INTRODUCTION

KIM BARRY'S FRUITFUL PROVOCATION

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If the *raison d'être* of the scholar is to provoke thought and contribute to the growth and refinement of our understanding of important phenomena, Kim Barry has succeeded. It is the fate of those who die young to be forever bathed in, but also obscured by, the luster of their promise. Our loving hopes for them often overshadow what they wanted for themselves and would have done with their talents. In Barry's case, however, this possible confusion is dispelled by the fact, fully revealed by this Symposium, that her ambition to be a notable legal scholar has already been realized. Her actual achievement, not merely her youthful ambition, has fulfilled the great promise that her New York University mentors, many friends, and devoted family saw in her. For one who, at the time of her death, had just taken her first step in what would surely have been a long and rewarding scholarly journey, this represents an immense personal triumph. This triumph is illuminated and celebrated in these pages, which I think of as an extended thank-you note acknowledging our debt to her.

A migrant who retained deep roots in both of the societies in which she was raised, first Australia and then the Bahamas, Barry was intrigued, even obsessed, by the timeless human drama of migration. As a student of post-modernism, she saw in this drama the convulsive discontinuities and dissonances that transformed both the reality of migration and our ways of understanding and managing it, particularly through the law. As a humane reformer, she hoped to grasp how these convulsions affect the people and institutions that migrants leave behind as well as those that await them in their new homes. And as an innovative thinker, she gravitated more to the neglected, backstage venue of the drama—the country of emigration—than to the center-stage *mise en scène* that had attracted most of our attention—the country of immigration. She recognized, as a number of the Symposium contributors point out, that this scholarly imbalance has less to do with the relative significance of these two subjects than with

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the fact that students of migration, and the institutions that employ them, are concentrated in the receiving countries. One of the hallmarks of a fine scholar is an eye for subjects worth studying but somehow overlooked by others. In devoting her initial work to the relationship between emigrant citizens and their countries of origin, Barry revealed, Argus-like, that she had such an eye.

The true measure of a scholar's work, of course, is her influence on other scholars and, through them, on our understanding of the world. If they find that her work stimulates and enriches their own, if her work is (in Pentagonese) a "force multiplier" in the scholarly sense, then she has managed to achieve what we all aspire to: transcending our own limitations. The excellent contributions to this Symposium show that Barry's work, although only prefiguring the larger project she had set for herself, has indeed had this self-transcending effect. The proof of this is clearly manifest in the contributions themselves.

Kim Barry's Article[1] advances a number of arresting and important propositions about the changing nature of citizenship in general, and "external citizenship" in particular. She defines external citizenship, which is the focus of her analysis, as

> the ongoing relationship between emigration states and their citizens who have moved temporarily or permanently to immigration states. It involves emigrants' and emigration states' efforts to preserve links to one another. External citizenship also encompasses emigrants' efforts to remain a part of the societies they left behind, independent of the state, that is, their ongoing engagement with the national community not limited to the national polity.[2]

For Barry, external citizenship is both a legal status and a "practiced identity" of emigrants as they engage with their old polities and societies in a variety of modalities, fashioning a new set of relationships. Drawing upon the examples of Mexico,[3] Turkey, India, and other countries of emigration that are seeking to re-incorporate their emigrants, Barry illustrates her thesis by showing how this "reconstruction" of external citizenship takes a number of discrete economic, legal, and political forms. The evolving nature and forms of external citizenship, she argues, raise profound normative issues for the

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

[2] *Id.* at 26.

[3] In a recent development that would not have surprised Barry but would have pleased her, Mexico has made it easier for its nationals in the U.S. to vote in elections. *See* Sam Quinones, *Mexican Emigres Cheer, Shrug at New Voting Right*, L.A. TIMES, July 2, 2005, at B1.

sending and receiving countries, for the emigrants (and their families), and for the international system that seeks to regulate some of these interactions and statuses.

Barry's Article sets an ambitious agenda for reflection, analysis, and future research. The contributors to this Symposium have eagerly taken up this challenge, helping to launch what will clearly be a new and fruitful area of study. As befits the initial mapping of any relatively new academic field of inquiry, our contributors take a variety of methodological approaches. Thus, Anupam Chander's contribution[4] is mainly taxonomic in nature, discussing the different strategies that sending countries use to maintain ties with their diasporas, while David Fitzgerald[5] uses a specific case study (the prominent example of Mexico) to identify important empirical and conceptual issues raised by the dynamic, complex relationship between sending country and diaspora with which Barry's work is vitally concerned. Ruth Rubio-Marín[6] elaborates a number of normative and prudential considerations implicated by external citizenship, particularly those bearing on the preservation by migrants of elements of sending state nationality (such as absentee voting rights) at the same time that they seek, post-naturalization, to find a place in the liberal political order of the receiving state. Ayelet Shachar[7] focuses her analysis on perhaps the most important subset of immigrants (at least in terms of the sending country's economic interests)—highly skilled workers—and on the "competitive immigration regimes" that are emerging from the efforts of developed states to attract and retain them. These regimes, Shachar insists, should focus more on how to distribute the economic benefits of skilled migration more equitably to the less advantaged. Peter Spiro[8] emphasizes the political dimension of external citizenship and advances a provocative argument for extending voting rights and legislative representation in the country of origin to emigrants. And Michael Trebilcock and Matthew Sudak[9] employ economic analysis to explore the potential complementarities between the policies of the sending and receiving countries with respect to the treatment of migrants.

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[4] Anupam Chander, *Homeward Bound*, 81 N.Y.U. L. REV. 60 (2006).

[5] David Fitzgerald, *Rethinking Emigrant Citizenship*, 81 N.Y.U. L. REV. 90 (2006).

[6] Ruth Rubio-Marín, *Transnational Politics and the Democratic Nation-State: Normative Challenges of Expatriate Voting and Nationality Retention of Emigrants*, 81 N.Y.U. L. REV. 117 (2006).

[7] Ayelet Shachar, *The Race for Talent: Highly Skilled Migrants and Competitive Immigration Regimes*, 81 N.Y.U. L. REV. 148 (2006).

[8] Peter J. Spiro, *Perfecting Political Diaspora*, 81 N.Y.U. L. REV. 207 (2006).

[9] Michael J. Trebilcock & Matthew Sudak, *The Political Economy of Emigration and Immigration*, 81 N.Y.U. L. REV. 234 (2006).

There is little point in further describing these rich contributions; they speak most eloquently for themselves and will reward the reader's careful scrutiny. Instead, I shall use the remainder of this Introduction to look across the Symposium pieces with a view to identifying some of the pivotal issues that are crystallized by the contributors' conceptualizations, evidence, analyses, and arguments. Five of these issues seem particularly important to our understanding of the external citizenship adumbrated by Barry's seminal article.

First, *what is the phenomenon in question?* Our authors use different terms to describe what they think is worthy of study. What Barry calls "external citizenship," Chander terms "diasporic relationships," but they evidently mean the same thing. They refer to a concept that all of the authors in some sense explore: the decoupling of *citizenship* (which Barry divides into its legal and participatory or engagement aspects, and which all of the authors further differentiate) from its traditional, although not necessarily exclusive, grounding in one's residency in the physical *territory* of the sending state, the state of original citizenship. Fitzgerald is at pains to deny that this decoupling of citizenship status from physical residence entails the "deterritorialization" of the nation-state.[10] He goes on to enlarge the focus somewhat by including not only the citizenship of emigrants but also "the ancestral citizenship of their descendants,"[11] an expansion that Spiro seems to favor by supporting an extension of emigrants' voting rights in the sending country beyond the emigrant generation to their children.[12]

Second, *what is new about this phenomenon?* Barry emphasizes that this "new model of citizenship"[13] departs from the old in that it is "portable, exchangeable, and increasingly multiple."[14] Fitzgerald, taking a "world-historical" perspective that compares "all countries of emigration at all times," claims that "what appears unprecedented in the contemporary period is the *legitimate prevalence* of dual nationality, and in many source countries, the government's *active* promotion of dual nationality and dual cultural nationalism."[15] To Rubio-Marín, what is new about external citizenship is the way in which it both challenges and at the same time reinforces the "nation-state construct." It is in this sense, she says, "post-national."[16] For Shachar, its

[10] Fitzgerald, *supra* note 5, at 103.
[11] Fitzgerald, *supra* note 5, at 91.
[12] Spiro, *supra* note 8, at 229.
[13] Barry, *supra* note 1, at 19.
[14] Barry, *supra* note 1, at 18.
[15] Fitzgerald, *supra* note 5, at 114.
[16] Rubio-Marín, *supra* note 6, at 118.

novelty is the role that it has come to play in the competitive scramble among the developed economies to recruit the most highly skilled workers—a market that she revealingly calls the "talent-for-citizenship exchange."[17] In a particularly illuminating insight, Shachar observes that this market "puts the state at the center of regulating the polity's membership boundaries."[18]

Our authors also have views about another telling aspect of external citizenship's novelty: the scholarly neglect of the subject. Apart from Rainer Bauböck's 2003 article,[19] little academic attention had been paid to it prior to this Symposium. The reason, according to several of the contributors, is that universities and research institutions are located primarily in the United States and other receiving countries, which naturally enough tend to emphasize immigrant citizenship.

Third, *what is the relationship of external citizenship to the political ideals of liberalism?* Barry notes that the construction of citizenship, both internal and external, is "a pluralistic endeavor" in which emigrants make their own demands on the institutions of citizenship as they re-engage with their countries of origin.[20] Her analysis of this development, which assesses the effects of external citizenship and its various policy instrumentalities on individual welfare, clearly implies that liberalism is both her methodological and normative approach. Fitzgerald explicitly asks whether external citizenship is liberal, and provides clarifying and nuanced answers to that question, concluding that it is a double-edged sword for liberalism and reminding us (as several of the Symposium authors do) that all forms of citizenship adopt parochial criteria, have an exclusionary purpose, and to that extent are illiberal.[21] Rubio-Marín, Shachar, and Spiro all adopt normative stances toward external citizenship that are designed to render it more inclusive, if not universalistic, and more protective of the individual emigrant and of democratic accountability in the sending states.

In this vein, Barry's notion, also stressed by Chander,[22] that emigrants have gone from being barely acknowledged by their countries of origin to being widely regarded as "national heroes,"[23] assumes special interest. Rubio-Marín, taking a longer view of this

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17 Shachar, *supra* note 7, at 159.

18 Shachar, *supra* note 7, at 204.

19 Rainer Bauböck, *Towards a Political Theory of Migrant Transnationalism*, 37 INT'L MIGRATION REV. 700 (2003).

20 Barry, *supra* note 1, at 15.

21 Fitzgerald, *supra* note 5, at 106–14.

22 Chander, *supra* note 4, at 62.

23 Barry, *supra* note 1, at 14.

assessment of emigrants, insists upon the contingency and contextuality of attitudes toward emigrants, noting that "in almost every country affected by large scale emigration there has been a place in the national imagination dedicated to those who emigrate," with the ascriptions ranging between "traitors" and "missionaries in the service of the nation."[24]

Fourth, *what are the modalities and consequences of external citizenship?* Here, there is widespread agreement among all the authors, with differences only in emphasis. Chander classifies the modalities, which he calls "bonding strategies," into three categories: political, economic, and cultural. (Barry's "legal incorporation" strategies overlap with his.) These strategies are numerous, including: dual nationality, voting, direct representation, diaspora visas, diasporic benefits, diaspora bonds (i.e., emigrant investment opportunities), diasporic support of specific development projects, foreign direct investment, encouragement of emigrant return and repatriation, celebration of emigrants' importance, emigrant-focused government agencies, diplomatic protection of emigrants, youth and retirement programs, and research institutions to study the diaspora.

Trebilcock and Sudak focus on the entailments and consequences of emigration for both the sending and receiving country, particularly from an economic efficiency perspective: the flow of human capital (also known as "brain drain" and "brain circulation"), effects on educational decisions and resource allocation, return migration, effects on the tax base, remittances, other investment activity, and the "optimal level of [out-] migration."[25] They conclude their survey of policy instruments with the observation that sending countries "will be made best off by policies that facilitate remittances, trade, and investment by emigrants, and that tread cautiously in the area of exit penalties such as taxes."[26] Among the policies discussed, they note that "efforts to increase the emotional and practical connections between emigrant communities and emigration states are also likely to have positive effects,"[27] on remittances, trade and investment, although "[i]n the long run, institutional change and economic development are likely to be the strongest determinants of whether people want to leave, and of whether they want their persons and their money to return."[28] Fitzgerald's study of Mexican emigration seems to support their analysis.

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[24] Rubio-Marín, *supra* note 6, at 122 (citing Bauböck, *supra* note 19, at 711).
[25] Trebilcock & Sudak, *supra* note 9, at 260.
[26] *Id.* at 291.
[27] *Id.* at 265.
[28] *Id.* at 266.

Rubio-Marín and Shachar join Barry in reflecting on (and worrying about) the likely distributional effects of external citizenship. They are mindful that the emigrants who become citizens in the receiving country tend to constitute a kind of elite when compared with their former compatriots. As Trebilcock and Sudak show, migrants are self-selected for relative economic mobility; they tend to be younger, more skilled, and better connected than otherwise comparable non-migrants. Moreover, those emigrants who naturalize in the receiving country are presumably more advantaged than those who do not. Shachar, writing about the "talent for citizenship exchange," particularly laments this stratification. Viewing it as irreversible, she urges that scholars and policymakers devote greater efforts to making the migration process more equitable,[29] although it is not clear how this can be done given the remorseless and powerful market dynamic that she describes. Indeed, the very reforms that all of the authors seem to favor with more or less enthusiasm—facilitating external citizenship for emigrants and also granting them more extensive legal and political rights in the receiving country—are likely to widen the already significant gap between emigrants and those they leave behind. Using Albert O. Hirschman's terms,[30] external citizenship enables migrants to use voice in their country of origin; their greater rights in the receiving country reinforce the option of exit that they have already exercised; and their loyalties are up for grabs, reflecting the constant renegotiation (in Barry's terms) of migrants' relationships to both the sending and receiving countries.

Finally, *what empirical and normative issues remain as precipitates of this Symposium?* The short answer is—lots of them. On the empirical side, our authors have described important geopolitical, economic, and legal trends associated with migration and external citizenship, and they have suggested or implied that the force of these trends will continue undiminished. They may well be right in the long run, but prudence (along with Keynes[31]) reminds us that the short run may be quite different, and may not be so short. Immigration and citizenship policy is just that—a matter of policy, of choice, of changing interests in light of changing events, of shifting political forces. We need to understand the causal dynamics that drive it far better than we now do in order to predict, much less control, future developments in this area.

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29 Shachar, *supra* note 7, at 206.

30 *See generally* ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINES IN FIRMS, ORGANIZATIONS, AND STATES (1970).

31 "*In the long run* we are all dead." JOHN MAYNARD KEYNES, A TRACT ON MONETARY REFORM 80 (1923).

It would be useful to know more, for example, about how the voters in receiving countries will react if and when the countries of origin extend greater political and economic rights to their emigrants, and how such extensions will feed back into the future migration decisions of others in the countries of origin. And, picking up on Shachar's interesting observation of (and puzzlement at) the fact that the United States "empire" has not struck back against its competitors for highly skilled immigrants as one might have expected, and indeed has actually weakened its own competitive position in the post-9/11 period[32]—one wonders what will happen to external citizenship if the United States finally manages to shake off its torpor (or fear) and *does* strike back. It would not be surprising if a country like the United States, which is at best ambivalent about dual citizenship and even more suspicious of dual citizens who vote elsewhere, were to require dual citizens to elect a single nationality at some point, regulate the political aspects of dual citizenship, or otherwise restrict its availability.

As my last speculation suggests, the normative questions about external citizenship are at least as difficult as the empirical ones. It is a great strength of this Symposium that the authors do not shrink from these normative issues but confront them head-on and offer plausible arguments on all sides. I in no way minimize their important contributions to our understanding by observing that their arguments are hardly the last word on these subjects and that those whose views on immigration and citizenship are more culturally and politically conservative than those of our progressive authors will bring to these debates quite different facts, values, and interpretations. Indeed, this Symposium, sparked by Kim Barry's luminous work and infused with her vivid personality, will be the indispensable starting point for what promises to be a fascinating, fruitful, and fateful conversation.

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[32] Shachar, *supra* note 7, at 169.