<sup>1</sup> See, e.g., SEYLA BENHABIB, *ANOTHER COSMOPOLITANISM* (2006) (exploring the development of global civil society governed by cosmopolitan norms); *THE CHANGING FACE OF HOME: THE TRANSNATIONAL LIVES OF THE SECOND GENERATION* (Peggy Levitt & Mary C. Waters eds., 2002) (collecting essays that explore how a globalized world may be giving rise to transnational identities, even among the second generation); SASKIA SASSEN, *GUESTS AND ALIENS* 133 (1999) (noting that national governments still have sovereignty but are now embedded in complex webs of international institutions).

<sup>2</sup> An exclusive citizenship is one that is either difficult to acquire or belongs only to those people whose commitments and ties to the United States are deep and verifiable. A unique citizenship revolves around a distinct conception of national identity—a citizenship whose characteristics differentiate U.S. citizens from citizens of other nations in substantive ways.

<sup>3</sup> Efforts to restrict *jus soli* citizenship by denying it to the children of unauthorized immigrants have been political nonstarters, though they surface during most debates over immigration policy.

constraint, and the law no longer imposes an obligation on children born abroad to return to the United States to retain their status (though to pass the status onto their own children, they must fulfill certain residency requirements).

Our naturalization law imposes few demands on potential citizens, other than that they be resident in the United States for three to five years prior to naturalization, speak a minimal amount of English, and profess symbolic allegiance to the Constitution. The law no longer strips women who marry noncitizens of their citizenship status. And nations the world over have come to tolerate dual citizenship, which was once thought to be an abomination, further expanding the parameters of U.S. citizenship to people whose lives or identities are not completely anchored inside the United States. According to Spiro, U.S. law allows into the ostensible political community myriad individuals who have no significant ties to or affinities with the United States or whose loyalties are divided. If citizenship is meant to coincide with belonging, the formal parameters that we have drawn are not well tailored to their purpose.

Spiro's description of citizenship law's overinclusiveness seems to me exactly right. The rules make it possible for people with no meaningful connection to our territory or society to be counted as within the formal political community, simply by virtue of birth. Likewise, the process of naturalization demands little more than symbolic acculturation or loyalty, which is not to say that naturalization is automatic or easy, or that the vast majority of immigrants who naturalize have not developed significant loyalties to the United States.

But Spiro's conclusion that the decline in exclusivity has demoted citizenship to just one of the many affiliations we hold takes the argument too far, mostly because decline in exclusivity and decline in value do not necessarily go hand in hand. The most straightforward reason why the erosion of exclusivity has not necessarily diminished the value of citizenship is that the existence of citizens without attachment to the United States has little effect on how most Americans live out their citizenship. Take, for instance, the *jus soli* rule—the primary cause of overinclusion. We

inherited this rule from the common law and later enshrined it in the Fourteenth Amendment. Among the presumptions embodied in this rule is that birth in a territory serves as an effective proxy for long-term loyalty to, and affiliation with, the polity contained within that territory. From that presumption flows the principle that all persons born in the polity ought to be treated as formally part of it. According to Spiro, however, the mobility of today's population, including the enhanced possibility of circular migration, means that birth in a territory is hardly a perfect proxy for belonging. But even assuming that this imprecision is orders of magnitude greater today (because of the ease of travel) than it was in the nineteenth century, the *de jure* U.S. citizen at birth who is ultimately a *de facto* citizen elsewhere is a marginal figure, at best, in a country as large and dynamic as the United States. It is far from obvious that these marginal citizens diminish the value or utility of the status for the more than three hundred million people who are permanently anchored to the United States.<sup>4</sup> Overinclusion is thus not a threat to the viability of the national community.

The same could be said of the "problem" of dual citizenship. In Spiro's view, the dramatic shift from the long-standing treatment of dual citizenship as an abomination to its widespread acceptance around the world is yet further proof that the parameters of citizenship no longer correspond perfectly to belonging and loyalty, because dual citizens necessarily will be distracted citizens. But, again, it is hardly clear that the possibility of dual affiliations actually threatens the vitality of U.S. citizenship. The actual connection between the existence of dual or triple nationals who prefer to channel their participatory energies in Canada, Mexico, or Ireland and the erosion of citizenship's value to those whose focus is primarily on the

<sup>4</sup> The loss to developing countries might be greater, and so the need to more closely align belonging and citizenship may be more present in other places. And yet, many of those societies that might suffer from the loss of formal citizens have opted not to make citizenship more exclusive as a means of strengthening internal bonds, but to permit dual citizenship, in the hope that the legal status will entice some emigrants, or "marginal" citizens, to maintain a connection to their countries of origin.

United States is elusive. The problem raised by those U.S. citizens whose presence or loyalty is elsewhere is one of desuetude, and it is primarily a problem for the dual citizen, who cannot make full use of both of his statuses, not the body politic.

What is more, dual citizenship is really the only answer to the problem of divided loyalties in a world in which transnational identities have become a part of the membership landscape, as Spiro recognizes. But most nations' tolerance of dual citizenship actually confirms the importance of territoriality and the utility of formal legal status. Dual citizenship is designed to provide incentives for people to integrate, participate, and vote in the communities where they live by encouraging them to see their connection to that territory as permanent. Dual citizenship accomplishes this end by allowing people with other affiliations to maintain them, freeing them from having to choose one identity over another. There may be many dual citizens whose U.S. status means nothing more than their passports—after all, for most people it will be hard to live out two citizenships equally, even if both are valued equally. But for many others, dual citizenship is likely to facilitate belonging to, and identification with, the United States, not discourage it.

And yet, the power to exclude persons from membership in the national community, whether through restrictive citizenship rules or immigration laws, has been wielded throughout U.S. history in service of particular substantive visions of how the American polity should be constituted. Whether motivated by the desire to ensure that citizens be sufficiently qualified or prepared to be citizens, or by a more base desire to reenforce one's own status by denying it to others thought to be inferior, exclusion has been crucial to the evolution of American identity. The exclusion of women and blacks from many of the prerogatives of citizenship, like the denial of both entry and naturalization to groups such as the Chinese and Japanese, has served to fortify a particular, ethnic version of American identity.<sup>5</sup>

<sup>5</sup> For a classic and comprehensive account of exclusion on the basis of ascription in U.S. history, see ROGERS SMITH, *CIVIC IDEALS* (1997). In addition, as Spiro certainly recognizes, the insider-outsider dynamic

These ascriptive limitations on citizenship have all but disappeared, and so exclusion contributes very little to our identity formation today. But because Spiro imposes the narrative of decline on the evolution of American citizenship law, even as he accepts the end of exclusivity as inevitable, he creates a misimpression that exclusivity may be essential to maintaining an American identity. This implication is ripe for manipulation by anyone who believes that United States citizenship should remain distinctive or who is not as accepting of the consequences of globalization as Spiro, and it is thus crucial to put the erosion of exclusivity into the proper perspective.

The erosion of exclusivity has been driven primarily by the imperatives of democracy and equality, as well as the demands of nation building, and only secondarily by modern-day globalization. Because our democratic commitments have required the dismantling of the barriers to attaining full citizenship status, the American psyche has undergone a fundamental change with respect to how we go about defining outsiders. As a result, the erosion of exclusivity has actually contributed to the vitality of American citizenship—in particular, by transforming it into an institution that more closely adheres to the foundational ideals and mythology of the United States as a country of opportunity, equality, and openness to all who are interested in participating in its endeavor.

Seen in this light, citizenship law *fulfills* its function when the law makes it as easy as possible for those who are *de facto* members of society, whether by birth or by choice, also to be *de jure* members, entitled to the full protection of the law and full participation rights. Over time, the gradual process of erosion has made citizenship more valuable to Americans, because we recognize it as an institution that is not supposed to make status distinctions like the membership rules of private clubs. The fact that our citizenship rules are quite

remains present today—namely, in the post-9/11 threats to the rights and security of Muslims in the United States (though the response could have been far worse, in Spiro's telling), and in the presence of a massive population of unauthorized immigrants and the increasingly common efforts by state and local governments to prevent those immigrants from resettling in their communities.

the opposite of a private club that has a bloodline entrance requirement makes membership for everyone in the polity more secure by reenforcing the norm of equal concern and by making clear that few, if any, loyalty-based or ascriptive qualifications will be imposed on participation. Cases like *Afroyim v. Rusk*,<sup>6</sup> in which the Supreme Court held that voting in a foreign election could not be grounds for denaturalization, may have sanctioned the inclusion of members with divided loyalties, but it also enhanced the security of all Americans' citizenship by freeing citizens to make a broader range of autonomous choices.

What is more, an inclusive citizenship regime arguably better serves the cause of social cohesion than efforts to screen citizens for meaningful loyalties or affinities before they become citizens. Take, again, the *jus soli* rule. The framers of the Fourteenth Amendment enshrined birthright citizenship into the Constitution, thereby burying once and for all the notion advanced by the Supreme Court in *Dred Scott v. Sandford*<sup>7</sup> that de facto Americans could be excluded from the formal polity because the majority believed them to be unworthy of citizenship status. Indeed, the Court itself followed up the Fourteenth Amendment by essentially universalizing the *jus soli* rule, holding that it extended to the children of Chinese immigrants, even though Chinese were barred from naturalizing at the time.<sup>8</sup> This rule thus embodies not just the presumption that birth in a territory serves as an effective proxy for long-term loyalty, but also the insight that all persons affiliated with the polity from birth ought to be treated as formally equal. The presumption is that we are better off with an overinclusive rule that prevents castes from arising than with a rule that attempts to screen for "true" belonging. Our rules are designed to avoid a situation in which the second- and third-generation descendants of immigrants who are functional Americans are not formal Americans—a problem that has plagued *jus sanguinis* countries like Germany and led to a general movement in *jus sanguinis* states toward

less exclusive citizenship laws.<sup>9</sup> We have chosen to draw the formal parameters of membership broadly, on the presumption that in so doing, we are more likely to create members with the incentive to participate, because we have created a society of equals.

To be sure, had the framers of the Fourteenth Amendment not constitutionalized a *jus soli* rule written in universal language, subsequent Congresses may well have narrowed its reach, much as the United Kingdom has reformed *jus soli* citizenship so that it applies to all children born there to either British citizens or persons "settled" there. But the same values of inclusion and possibility also carry over into the law of naturalization, over which Congress does have control. Though naturalization is hardly automatic, and our immigration laws have evolved in such a way that millions of ostensible members are not even on the path to naturalization, the relative ease of naturalization, when placed in global perspective, underscores the gamble that underlies U.S. citizenship law—the same gamble that explains the *jus soli* rule and the acceptance of dual citizenship. Permitting naturalization at early stages and with few substantive limitations promotes loyalty formation and integration. The process of incorporating millions of new citizens every year may well change the character of American society, but it helps to ensure that those who have resettled in the United States are committed to the continuation of the United States by virtue of having a permanent role in it.

Of course, even if we value our citizenship structures for their openness, Spiro may still be correct that the nation no longer has a *distinctive* identity as compared to the rest of the world, or that citizenship no longer offers unique benefits. Indeed, an important thrust of his book is that citizenship must be seen as a "relative quantity" that can be understood only against a changing global backdrop. He makes two primary claims to support his second major conclusion—that U.S. citizenship is no longer unique. First, American identity—which historically has been based on a

<sup>6</sup> 387 U.S. 253 (1967).

<sup>7</sup> 60 U.S. (19 How.) 393 (1857).

<sup>8</sup> See *United States v. Wong Kim Ark*, 169 U.S. 649 (1898).

<sup>9</sup> See Patrick Weil, *Access to Citizenship: A Comparison of 25 Nationality Laws*, in *CITIZENSHIP TODAY* 17 (T. Alexander Aleinikoff & Douglas Klusmeyer eds., 2002).

commitment to principle rather than to an ethnic nationalism based on language, religion, ethnicity, or culture—is no longer distinct. The ideals that define American identity, which include liberty, equality, opportunity, and even consumerism, have spread across the globe and are widely shared. Second, the rights and obligations of citizens and noncitizens inside the United States are largely the same, rendering citizenship a formality. These claims are similar in implication to his arguments regarding exclusivity: if many people share the characteristics that define American citizenship without being citizens, then U.S. citizenship has little meaning.

It is not entirely clear what Spiro thinks are the practical consequences of the decline in distinctiveness. He seems to suggest that the formality that citizenship has become has contributed to the decline in naturalization rates in the last decade; if U.S. citizenship means less, there is less incentive for permanent residents to adopt it. For those who are already U.S. citizens, the status has come to mean little more to us than any of our other affiliations, which could include membership in transnational networks of activists, workers, or immigrant diasporas. Indeed, we largely take our citizenship for granted because it is nothing special. By losing its *unique* status as a locus for affiliation and a source of rights, citizenship loses its power as a centralizing force in American political life, making it less costly for citizens to focus their energies on either local or transnational concerns. The absence of a distinctive American identity may make it more difficult to foster a sense of duty to country that might translate into support for a draft and for more even sharing of the military service burden. Perhaps the decline in distinctiveness of American citizenship has undermined our sense of commonality and, with it, our ability to build a robust welfare state. In this sense, the decline of distinctiveness is reenforced by the decline in exclusivity.

Because Spiro does not make this claim about decline in service of a make-American-great-again agenda, he is not compelled to linger on the consequences, because the decline simply is. But as with the exclusivity narrative, it is far from clear that the empirical foundations of Spiro's claims

are accurate. Particularly when he makes the move from assessing legal frameworks to making socio-cultural observations regarding the spread of American culture around the globe, his claims of erosion are at their least persuasive. He essentially argues that the American brand has become diluted through the global dispersion of American consumer and popular culture, as well as through the profusion of democratic systems of government across formerly authoritarian societies. If adherence to ideals such as freedom and democracy has been the defining feature of American citizenship, the fact that those ideals are no longer our own means that American identity is no longer exclusively American.

It is certainly the case that Americans would be hard pressed to travel to a place in today's world that is utterly foreign, either because of the spread of English as a global lingua franca or because of the emergence of a global popular culture with strong, though by no means exclusive, American content. But a scratch of the surface would reveal deep cultural differences. Indeed, the civic nationalist premise is dubious. American identity always has had a cultural component that has revolved around a common language and shared history.<sup>10</sup> It is these historical points of reference, in particular, through which our core values have been contested and instantiated—the Revolution, westward expansion, the antislavery movement and free labor ideology, Gettysburg and Antietam, Jim Crow, Selma and the March on Washington—that give American identity a substantive content. Robust individualism, a customer-is-always-right mentality, the suspicion of government, and a

<sup>10</sup> See, e.g., WILL KYMLICKA, *POLITICS IN THE VERNACULAR: NATIONALISM, MULTICULTURALISM, AND CITIZENSHIP* 242, 244–45 (2001) (observing that the distinction between ethnic and civic nationalism is something of a cliché and that citizenship in the United States and France, though concerned with adherence to political principles, has also revolved around participation in a societal culture defined by a common language and history). It is certainly the case that our relatively inclusive citizenship and immigration policies, along with the decline of assimilationism as an ideology, have destabilized, though hardly eliminated, the cultural dimension of American citizenship, particularly the extent to which that conception relies on a common history built up over time.

peculiar-to-outsiders conception of race relations and civil rights drive our political culture. Nowhere is the difference between the American implementation of democratic values and the approach of other democratic societies more apparent than in our jealous protection of the freedom of speech, which makes hate speech, the enforcement of civility, and even campaign finance regulation far more controversial and constitutionally problematic than in other liberal democracies.<sup>11</sup> Even our distinctive (or idiosyncratic) conception of judicial review helps to define a distinctive American identity.<sup>12</sup> If we define American identity as a set of abstract ideals—liberty, equality, democracy, constitutionalism (which the French and British, among others, would hardly describe as ever having been uniquely American)—then, of course, American identity is not distinct. But if we understand that the meaning of those ideals depends on their implementation through history and institutions, then it will always be possible to speak of an American identity, even if claims to exceptionalism are overwrought. Those who spend their formative years in the United States and choose to spend time elsewhere (even—perhaps especially—England) will experience culture shock. Those who adopt the United States as a home will have to adapt to something new.

In my view, the more persuasive claim that Spiro makes with respect to distinctiveness takes us back to the formal legal institution of citizenship and focuses not on the United States versus the world, but on the difference between citizens and noncitizens inside the United States. Over time, the difference between the rights of citizens

and legal noncitizens largely has been effaced, for many of the same reasons that have led to the decline in exclusivity—to promote democracy and the integration of new arrivals.<sup>13</sup> As a result, says Spiro, citizenship is neither here nor there for most people. Few, if any, limitations exist on lawful noncitizens' rights to speak, work, or participate in civil society organizations such as unions and political parties.

Only two rights hinge on the formal status of citizenship today: the right to vote, and the infeasible right to remain in the United States. Though citizenship and voting have not always been coterminous, today they are, with the exception of some local governments that extend the franchise to noncitizens. Perhaps more importantly, even permanent resident status is not secure. The "right to remain" belongs to citizens alone, as even permanent residents can be removed from the United States if they violate the terms of their admissions.

According to Spiro, neither of these differences means much. First, we fetishize the right to vote, and noncitizens have many ways to exert their influence on the political process, such as appealing to lawmakers who may one day need their votes. And second, though Congress has, in the last decade, dramatically expanded the grounds for removal, the vast majority of immigrants will not be subject to removal, either because they will not run afoul of the law or because the government's capacity to enforce its increasingly demanding rules is limited.

Both of these conclusions are overstatements. Actually possessing the right to vote can be crucial to getting politicians and fellow citizens to pay attention to one's interests. More importantly, the virtually infeasible right to remain where you have a home, ties, and a livelihood, while invisible

<sup>11</sup> See Adam Liptak, *Unlike Others, U.S. Defends Freedom to Offend Others in Speech*, N.Y. TIMES, June 12, 2008 (Magazine) (noting that when it comes to hate speech, as in many other areas of the law, the United States takes a decidedly different approach than other liberal democracies that also value and protect freedom of speech).

<sup>12</sup> See KYMLICKA, *supra* note 10, at 245 ("History is emphasized, not in the form of a historical folk culture, but rather as a way of emphasizing an historical commitment to certain institutions and procedures which embody principles of equality and freedom. After all, principles . . . by themselves are vague. . . . They do not tell us where to draw political boundaries.").

<sup>13</sup> See, e.g., *Bridges v. Wixon*, 326 U.S. 135, 161–62 (1945) (Murphy, J., concurring) (noting that the First and Fifth Amendments "extend their inalienable privileges to all persons and guard against any encroachment on those rights by federal or state authority"); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) (establishing that the Equal Protection Clause applies to persons, not just citizens); *Zadydas v. Davis*, 533 U.S. 678 (2001) (noting that due process protections apply to noncitizens).

to most citizens, is what makes the status irreplaceable, and what leads to spikes in naturalization when immigration laws start to constrict. Though the Supreme Court has never articulated a right to remain as such, the right has emerged functionally, through the constitutional law of denaturalization and expatriation, and as the negative implication of the Court's acceptance of the government's authority to remove noncitizens.<sup>14</sup> Even if the right to remain is all that is left of citizenship, citizenship remains highly relevant and important as a legal status,<sup>15</sup> and therefore the incentive to acquire citizenship has by no means disappeared.<sup>16</sup> Indeed, given that noncitizens must pay taxes and that most naturalized citizens can retain their prior citizenship status, there appear to be few reasons, other than symbolic ones, not to become a citizen.

Like many of the debatable empirical claims that Spiro makes, I suspect these observations regarding the decline in citizenship's uniqueness are intended to draw a contrast with historical practice or to make a relative point. The deeper development worth lingering over, which Spiro's work highlights but does not explore, is not citizenship's decline, but the fact that citizenship law is no longer our primary tool of exclusion. Territoriality and immigration policy determine who has influence and who has the legal capacity to mobilize in defense of their interests. The real problem in the globalized world that Spiro describes is not that the United States means nothing. Instead, the problem is that millions of indi-

viduals living outside the United States have their lives shaped by decisions made within the United States—decisions over which their influence is minimal. And, more importantly, *within* the United States, millions of people, responding to the dynamics of globalization and development, live and work without legal status of any kind. Their interests may register with some lawmakers and fellow members of society, but they lack the security and authority that legal status provides to defend their interests or to hold decision makers accountable.

Thus, even as he downplays crucial characteristics of citizenship that make it unique as a legal status, Spiro demonstrates that our *de facto* and *de jure* political communities do not overlap. This observation—that the new line of exclusion is no longer citizenship but rather legal standing—opens up a new line of inquiry. If we think that *de facto* and *de jure* political communities should be aligned, liberalizing the rights of permanent noncitizens does not mean much if there has been a corresponding spike in the number of persons who do not have legal status but whose interests are wrapped up in what goes on in the decision-making corridors of the United States. Citizenship as an institution can no longer single-handedly channel the forms of association and affiliation that exist in today's world, if it ever could.

In response to this challenge, some scholars might call for even more generous treatment of noncitizens inside the United States,<sup>17</sup> and perhaps even for an expansion of legal channels for entry. My general view is that territorially based anchors for belonging—whether through formal citizenship rules, secure immigration statuses, strong and constitutionally based guarantees of rights, or robust mechanisms for political participation at the state and local level, including through voting rights—are crucial to ensuring social cohesion in a transnational milieu.<sup>18</sup> In view

<sup>14</sup> See *Fong Yue Ting v. United States*, 149 U.S. 698 (1893) (establishing authority of federal government to remove noncitizens).

<sup>15</sup> Similarly, citizenship remains relevant as a mechanism for "sorting" the people of the world. Though dual and triple citizenship makes this process more complicated, the formal institution ensures that some country will be responsible for each person on the globe and that virtually no one can be banished, or left stateless, which would compromise her most basic human rights and create instability in the world.

<sup>16</sup> As Spiro also recognizes, though most disabilities on noncitizens have been lifted, their access to public benefits remains contested; as recently as 1996, Congress denied noncitizens access to a range of public benefits, even though noncitizens pay taxes. Constitutional challenges to this discrimination failed, but Congress did eventually restore most benefits.

<sup>17</sup> See, e.g., HIROSHI MOTOMURA, *AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES* (2006).

<sup>18</sup> See Cristina M. Rodríguez, *The Citizenship Paradox in a Transnational Age*, 106 MICH. L. REV. 1111 (2008).

of the political difficulties associated with expanding opportunities for permanent entry, we might press the continued development of the human rights protections that transcend particular legal statuses, such as the right to familial integrity or the right to political participation in the society in which one lives, regardless of citizenship and perhaps even legal status. More importantly, we would continue to focus on building the court doctrines and institutions, both governmental and nongovernmental, that facilitate the incorporation of these human rights principles into the legal, social, and political practices of various societies. For the de facto members of our political community who live beyond our borders, but who are deeply affected by U.S. policies, Spiro himself, in the form of a thought experiment, has suggested that they have voice of some kind in the U.S. political process.<sup>19</sup> Though it is unlikely that such de facto members would ever be given voice by being granted the right to vote for the so-called leader of the free world, there might well be ways of shaping international institutions and transnational networks, apart from normal diplomatic channels, to secure and formalize the forms of association that have grown up around and overtaken the institution of national citizenship.

In *Beyond Citizenship*, Spiro does not spell out what it would mean to devise mechanisms other than citizenship to structure belonging, though he is emphatic that “[n]o universal community, no world citizenship will take [citizenship’s] place” (p. 7). But in highlighting the disjunction between formal citizenship and political identity, he has defined a research agenda for himself and others. We ultimately must seek to insure that the virtues of national citizenship—of providing clear rules that define membership, promote solidarity, establish a structure of belonging for people engaged in common cause, and create a secure basis from which to hold government accountable—are adapted to suit the fractured, but

dynamic, world that swirls in and beyond the nation-state.

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*Indigenous Rights and United Nations Standards.*

By Alexandra Xanthaki. Cambridge: Cambridge University Press. 2007. Pp. xxxix, 314. Index. \$110, £58.

*Indigenous Rights and United Nations Standards* aims high: Alexandra Xanthaki, says the book’s dust jacket, “refuses to shy away from difficult questions and challenging issues and offers a comprehensive discussion of indigenous rights and their contribution to international law.” In her introduction, Xanthaki—who teaches at London’s Brunel University—states that “[t]his book will look at the responses that current international law offers to . . . questions” such as whether indigenous peoples “[s]hould be given special protection? And to what extent? Should they have the right to decide on matters that affect them, even when such decisions affect the wider population of the state?” (p. 1). With the exception of the discussion of pertinent claims of customary international law, to which I shall return later, the author comes pretty close to achieving her goal. She covers the field quite successfully by focusing on the key issues of self-determination, culture, and land.

The author’s introduction to the subject is enthralling: in a thoughtful, authoritative, and elegantly written analysis of the current debate in the political sciences regarding the issues of preference and policy choice surrounding the preservation of cultures, she presents a radically different position from the Western paradigm underpinning traditional international law. She lucidly points out that preservation of global cultural diversity alone cannot be the convincing reason why indigenous cultures are in need of special protection: their particular history of conquest, exclusion, and marginalization makes their claims stand out from those of other minority groups. Also, in lieu of the static, artificial preservation of indigenous cultures, the proper policy goal should be that indigenous cultures flourish as living and changing phenomena.

<sup>19</sup> Peter J. Spiro, *With Liberty and Justice for All: Non-citizens and Democratic Rights*, Remarks at the National Lawyers Guild, Immigrant Voting Project, & New York Coalition to Expand Voting Rights Symposium, New York University School of Law (Feb. 29, 2008).