

SYMPOSIUM

HOME AND AWAY: THE CONSTRUCTION OF CITIZENSHIP IN AN EMIGRATION CONTEXT

KIM BARRY*

Scholarly discourse on immigration is abundant, but little attention has been paid to emigration as such, and particularly to citizenship within the emigration context. This Article examines the ways in which citizenship has been reconfigured by emigrants and emigration states, and begins to construct a broadened conception of citizenship based on these actual practices. Citizenship as experienced by emigrants, or "external citizenship," has two dimensions: formal legal status and the lived experience of participation in national life. The Article highlights the strong economic incentives for emigration states to strengthen ties with their absent citizens. It also emphasizes emigrants' active stance in shaping their new role in the national life of their home countries. As emigrant states and emigrants negotiate the terms of their relationship, a new set of citizenship constructs has begun to emerge. States have newly styled emigrants as heroic citizens, as they seek to encourage emigrants to direct financial resources homeward, in the form of remittances, direct contributions styled as taxes, and investment. In approving dual nationality, states have allowed emigrants to retain legal membership at home, even as they acquire citizenship abroad. Emigrants themselves have begun to assert political claims in their home states, and in a number of states, emigrants have acquired the right to vote in national elections while abroad. Emigrants also continue to influence politics in their home states in other ways, including running for office, making contributions to candidates, and traveling home to vote there. The Article concludes by offering some initial thoughts on the ways in which emigrant citizenship might evolve in the future.

INTRODUCTION	12
I. CONTEXT: CITIZENSHIP AND EMIGRATION	20
A. <i>The Nature of Citizenship</i>	20
1. <i>Citizenship as Legal Status</i>	21
2. <i>Citizenship as Practiced Identity</i>	23
B. <i>The Deployment of 'External' Citizenship</i>	26

* Copyright © 2006 by Kim Barry. To the greatest extent possible this paper is being presented here in the form that it was left by Kim Barry. The text has been edited only for grammatical and factual correctness. Material has been added to the footnotes without comment where statements in the text could be supported by reference to official documents or material cited by Kim Barry elsewhere in the original article. In a few instances, to aid the reader, additional material has been added in the form of editorial notes. The article was edited by the members of the *New York University Law Review* together with Professor Kevin Davis, who gratefully acknowledges the assistance of Professor Kon Sik Kim, Joon Park, Jeanne Rehberg, and Inés Tófaló (who was also Kim Barry's research assistant).

1. <i>External Citizenship as Legal Status</i>	27
2. <i>External Citizenship as Practiced Identity</i>	28
a. <i>External Citizenship as Practiced by</i> <i>Emigrant States</i>	28
b. <i>External Citizenship as Practiced by</i> <i>Emigrant Citizens</i>	31
II. <i>THE RECONSTRUCTION OF CITIZENSHIP</i>	34
A. <i>Economic Incorporation via Emigrant Remittances</i> <i>and Capital Inflows</i>	35
1. <i>Encouragement of Remittances</i>	35
2. <i>Taxes on Emigrant Citizens</i>	36
3. <i>Investment Incentives</i>	40
B. <i>Legal Incorporation</i>	42
C. <i>Political Incorporation</i>	51
CONCLUSION	58

INTRODUCTION

Three recent winners in Mexican elections may have unremarkable profiles—Manuel de la Cruz, engineer and radio talk show host, and Eddie Varon Levy, a very well connected entrepreneur, are now members of Mexico's Congress; and Andrés "Tomato King" Bermudez, a millionaire tomato farmer, has become mayor of the town of Jerez—but it is remarkable that, at the time of their election, none of them was living in Mexico.¹ All three are long-time residents of the United States, and two intend to continue to live part-time in the United States while carrying out their elective duties, shuttling between homes in California and Mexico.² The acceptance of emigrant citizens who have lived most of their lives outside the country's physical borders as full members of the national political community marks a profound shift in Mexican society. That shift represents a response to challenges to fundamental assumptions about presence, absence, and the nature of national belonging.

Mexico is a classic "emigration state," that is, it is a nation with a consistent net outflow of people: More citizens depart—temporarily

¹ [Ed.: See Robert C. Smith, *Diasporic Memberships in Historical Perspective: Comparative Insights from the Mexican, Italian and Polish Cases*, 37 INT'L MIGRATION REV. 724, 732–36 (2003) (discussing Bermudez); Jose Diaz Briseño & Chris Kraul, *Westside Man Apparently a Winner in Mexico Voting*, L.A. TIMES, July 6, 2000, at B3 (discussing Varon Levy); Jennifer Mena, *U.S. Citizen in Mexico's Congress*, L.A. TIMES, July 11, 2003, at B1 (discussing de la Cruz).]

² [Ed.: See Mena, *supra* note 1, (noting that de la Cruz's wife "expect[ed] to live with him in Mexico" for at least part of his term of office); *infra* note 186 and accompanying text (noting that Varon Levy planned to commute between Los Angeles and Mexico City).]

or permanently, in search of expanded economic opportunities in wealthier countries—than immigrants arrive.³ As an emigration state, Mexico has become increasingly economically dependent on the earnings of its emigrant citizens.⁴ Its emigrants bolster the Mexican economy by remitting a portion of their earnings to families they left behind; by investing in property, businesses, and even development projects back home; and by skills and technology transfers.⁵ But, as in

³ Approximately ten percent of the 115 million living persons born in Mexico have migrated to the United States. *Mexico: Migration, Remittances*, MIGRATION NEWS, July 2004, http://migration.ucdavis.edu/mn/more.php?id=3022_0_2_0. Emigration states—all of which are in the global South and are also referred to as “labor sending states”—rarely monitor or report on emigration figures, so the category itself is imprecise. In 1990, the International Labour Organization (ILO) designated fifty-five countries as major international labor suppliers, compared to only twenty-nine in 1970. See PETER STALKER, *WORKERS WITHOUT FRONTIERS: THE IMPACT OF GLOBALIZATION ON INTERNATIONAL MIGRATION* 7 (2000). “Emigrant citizens” are legal nationals and citizens of emigration states who voluntarily live physically outside those states. The term does not include refugees or asylum-seekers. Although “[c]lose to half of all reported migrants move from one developing country to another,” see INT’L LABOUR OFFICE, *TOWARDS A FAIR DEAL FOR MIGRANT WORKERS IN THE GLOBAL ECONOMY* 5 (2004), available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf>, this Article is most concerned with that subset of developing countries whose emigrant citizens move mostly to immigration states in the North and the Gulf States. This subset of emigration states includes most countries in the Caribbean, Latin America, and Asia. Throughout this Article, “North” refers generally to the countries of the European Union, North America (except Mexico), Australia, New Zealand, Japan, and Hong Kong and is used interchangeably with “developed” and “industrialized.” “South” or “developing” refers generally to the countries of the Caribbean, Latin America, Asia (except Japan and Hong Kong), and Africa.

⁴ A large literature estimates the amounts, uses, and impact on economic development of migrant economic contributions to emigration states. See generally Premachandra Athukorala, *The Use of Migrant Remittances in Development: Lessons from the Asian Experience*, 4 J. INT’L DEV. 511 (1992) (examining remittance policies of labor exporting countries in Asia); Susan F. Martin, *Remittances as a Development Tool*, 6 ECON. PERSP. 37 (2001), available at <http://usinfo.state.gov/journals/ites/0901/ijee/martin.htm> (discussing possible effects of remittances on developing countries); Sharon Stanton Russell, *Migrant Remittances and Development*, 30 INT’L MIGRATION 267 (1992) (discussing measurement, volume, and direction of flows of remittances); Deborah Waller Meyers, *Migrant Remittances to Latin America: Reviewing the Literature* 1–21 (The Tomás Rivera Policy Inst., Working Paper, 1998), available at <http://www.thedialogue.org/publications/meyers.html> (discussing transmission, uses, and estimates of remittances). The estimated remittances sent by Mexicans in the United States to family and friends in Mexico in 2003 is US\$13.3 billion, “equivalent to about 140 percent of foreign direct investment and 71 percent of oil exports.” Roberto Coronado, *Workers’ Remittances to Mexico*, BUS. FRONTIER (Fed. Res. Bank of Dallas, El Paso, TX), 2004, at 1, available at <http://www.dallasfed.org/research/busfront/bus0401.pdf>.

⁵ Throughout this Article, “home” and “state of origin” are used interchangeably to refer to an emigrant’s state of citizenship. These terms are convenient and familiar, although not entirely synonymous. Emigrants, particularly those who have settled abroad permanently, do not necessarily consider their state of citizenship their home, nor is it necessarily their “state of origin,” depending on how far back one dates one’s national identity. Home can be a physical space or a concept of where one belongs or fits beyond geographic location. One’s definition of home can change over time and according to con-

some other emigration states, the increasing importance to Mexico of its emigrants' capital contributions has driven a sea change in the national identity toward one that more readily locates emigrant citizens well within the "imagined nation"⁶ of Mexican citizens.

In this reconfiguration of citizenship, emigrants have gone from being barely acknowledged, absent, second-class citizens whose Mexican-ness was suspect, to being national heroes who make great sacrifices for Mexico—essential members of *México de afuera*, or "Mexico outside Mexico."⁷ That three emigrants living in the United

text. Likewise, the terms "abroad" and "state of destination" or "state of residence" are used interchangeably with "state of immigration" to refer to the country in which an emigrant settles for any extended period, even if that place comes to be considered his or her home. Finally, the Article avoids using the common terminology of "sending" (emigration) and "receiving" or "host" (immigration) states. The implied activity of the former and passivity of the latter are misleading and reflect and reinforce policy positions in the North that developed "receiving" countries neither generate nor facilitate migrant flows. See THOMAS FAIST, *THE VOLUME AND DYNAMICS OF INTERNATIONAL MIGRATION AND TRANSNATIONAL SOCIAL SPACES* 69 (2000) ("It is one of the few undisputed findings of international migration research that the immigration countries in the North have initiated virtually all labour migration flows.").

⁶ The concept of the imagined community was formulated by Benedict Anderson in his study of nationalism and national identity. See BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGINS AND SPREAD OF NATIONALISM* 5–7 (rev. ed. 1991) (defining "the nation" as "an imagined political community" that is "imagined as both inherently limited and sovereign," and positing that nationalists imagine communities and invent traditions in order to legitimize nationhood and their own claims to power); see also E.J. HOBBSBAWM, *NATIONS AND NATIONALISM SINCE 1780: PROGRAMME, MYTH, REALITY* 10 (2d ed. 1990) (stressing "the element of artefact, invention and social engineering which enters into the making of nations"). Following the convention in much of the legal scholarship on citizenship, I use the term "nation" interchangeably with "nation-state," "state," and "country" to mean "the modern political entity that carries out foreign relations," but not an "ethnically homogeneous political entity." David A. Martin, *New Rules on Dual Nationality for a Democratizing Globe: Between Rejection and Embrace*, 14 GEO. IMMIGR. L.J. 1, 1 n.1 (1999).

I also use the terms "nationality" and "citizenship" interchangeably even though there are differences between the two under municipal law. All citizens of a state are nationals (and so identified under international law) but nationals might not enjoy the full rights of citizenship. Where these distinctions matter for the Article's analysis, they have been highlighted. See *infra* notes 127–39 (discussing distinctions between nationality and citizenship in Mexico).

⁷ Smith, *supra* note 1, at 728–32 (tracing evolution of Mexican state's policies toward Mexican emigrants); see also Luin Goldring, *The Mexican State and Transmigrant Organizations: Negotiating the Boundaries of Membership and Participation*, 37 LATIN AM. RES. REV. 55, 64–70 (2002) (same). Emigrant-state relations are not new, but nor are they inevitable: "[T]he sending country may attempt to control [emigrants'] activities, to retain their loyalties or to lure them back home, but it may also denounce them as traitors and prevent them from returning or regard them more neutrally as lost populations who have cut the ties to their origins." Rainer Bauböck, *Towards a Political Theory of Migrant Transnationalism*, 37 INT'L MIGRATION REV. 700, 709 (2003). Even within a single state's history, emigrants may receive more or less attention, depending on a host of internal and external factors. See, e.g., Nina Glick Schiller & Georges Fouron, *Transnational Lives and National Identities: The Identity and Politics of Haitian Immigrants*, in *TRANSNATIONALISM FROM*

States could be viable candidates in the intensely competitive Mexican political scene and embraced as legitimate representatives of their fellow Mexicans would have been inconceivable just decades ago. Even more stunning is the fact that an emigrant could come into office *as* an emigrant; that is, not as a *pocho* returnee,⁸ but as a citizen of Mexico who lives in the United States, works in the United States, and pledges to represent the interests of Mexico and Mexicans from the United States.

The candidacies and subsequent elections of de la Cruz, Varon Levy, and Bermudez caught even elements in the Mexican establishment by surprise. The participation of emigrant citizens in the political life of Mexico was not on the state's agenda as it attempted to reconfigure Mexican citizenship. For its part, the state directed its citizenship strategy explicitly toward growing economic contributions from emigrants.⁹ But the construction of citizenship—the setting of its terms and contours, content and significance—is a pluralistic endeavor. Mexican citizens abroad are making their own demands on the institution of citizenship, seeking recognition even from afar as equal participants in all aspects of the nation-building project. They are making headway, finding modes of participation and incorporation into areas of Mexican society where the state has been reluctant to admit them.

Reconfigurations of emigrant citizenship also are due, in part, to developments outside the control of either the state or the emigrant population. New transportation and communication technologies allow emigrants to remain actively engaged with events, people, and institutions in their countries of origin, and enhance emigration states' capacity to reach citizens abroad. For example, in 1990 the cost of air transport per mile was less than twenty percent of its level in 1930.¹⁰

BELOW 130, 130–56 (Michael Peter Smith & Luis Eduardo Guarnizo eds., 1998) (tracing shifting relations between emigrant Haitians and Haitian society and governments); José Itzigsohn, *Immigration and the Boundaries of Citizenship: The Institutions of Immigrants' Political Transnationalism*, 34 INT'L MIGRATION REV. 1126, 1132, 1137 (2000) (describing Dominican state as “relatively detached” from its emigrant population until recently and noting that El Salvador had “few institutional contacts” with its emigrants through 1980s).

⁸ The adjective *pocho* literally means too ripe or spoiled. In Mexico it is a derogatory noun that refers to Mexicans in the United States deemed to have assimilated and taken on an attitude of superiority toward Mexico. See Carlos González Gutiérrez, *Fostering Identities: Mexico's Relations with Its Diaspora*, 86 J. AM. HIST. 545, 551 (1999) (noting negative portrayal of Mexican emigrants in most Mexican films as individuals who have lost their Mexican identity while trying to fit into American society).

⁹ [Ed.: See González Gutiérrez, *supra* note 8, at 545–46.]

¹⁰ STALKER, *supra* note 3, at 7. Long-distance travel between emigration states and the countries to which their emigrants move has soared in recent decades. See, e.g., Eva Østergaard-Nielsen, *Turkey and the 'Euro Turks': Overseas Nationals as an Ambiguous Asset*, in INTERNATIONAL MIGRATION AND SENDING COUNTRIES: PERCEPTIONS, POLICIES

Over roughly the same period, “the cost of a three-minute telephone conversation between London and New York fell from [US] \$300 to \$1.”¹¹ Calling cards sold in the United States today offer rates of 8¢ a minute to call India and the Philippines, 6¢ a minute to Jamaica, and as little as 1.7¢ a minute to telephone Mexico. The gross annual sales of the U.S. calling card industry are estimated to be between \$2.1 billion and \$5 billion, with a major market share going to immigrants phoning home.¹² Banks and money wire companies in immigration states fight for a share of the lucrative remittance industry, which in the United States generates about \$2.4 billion in fees each year.¹³ High-speed internet, a relatively recent invention, has compounded the availability and accessibility of instantaneous global communication and exchange.

These advances mean that it has never been cheaper or easier for Mexican emigrants in the United States to call their family and friends in Mexico, return for visits, send children back for periods of Mexican schooling or Spanish language instruction, donate money to political parties and candidates who campaign among emigrant communities, watch Mexican television, and read its daily papers online. But technological progress alone cannot explain the ongoing national reimagining of emigrant citizenship that includes the facts that nonresident Mexicans hold political office in Mexico at national and local levels; that Mexicans who naturalize abroad now may retain their

AND TRANSNATIONAL RELATIONS 77, 81 (Eva Østergaard-Nielsen ed., 2003) [hereinafter INTERNATIONAL MIGRATION AND SENDING COUNTRIES] (noting that approximately eighty planes per day leave Germany—home to almost 3 million Turkish citizens—for Turkish airports and that “the number of persons traveling to Turkey by plane every year rose from less than half a million in 1980 to 4.3 million in 2000” (citing German Fed. Dep’t of Statistics from 1980, 1987, 2001)).

¹¹ STALKER, *supra* note 3, at 7.

¹² See Vic Kolenc, *Annual Phone Card Sales Reach into Billions*, EL PASO TIMES, July 18, 2000; see also Jennifer Files, *Telephone Companies Court Hispanic Customers in U.S.: Demographics Show Good Fit with Industry Goals*, DALLAS MORNING NEWS, Oct. 5, 1997, at H1 (describing industry marketing designed to appeal to Hispanic callers, and quoting Honduran immigrant as saying “[i]f you don’t have contact with your family, *vives mal*—you live poorly. . . . ‘Talking on the phone . . . the world feels closer’”).

¹³ Susan Sachs, *Immigrants Facing Strict New Controls on Cash Sent Home*, N.Y. TIMES, Nov. 12, 2002, at B1; see also Tim Weiner, *Bank Calls Purchase Way to Woo Hispanics*, N.Y. TIMES, Dec. 12, 2002, at W1 (announcing Bank of America’s \$1.6 billion purchase of 24.9% of Mexico’s most profitable bank with expectation of winning larger share of \$1 billion in fees charged to immigrants remitting money to Mexico). The growth of U.S.-based company Western Union, with an annual revenue of about \$2 billion, is at the center of the thriving international money transfer business. As of 2002, it allowed customers to wire money to any of its 151,000 affiliated offices, of which 95,000 were outside North America. In 1996, it had just 35,000 agent offices, of which 10,000 were outside North America. Devesh Kapur & John McHale, *Migration’s New Payoff*, 139 FOREIGN POL’Y 48, 51–52 (2003).

Mexican nationality; and that emigrants have won the right to vote in Mexican elections from abroad (although the final stage of that struggle—the implementation of absentee voting provisions—remains incomplete).¹⁴ These developments in Mexico reflect a broader international trend toward rethinking citizenship. And as Mexico and its emigrant population negotiate the terms, the pace, and the degree of emigrant (re)incorporation into Mexican society, the very nature of Mexican citizenship is being revised profoundly.

Mexico is not alone in grappling with the effects of international migration on conceptions of national community and citizenship therein. Public debate over the terms of national membership has everywhere intensified as migration flows have become “more global in scope and more complex and diverse in character,”¹⁵ taking people from where they formally belong and leaving them where they do not. Migration decouples citizenship and residence, disrupting tidy conceptions of nation-states as bounded territorial entities with fixed populations of citizens. Today states are constituted increasingly by large numbers of resident noncitizens as well as nonresident, or external citizens—those who reside elsewhere.¹⁶ Migration also extends states’ jurisdiction, albeit in a constrained manner, into the territory of

¹⁴ See *infra* Part II.B.

¹⁵ THE CAMBRIDGE SURVEY OF WORLD MIGRATION 3 (Robin Cohen ed., 1995). This Article does not try to explain why people migrate or whether migration facilitates or hinders economic development. These are intensely debated, unresolved issues. Many different factors have been suggested as causes of migration. See generally INTERNATIONAL MIGRATION INTO THE 21ST CENTURY: ESSAYS IN HONOUR OF REGINALD APPEYARD (M.A.B. Siddique ed., 2001) (discussing various issues relevant to migration in first decade of twenty-first century); INTERNATIONAL MIGRATION SYSTEMS: A GLOBAL APPROACH (Mary M. Kritz et al. eds., 1992) (advocating a systems approach to understanding international migration); WORLDS IN MOTION: UNDERSTANDING INTERNATIONAL MIGRATION AT THE END OF THE MILLENNIUM (Douglas S. Massey et al. eds., 1998) (tracing international migration to social, economic, and political displacements accompanying penetration of capitalist markets into nonmarket or pre-market societies). Other scholars have focused on the link between migration and development. See generally Arjan de Haan, *Livelihoods and Poverty: The Role of Migration—A Critical Review of the Migration Literature*, 36 J. DEV. STUD. 1, 30 (1999) (arguing that migration should be seen as “integral part of societies rather than a sign of rupture” and as “essential element in people’s livelihoods”); Ninna Nyberg-Sørensen et al., *The Migration-Development Nexus: Evidence and Policy Options State-of-the-Art Overview*, 40 INT’L MIGRATION 3, 4 (2002) (synthesizing “current knowledge of migration-development dynamics, including . . . intended and unintended consequences of development and humanitarian policy interventions”). The starting point, however, is that people do emigrate from poor countries to richer countries, often in the hope of making a better life for themselves and their families, and that such migration is seen by the emigration state as an opportunity for national economic gain.

¹⁶ In 2000, about 175 million people, or roughly three percent of the world’s population, lived outside their country of birth or of citizenship. INT’L LABOUR OFFICE, *supra* note 3, at 13. The phrase “external citizens” comes from Bauböck. See Bauböck, *supra* note 7, at 712–13 (discussing rights and obligations of external citizenship).

whatever foreign sovereign their citizens enter; citizens residing outside their states of citizenship are thus simultaneously subject to, and sometimes protected by, the laws of multiple overlapping sovereigns.¹⁷ Citizenship—so long a symbol of rootedness, exclusivity, and permanence—has been discovered to be portable, exchangeable, and increasingly multiple. This development requires correspondingly new analyses.

Contemporary flows of international migration and their implications for citizenship have spawned a wealth of scholarship across social science disciplines. In particular, a lively discourse has developed in recent decades in response to the “immigration challenge” in developed industrialized states.¹⁸ The core tensions of the discourse surround admission and membership, that is, which non-citizens immigration states should admit to their territories, and under what conditions, and ultimately which immigrants should be eligible for full formal membership and embraced as citizens. Debates over the contours of various normative and political conceptions of citizenship and their relation to “immigration, social cohesion, welfare reform, multiculturalism, nationalism and political participation, to name a few,”¹⁹ are complex and continue to engage scholars and policy makers alike.²⁰

Although a robust scholarly discourse surrounds immigration, very little attention has been paid to citizenship in relation to emigration. Perhaps most remarkably, scholarly treatments of immigration and citizenship tend to ignore the fact that immigrants are simultaneously emigrants. Emigrants are “legal anomalies,” having left one country where they were entitled to exercise the full range of rights and duties of citizens, but not yet (and maybe never to be) admitted to

¹⁷ See *infra* Part I.A.1.

¹⁸ By the ILO's measure, between 1970 and 1990 the number of countries that qualified as major receivers of immigrants increased from thirty-nine to sixty-seven. See STALKER, *supra* note 3, at 7. About fifteen states are now classified as both major senders and receivers of migrants. *Id.*

¹⁹ Will Kymlicka, endorsing CITIZENSHIP TODAY: GLOBAL PERSPECTIVES AND PRACTICES 1 (T. Alexander Aleinikoff & Douglas Klusmeyer eds., 2001) [hereinafter CITIZENSHIP TODAY], on back cover.

²⁰ It has become fairly standard for authors to begin their studies by noting the growing “mass of . . . academic literature on citizenship.” See, e.g., Linda Bosniak, *Multiple Nationality and the Postnational Transformation of Citizenship*, in RIGHTS AND DUTIES OF DUAL NATIONALS: EVOLUTION AND PROSPECTS 27, 27 (David A. Martin & Kay Hailbronner eds., 2003) [hereinafter RIGHTS AND DUTIES OF DUAL NATIONALS] (referring to “the vast scholarly literature on citizenship to emerge in the past decade”); Douglas Klusmeyer, *Introduction to CITIZENSHIP TODAY*, *supra* note 19, at 1 (noting “sheer mass of the academic literature on citizenship”); Peter J. Spiro, *Dual Nationality and the Meaning of Citizenship*, 46 EMORY L.J. 1411, 1413 & nn.4–5 (1997) (citing recent works by policymakers and scholars on citizenship and naturalization).

membership in another. Yet in the immigration-focused accounts, immigrants' pre-existing citizenship matters only insofar as it marks them as "other" (or, in the colorful language of U.S. immigration law, "alien").²¹ This narrow focus has obscured what are among the most vital (and volatile) aspects of the present citizenship debate. A new model of citizenship is called for—one that takes the complexity and significance of emigrant citizenship into account.

There is a qualitative difference between the nature and meaning of citizenship in emigration and immigration states. Where, as in Mexico, emigration is an embedded feature of a country's economic, political, and social landscape, citizenship necessarily will take on a different aspect than it has in developed immigration states preoccupied with whom to admit to membership and its privileges. The citizenship discourse will remain incomplete until it analyzes emigrant citizenship as a tool of nation-building and identity construction in emigration states.

This Article considers citizenship from an emigration perspective by attempting to isolate citizenship dynamics that are specific to contemporary emigration states and their citizens. It argues that the way in which citizenship is being reconfigured in some emigration states has gone unrecognized in the existing immigration-oriented literature. Moreover, external citizenship does not fit within current citizenship discourse; it requires a broadened citizenship conception.

Part I contextualizes citizenship by looking at its role within states and between states. It outlines the two dimensions of citizenship at issue in this Article: citizenship as legal status, and citizenship as practical engagement between individual, the state, and civil society. Its central point is that the law and practice of citizenship—both within a state and extraterritorially—are inextricably intertwined and mutually constitutive.²² Part II describes trends in the economic,

²¹ The catch-all category of noncitizen erases citizenship distinctions among immigrants. Within the immigration frame, the specific country emigrants have come from loses its salience, except as the place to which they would be returned, should they fall afoul of certain immigration state rules. Cf. Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1736 (1993) (discussing exclusionary authority of American racial categories where "whiteness has been characterized, not by an inherent unifying characteristic, but by the exclusion of others deemed to be 'not white'").

²² [Ed.: In fact, Part I is further divided into two sections. The first section introduces the concepts of citizenship as legal status and citizenship as practice, discusses the interrelationship between the two concepts, and then elaborates upon each concept in turn. The second section focuses upon citizenship in relation to emigrants ("external citizenship"), with separate sub-sections devoted to external citizenship as legal status and external citizenship as practice. A further distinction is drawn in the latter subsection between external citizenship as practiced by emigrant states and as practiced by emigrant citizens.]

legal, and political relations between emigrants and emigration states and seeks to identify their most salient implications for citizenship constructs in emigration states. The Part argues that the terms of citizenship in emigration states are being reevaluated through the negotiation of extraterritorial claims that emigration states and their emigrant citizens make on one another. At the same time, the very nature of citizenship itself in emigration states is being reconstructed. The Conclusion reflects on some of the implications of recent developments in external citizenship for both immigration and emigration states and for emigrant citizens themselves.

I

CONTEXT: CITIZENSHIP AND EMIGRATION

A. *The Nature of Citizenship*

Throughout this Article, citizenship has one of two meanings. The first, concerned with the state-ascribed legal status of being a given nation's citizen, is narrow and has both international and domestic significance. The other, concerned with issues of group and individual identity and engagement, is broad and centers on citizens' participation in national life.²³ Citizenship's content and its role as determinant of behavior and source of identity cannot be understood by considering only the black letter of the law for attributing membership. To be sure, citizenship law is the necessary starting point. It tells us who the state considers a full member, how that membership is transmitted inter-generationally, and how it can be lost, gained, and reclaimed. It signals which individuals are members of which polity and entitled to certain protections and to claim certain rights therein. But legal citizenship generally does not tell us what those rights are or how citizens are expected to participate in the polity *as citizens*. Nor does it indicate how citizenship is sustained as a source of communal "identification and solidarity."²⁴ Legal citizenship is "formal and official," but its "formalization and codification are themselves social

²³ Citizenship is a notoriously difficult concept to define: "No single definition can adequately capture the complex, multidimensional character of citizenship as a general legal status, unitary institution, or fixed, delimited sets of practices. The forms and meanings of citizenship vary broadly" Klusmeyer, *supra* note 20, at 9. In an especially lucid analysis of current citizenship discourse, Linda Bosniak finds four distinct understandings of citizenship: "as legal status," "as rights," "as political activity," and "as a form of collective identity and sentiment." Linda Bosniak, *Citizenship Denationalized*, 7 IND. J. GLOBAL LEGAL STUD. 447, 450, 455 (2000) (recognizing that "the meaning of citizenship has been, and remains, highly contested among scholars").

²⁴ Bosniak, *supra* note 23, at 479.

phenomena, with sociologically interesting effects.”²⁵ These “effects” are played out in the practice of citizenship. In order to understand a particular society’s conception of citizenship as a multi-purpose, multi-level institution, one has to look at citizenship law in conjunction with active citizenship, that is, at the actual points of engagement between citizens and the state.

Legal citizenship grounds participatory citizenship. Legal citizenship is not central to participation in all cases; immigrants and resident citizens often can engage in similar ways with the society in which both groups live. Be that as it may, emigrants are not similarly situated vis-à-vis their home state. Immigrants’ physical presence in a host state informs their interaction with its society, whereas emigrants’ legal citizenship is in a sense a substitute for physical presence in the home state, and grounds emigrants’ ability and even need to engage with it from afar. Participation can be institutionalized by the state of origin, or might not involve the state at all, but it is rooted in legal belonging to the state. Legal membership frames the very nature of the participation in many instances, informing the content and style of claims that states and emigrant citizens make on each other.

1. Citizenship as Legal Status

Sovereign states determine their citizenship rules; indeed, such determinations are a hallmark of state sovereignty.²⁶ This link between sovereignty and citizenship determinations gives citizenship its dual significance—one domestic, the other international. In the international sphere, citizenship assigns individuals to particular states which lay claim to their citizens in order “to distinguish and delimit them from those who are not their nationals, who as a rule are nationals of other States.”²⁷ It also provides the basis for two important protective functions under international law. First, only citizens have a right to return to their country of citizenship and to reside

²⁵ ROGERS BRUBAKER, *CITIZENSHIP AND NATIONHOOD IN FRANCE AND GERMANY* 22 (1992).

²⁶ See P. WEIS, *NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW* 250 (1956) (“[T]he existence of a ‘people’ in the sense of the sum-total of persons linked to the State by the bond of nationality is one of the essential requisites of statehood . . .”). But see T. Alexander Aleinikoff & Douglas Klusmeyer, *Plural Nationality: Facing the Future in a Migratory World*, in *CITIZENSHIP TODAY*, *supra* note 19, at 63, 64–65 (noting that “emerging international legal norms have somewhat qualified [the] authority” of states to determine their own citizenship policies, although even so, “states have wide latitude in setting their rules for its acquisition and loss [of citizenship]” as international legal restrictions “remain decidedly modest”).

²⁷ WEIS, *supra* note 26, at xiii.

there indefinitely.²⁸ Second, citizens outside the territory of their state of citizenship can under certain circumstances call on their state to protectively intervene on their behalf with the territorial sovereign.²⁹ Such intervention is not a *right* of the citizen abroad, but rather is a prerogative of that citizen's state.³⁰

Within the state, too, citizenship plays a multi-faceted role. States may make affirmative citizenship designations, thereby laying claim to the allegiances of select individuals. States likewise can strip individuals of their citizenship status.³¹ Citizenship marks its holder as a member of an intergenerational polity, formally equal in terms of rights and duties to all other members. States ascribe the status of citizenship at birth and set forth the conditions for allowing certain citizens born to another polity to join their own.³² The legal term for formally acceding to membership in a state other than that ascribed at birth, "naturalization," reflects the belief that tying individuals to particular states is normatively desirable. Until recently, naturalization in most countries has assumed complete assimilation into the new state and complete separation from one's origin.

Citizenship is therefore "both a legal quality of the individual holding it and the basis of the large number of rules applied to the same individual."³³ The content of those rules varies substantially according to "specific state interests that result from a particular con-

²⁸ See Universal Declaration of Human Rights, G.A. Res. 217, at 74, U.N. GAOR, 3d Sess., 183d plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948) (recognizing that "[e]veryone has the right to leave any country, including his own, and to return to his or her country").

²⁹ The state is no longer the only protector of an individual's rights. International human rights laws and bilateral and multilateral treaties and conventions provide mechanisms for individuals, regardless of citizenship, to seek protection from international bodies for violations of proscribed rights. In many cases, however, the protective action of one's own state of citizenship "may be the only effective instrument to enforce an individual's human rights." Kay Hailbronner, *Rights and Duties of Dual Nationals: Changing Concepts and Attitudes*, in *RIGHTS AND DUTIES OF DUAL NATIONALS*, *supra* note 20, at 19, 20.

³⁰ In this theoretical construct, the state has been injured via the alleged harm to its citizen and is asserting its own right by protecting its citizens.

³¹ See HURST HANNUM, *THE RIGHT TO LEAVE AND RETURN IN INTERNATIONAL LAW AND PRACTICE* 4 (1987) ("Historically, both expulsion and retention of peoples have been utilized according to the political and economic dictates of the moment . . .").

³² Citizenship is ascribed at birth by states applying either the principle of *jus soli* (according citizenship to those born on the sovereign's territory) or *jus sanguinis* (according citizenship to an individual descended from a parent with that nationality) or both. Those not ascribed a particular citizenship at birth may be eligible to acquire it later through naturalization.

³³ Géraud de la Pradelle, *Dual Nationality and the French Citizenship Tradition*, in *DUAL NATIONALITY, SOCIAL RIGHTS AND FEDERAL CITIZENSHIP IN THE US AND EUROPE: THE REINVENTION OF CITIZENSHIP* 191, 202 (Randall Hansen & Patrick Weil eds., 2002) [hereinafter *REINVENTION OF CITIZENSHIP*].

cept of nationhood or position in the international system”³⁴ Notwithstanding predictions of the nation-state’s imminent demise and its alleged reduced relevance for the protection of basic rights,³⁵ state membership continues to be central to the allocation, withholding, exercise, and enforcement of individual rights and duties.³⁶ At a minimum, citizenship is supposed to afford some opportunity to participate in the governance of one’s state. International human rights law formally and minimally protects individuals regardless of citizenship, but most political and economic rights depend on state citizenship for their exercise.³⁷

2. *Citizenship as Practiced Identity*

At one level, citizenship serves an administrative sorting function by separating us from them and attaching various rights and duties to each category. In sorting us from them, citizenship constructs “the polity that defines the nation,”³⁸ and affiliates citizens with a designated political community. Like any membership designation, citizenship has a constitutive role in identity and long has been presumed to be central to an individual’s understanding of herself as part of a larger group defined by a shared history, genealogy, territory, or political-ideological vision. Citizenship codifies and institutionalizes identity, anchoring it in law. The very foundation of the way people think about themselves and the country to which they are assigned is in large part legally defined.

³⁴ RAINER BAUBÖCK, *TRANSNATIONAL CITIZENSHIP: MEMBERSHIP AND RIGHTS IN INTERNATIONAL MIGRATION* 127 (1994).

³⁵ See, e.g., DAVID JACOBSON, *RIGHTS ACROSS BORDERS: IMMIGRATION AND THE DECLINE OF CITIZENSHIP* 135–37 (1996) (discussing “the gradual stripping of the state as the actor in international relations”); YASEMIN NUHOGLU SOYSAL, *LIMITS OF CITIZENSHIP: MIGRANTS AND POSTNATIONAL MEMBERSHIP IN EUROPE* 164 (1994) (arguing that source of many fundamental rights is international human rights law which protects individuals on basis of personhood rather than being derived from one’s legal membership in particular state).

³⁶ See JACOBSON, *supra* note 35, at 112 (“The *state itself* . . . is the critical mechanism in advancing human rights.”).

³⁷ Hence the strong international norm against statelessness, that is, against not having a citizenship. The international legal order requires the territorial allocation of persons according to membership in states, and international legal norms proclaim the right of everyone to a nationality. See Universal Declaration of Human Rights, G.A. Res. 217, at 74, U.N. GAOR, 3d Sess., 183d plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948) (asserting that everyone has both right to his nationality and right to change his nationality); Convention on the Reduction of Statelessness, art. 10, Aug. 30, 1961, 989 U.N.T.S. 175, 179.

³⁸ Gertrude Himmelfarb, *The Illusions of Cosmopolitanism*, in *FOR LOVE OF COUNTRY: DEBATING THE LIMITS OF PATRIOTISM* 72, 74 (Joshua Cohen ed., 1996).

Through the designation of individuals as citizens, the state seeks to create "a stably coherent population"³⁹ with a shared political allegiance and sense of "solidarity, symbolic identification, and community."⁴⁰ The coherence of the citizenry is expected to flow largely from co-residence in a bounded geographic territory, anchoring conceptualizations of citizenship firmly to residence in a territorial state.⁴¹ Citizenship is assumed to entail "membership of the community in which one lives one's life."⁴² In emigration states, cohesion between citizens is made vulnerable by the steady departure of citizens for periods of residence, or even permanent settlement, in other states. Certainly, where the emigration experience is "an expected ingredient of the life-course" of many citizens,⁴³ emigration itself can be a defining feature of the citizenship experience. Its more dramatic impact on the national community, however, is its scattering and separating among several states, of people who legally belong to the same bounded territorial country.

Still, those emigrant citizens may practice citizenship; that is, they may "participat[e] in public life (which is broader than political life),"⁴⁴ in their states of citizenship, where "public life" includes both

³⁹ DEREK HEATER, WHAT IS CITIZENSHIP? 174 (1999).

⁴⁰ Peter H. Schuck, *Membership in the Liberal Polity: The Devaluation of American Citizenship*, in IMMIGRATION AND THE POLITICS OF CITIZENSHIP IN EUROPE AND NORTH AMERICA 51, 65 (William Rogers Brubaker ed., 1989).

⁴¹ In most countries that employ the principle of *jus sanguinis*, which attributes the citizenship of a parent or grandparent to direct descendants (and so is not based on birth which presumes residence in the territorial state), the right to claim that citizenship expires within one or two generations of nonresidence. Following the constitutional amendment of 1996, for example, children born outside Mexico to Mexican citizens will be Mexican nationals at birth, but their children will not. MEX. CONST. art. 30. See *infra* notes 129–37 and accompanying text.

⁴² David Held, *Between State and Civil Society: Citizenship*, in CITIZENSHIP 19, 20 (Geoff Andrews ed., 1991).

⁴³ Gunilla Bjerén, *Gender and Reproduction*, in INTERNATIONAL MIGRATION, IMMOBILITY AND DEVELOPMENT: MULTIDISCIPLINARY PERSPECTIVES 219, 246 (Tomas Hammar et al. eds., 1997). In Mexico, for example, a recent survey asked adults, "Are you thinking about emigrating to the United States?" Nineteen percent of adult respondents, representing 13.5 million people, answered "yes." PEW HISPANIC CTR., REMITTANCE SENDERS AND RECEIVERS: TRACKING THE TRANSNATIONAL CHANNELS 4 (2003) (citing 2003 joint studies by Pew Hispanic Center and Multilateral Investment Fund). Where emigration is concentrated at the regional or local level, it is frequently the case that most families in an area have at least one member living abroad at any given time. For an excellent study of daily life in a village in the Dominican Republic, where two-thirds of village families have relatives in the Boston metropolitan area, see generally PEGGY LEVITT, THE TRANSNATIONAL VILLAGERS (2001).

⁴⁴ Bart van Steenberghe, *Introduction to THE CONDITION OF CITIZENSHIP* 1, 2 (Bart van Steenberghe ed., 1994).

civil society and those spheres traditionally understood as private.⁴⁵ In this context, citizenship is a guarantee, a promise of indefinite permission to return to and remain in a defined territorial space.⁴⁶ The import of that security for emigrants (and its concomitant insecurity for even those emigrants who are long-term non-citizen residents of immigration states) should not be underestimated. Only where residence is legally secure can individuals “plan their lives accordingly.”⁴⁷ Citizenship is a marker of where one formally belongs. One could think of this as primarily a personal contextual bond, an indicator of lineage, heritage, and “network of relationships,”⁴⁸ rooted in a geographic space that is simultaneously a “membership organization.”⁴⁹

Citizenship is embedded in, as well as constitutive of, community, and its legitimacy depends on that community's approval. Any state-promoted notion that emigrants are really just citizens abroad, as opposed to, for example, traitors who have abandoned the motherland, can take root only if the citizenry itself—resident citizens and nonresident citizens alike—accepts that view. Because “the ability to exercise one's *de jure* citizenship rights depends in part on being recognised as a citizen in daily life by other members of society,”⁵⁰ it is essential to explore whether and how the practices of emigrant citizens feature in the daily lives of their resident co-citizens. The integ-

⁴⁵ This concept is best developed in the domestic context in the political theory literature on civil society. While there is no agreement on the “precise parameters and nature of the sphere of civil society,” see Bosniak, *supra* note 23, at 476 n.119, its proponents generally seek to expand understandings of citizenship practices beyond “formal interactions between citizens and the state.” *Id.* at 476 (quoting Kathleen B. Jones, *Citizenship in a Woman-Friendly Polity*, in *THE CITIZENSHIP DEBATES: A READER* 221, 233 (Gershon Shafir ed., 1998)).

⁴⁶ A few states do not grant citizens an automatic right of repatriation. Cuba, for example, requires emigrant citizens who have not “engaged in so-called hostile actions against the Government and who [are] not subject to criminal proceedings in their countries of residence,” to apply at Cuban consulates for renewable, two-year, multiple-entry travel authorizations. BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (CUBA) § 2d (2003), available at <http://www.state.gov/g/drl/rls/hrrpt/2003/27893.htm>. “However, in 1999, the Government announced that it would deny entry permits for emigrants who had left the country illegally after September 1994.” *Id.*

⁴⁷ BRUBAKER, *supra* note 25, at 24.

⁴⁸ Karen Knop, *Relational Nationality: On Gender and Nationality in International Law*, in *CITIZENSHIP TODAY*, *supra* note 19, at 89, 93–95 (arguing for “relational” perspective on citizenship that recognizes that persons' identities are defined through their closest relationships with others, and criticizing traditional understandings of citizenship for being overly individualistic and atomistic and “abstracted from . . . social contexts”).

⁴⁹ BRUBAKER, *supra* note 25, at 21.

⁵⁰ Joe Painter, *Multi-level Citizenship, Identity and Regions in Contemporary Europe*, in *TRANSNATIONAL DEMOCRACY: POLITICAL SPACES AND BORDER CROSSINGS* 93, 95 (James Anderson ed., 2002) (citing Eleonore Kofman, *Citizenship for Some, but Not for Others: Spaces of Citizenship in Contemporary Europe*, 14 *POL. GEOGRAPHY* 121 (1995)).

rity of emigrant citizenship is at stake as “[t]hose whose faces do not fit with the majority collective perception of the ‘imagined community’ may find that they are excluded *de facto* from full participation in social life.”⁵¹

B. *The Deployment of ‘External’ Citizenship*

External citizenship is 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.

The cohesive force of citizenship in emigration states is strained by processes that have compressed time and space, enabling the rapid international movement of individuals and information.⁵² Although migratory flows are not random,⁵³ the penetration of transport and communication networks means that the international movement of people is increasingly multidirectional.⁵⁴ This ever-broader dispersal of people taxes resource-strapped emigration states’ abilities to locate and lay claim to citizens abroad.

But the same technological forces that may weaken the bonds between emigrant citizen and emigration state society also can serve to reinvigorate them. High-speed modes of globalized communication and transportation have minimized some of the effects of the emigrants’ physical absence. In an age of electronic mail, wire transfer services, satellite television, the World Wide Web, and rela-

⁵¹ *Id.*

⁵² The concept of time-space compression was proposed by geographer David Harvey, to describe “processes that so revolutionize the objective qualities of space and time that we are forced to alter, sometimes in quite radical ways, how we represent the world to ourselves.” DAVID HARVEY, *THE CONDITION OF POSTMODERNITY: AN ENQUIRY INTO THE ORIGINS OF CULTURAL CHANGE* 240 (1989). Harvey posits that many transportation and communication technologies have had the effect of shrinking space, largely through increases in the speed of sending material goods, information, and people. As distance has been overcome, time too becomes compressed by increasing speeds of production and consumption. *Id.* at 240, 284–85.

⁵³ See SASKIA SASSEN, *GUESTS AND ALIENS* 133, 155 (1999) (noting that international migration has historically been patterned, systemic, and limited, “bounded in space, time, and scale”).

⁵⁴ See, e.g., NIKOS PAPASTERGIADIS, *THE TURBULENCE OF MIGRATION: GLOBALIZATION, DETERRITORIALIZATION AND HYBRIDITY* 7 (2000) (arguing that current migration patterns represent “fluid but structured movement, with multidirectional and reversible trajectories”).

tively affordable, accessible air travel, emigrants can be present in their home states, in absentia. Using the same technology, even poor states have a greater opportunity to reach out and claim emigrants as citizens abroad, to reassure them that, although gone, they are not forgotten but remain members of a unique community.

1. *External Citizenship as Legal Status*

Emigration states “have routinely exercised the right to preserve membership links with their departed nationals [and their descendants] long after they have become the permanent residents, if not citizens, of other states;”⁵⁵ yet actual preservation of ties is not a straightforward matter. The principles of territoriality and sovereignty frame state-emigrant engagement, limiting the power states have over citizens outside their boundaries and vice versa. Sovereign states exercise territorial jurisdiction over citizens and noncitizens alike within their borders. In Weber’s well-known construction, the essence of statehood is the coercive, corporate apparatus controlled by the government within a certain area: a state is “a human community that (successfully) claims the *monopoly of the legitimate use of physical force* within a given territory.”⁵⁶

The territorial aspect of a state’s reach ends at its physical borders. States retain personal jurisdiction over their citizens abroad, but without simultaneous territorial jurisdiction, states’ enforcement powers are greatly diminished. Where a state can threaten with arrest and imprisonment resident citizens who, for example, fail to pay taxes, a state has limited recourse against nonresident citizens for similar failings. Procedures for enforcing domestic law internationally are cumbersome and costly. For the most part, states that want to affect emigrant behavior are forced to rely on the voluntary cooperation of the immigration states or of the nonresident citizens, or to wait until the emigrants’ return to the home state territory. There are limits then, to what a state may do to reach its citizens in another state, to control them from afar, or to influence their extraterritorial behavior, notwithstanding the state of citizenship’s continued personal jurisdiction.

Emigrants too are limited in what they can demand from their states of citizenship while abroad. As legal citizens of the emigration state, emigrants fall under that state’s protective jurisdiction. Regardless of emigrants’ degree of affection for or involvement with the emi-

⁵⁵ Klusmeyer, *supra* note 20, at 3.

⁵⁶ Max Weber, *Politics as a Vocation*, in FROM MAX WEBER: ESSAYS IN SOCIOLOGY 77, 78 (H.H. Gerth & C. Wright Mills trans. and eds., 1946).

gration state, that state might choose to intervene protectively should its citizens face harm while abroad. Consulates and embassies provide their nationals with a limited menu of services, including practical assistance and some legal protections.

2. *External Citizenship as Practiced Identity*

a. External Citizenship as Practiced by Emigration States

The motivations for emigration states to develop, maintain, expand, or institutionalize relations with emigrants are complex and often conflicting. Given the current disparities in economic development between North and South, however, it seems clear that emigration states' interest in their emigrant nationals is driven primarily by economic considerations.⁵⁷ Emigrants' earning power generally increases significantly following emigration, thereby increasing their value to the home state.⁵⁸ Developing countries are engaged in economic state-building and seek to (re)incorporate emigrants into that project by extracting resources from them.⁵⁹ Specifically, emigration states are increasingly dependent on, and solicitous of, economic contributions from emigrants in the form of remittances and capital inflows. Although only a tiny percentage of these inflows is contrib-

⁵⁷ But see Rachel Sherman, *From State Introversion to State Extension in Mexico: Modes of Emigrant Incorporation, 1900–1997*, 28 *THEORY & SOC'Y* 835, 866–67 (1999) (arguing that, in case of Mexico, while “[m]aintaining the influx of remittances is undoubtedly one objective . . . more complex elements of a long-term [political and economic] integrationist strategy” explain state’s interest in its emigrants).

⁵⁸ The World Bank calculates that the gap between average incomes in the richest and poorest countries was about 11:1 in 1870, 38:1 in 1960, and 52:1 in 1985. WORLD BANK, *WORLD DEVELOPMENT REPORT 1995: WORKERS IN AN INTEGRATING WORLD* 9 (1995). In 1995, hourly labor costs in manufacturing stood, in U.S. dollars, at \$0.25 in India and China, \$0.46 in Thailand, \$0.60 in Russia, \$1.70 in Hungary, and \$2.09 in Poland against \$13.77 in the United Kingdom, \$14.40 in Australia, \$16.03 in Canada, \$17.20 in the United States, \$19.34 in France, \$23.66 in Japan and \$31.88 in Germany. STALKER, *supra* note 3, at 23. For so-called “high-skilled” workers, the gains are also significant. See, e.g., Celia W. Dugger, *An Exodus of African Nurses Puts Infants and the Ill in Peril*, N.Y. TIMES, July 12, 2004, at A1 (reporting that nurse in Malawi who earns \$1900 annually and less than \$0.20 per hour of overtime can earn starting salary of \$31,000 annually with National Health Service in Britain, and \$21 for each hour of overtime).

⁵⁹ State-building continues to have resonance in emigration states even if it is no longer a fashionable or explicit project of immigration states. See HOBBSBAWM, *supra* note 6, at 191 (arguing that although “[i]t is not implausible to present the history of the Eurocentric nineteenth-century world” through lens of “nation-building,” that perspective is not appropriate for late twentieth and early twenty-first centuries). As all modern emigration states are economically underdeveloped compared to immigration states, state-building is a concrete economic project. Because most emigration states are former colonies or at least on the periphery of global affairs, state-building is also a political project, focused on claiming and confirming a sovereign national identity. I would argue, however, that in most if not all emigration states, the political agenda is secondary to the economic.

uted directly to the government in the form of taxes or investments in government projects or financial instruments, all of the inflows have significant value for the emigration state.

The primary source of such inflows is the remittance: a "transfer[] in cash or in kind from migrants to resident households in the countries of origin."⁶⁰ These transfers "represent an inflow of foreign resources for which the economy does not have to part with any domestic resources except for the labour which has already migrated."⁶¹ Long ignored by international economists as insignificant, remittances have "emerged as the latest cause célèbre among governments, foundations, and multilateral institutions,"⁶² although their relationship to economic development remains hotly debated.⁶³

Developing countries have been the major beneficiaries; their remittance intake has soared from \$17.7 billion in 1980 to \$30.6 billion in 1990, to nearly \$80 billion in 2002.⁶⁴ In 2002, remittances to emigra-

⁶⁰ *Remittance Data*, MIGRATION INFORMATION SOURCE (Migration Policy Institute, Washington, D.C.), June 2003, www.migrationinformation.org/feature/display.cfm?ID=137. The International Monetary Fund (IMF) defines remittances as the current transfers by migrants who are employed for a year or more in another economy where they are residents. INT'L MONETARY FUND, *BALANCE OF PAYMENTS MANUAL* 75 (5th ed. 1993).

⁶¹ DEEPAK NAYYAR, *MIGRATION, REMITTANCES AND CAPITAL FLOWS: THE INDIAN EXPERIENCE* 10 (1994).

⁶² Kapur & McHale, *supra* note 13, at 49. Kapur and McHale attribute the growth of remittances to a steady increase in South-North migration, "relaxed exchange controls on the purchase and sale of foreign currencies," and "a burgeoning infrastructure that has helped ease the movement of money across borders." *Id.* at 51. They commend remittances as "stable" and not subject to "whims" and "onerous conditions" of foreign donors or "the herd behavior of private investors." *Id.* at 50. The authors' tone, however, is over-celebratory. Emigration states risk overdependence on remittances and are especially vulnerable to mass expulsion of migrant workers or other sudden changes in immigration state policy. For example, during the first Gulf War, 2 million of the 2.8 million migrant workers and their families in Iraq and Kuwait fled or were forced from the area. *The 'Spoils' of War: Damaged Economies . . . Devastated Ecologies*, U.N. CHRON., June 1991, at 18. In addition to the cost of repatriating these workers, the governments of Bangladesh, India, Pakistan, the Philippines, Sri Lanka, and Thailand lost nearly \$1.5 billion in remittances from citizens residing in the Persian Gulf. *Id.*

⁶³ Some argue that remittances can contribute to national development. See generally J. Edward Taylor et al., *International Migration and National Development*, 62 POPULATION INDEX 181 (1996) (describing theoretical and empirical effects of remittances on economic development). Yet some studies have concluded that migration distorts economic development. See, e.g., Charles B. Keely & Bao Nga Tran, *Remittances from Labor Migration: Evaluations, Performance and Implications*, 23 INT'L MIGRATION REV. 500, 502-03 (1989) (surveying negative critiques of remittances). Still others have determined that remittances do little to alter fundamental economic weaknesses of emigration states. See, e.g., COMM'N FOR THE STUDY OF INT'L MIGRATION & COOP. ECON. DEV., UNAUTHORIZED MIGRATION: AN ECONOMIC DEVELOPMENT RESPONSE (1990) (indicating that remittances likely do not contribute to economic development, but have potential to do so).

⁶⁴ Kapur & McHale, *supra* note 13, at 49; see also INT'L LABOUR OFFICE, *supra* note 3, at 23-25 (noting that remittances are largest source of external funding for developing

tion states in Latin America and the Caribbean totaled \$32 billion—over 20 times the amount of U.S. foreign aid sent to the region.⁶⁵ These totals are amassed by large numbers of emigrants sending relatively small amounts of money to their families.⁶⁶ Remittances play several roles in emigration state economies: They are used to meet the consumption needs of individual families;⁶⁷ they have multiplier effects within an economy;⁶⁸ they raise the level of national savings and provide a steady source of foreign exchange which in turn finances large trade deficits and services external debts;⁶⁹ and they are even being used as future hard-currency receivables to securitize emigration states' international loans.⁷⁰ In short, emigrant remittances—

countries after foreign direct investment, and tend to be more reliable than flows of foreign capital).

⁶⁵ Kapur & McHale, *supra* note 13, at 50. Several emigration states are more dependent on remittances than on aid. See Peter Gammeltoft, *Remittances and other Financial Flows to Developing Countries* 3 (Ctr. for Dev. Research, Working Paper 02.11, 2002), available at http://www.cdr.dk/working_papers/wp-02-11.pdf (listing ratios of remittances to development aid for several countries). "[T]he relations between the two forms of inflows are 39:1 in Turkey; 34:1 in Mexico; . . . 15:1 in Jamaica; 8:1 in the Philippines; . . . and 4:1 in Lesotho." *Id.*

⁶⁶ About 42% of adult, foreign-born Latinos in the United States regularly send remittances to family members in their state of citizenship. PEW HISPANIC CTR., *supra* note 43, at 3. Two-thirds of all remittance senders send money at least once a month. *Id.* at 7. And 56% of remitters send between \$100 and \$300 at a time. *Id.* It is estimated that the average undocumented Mexican worker in the United States sends about \$500 per month to Mexico. INT'L LABOUR OFFICE, *supra* note 3, at 24. A recent study of Latino migrants in the United States found that migrants generally remitted 6–16% of their household incomes. See Rodolfo O. de la Garza & Manuel Orozco, *Binational Impact of Latino Remittances*, in *SENDING MONEY HOME: HISPANIC REMITTANCES AND COMMUNITY DEVELOPMENT* 29, 35 (Rodolfo O. de la Garza & Briant Lindsay Lowell eds., 2002).

⁶⁷ ILO studies show, for example, that remittances account for more than half of household income of the families who receive them in Bangladesh, and as much as 90% of the household income of families of emigrants in Senegal. INT'L LABOUR OFFICE, *supra* note 3, at 24.

⁶⁸ The multiplier effect of remittances is generated by migrant households using remittances to spend more on certain goods and services, which in turn creates jobs and incomes for others who in turn can spend more and so on. The effect can be considerable. In Bangladesh, for example, one study estimates the multiplier effect of remittances at 3.3 on GNP, 2.8 on consumption, and 0.4 on investment. *Id.* at 25. Another study estimated that \$610 million in remittances generated a demand of \$351 million for Bangladeshi goods and services and created at least 577,000 jobs. STALKER, *supra* note 3, at 82 (citing Fred Arnold, *The Contribution of Remittances to Economic and Social Development*, in *INTERNATIONAL MIGRATION SYSTEMS: A GLOBAL APPROACH*, *supra* note 15, at 205, 210).

⁶⁹ Kapur & McHale, *supra* note 13, at 54.

⁷⁰ See Luis Eduardo Guarnizo, *The Economics of Transnational Living*, 37 INT'L MIGRATION REV. 666, 687 (2003) (discussing Suhas Ketkar & Dilip Ratha, *Securitization of Future Flow Receivables: A Useful Tool for Developing Countries*, FIN. & DEV., Mar. 2001, at 48–49, available at <http://www.imf.org/external/pubs/ft/fandd/2001/03/ketkar.htm>) (citing study estimating that remittances contributed five percent of total amount securitized from 1987–99, and amounted to ten percent of total potential securitized borrowing for Latin America).

and of course the emigrants who send them—have become central to emigration state economies.⁷¹

A few emigration states also are interested in recruiting their citizens abroad who have grown relatively wealthy—both financially and in terms of human capital—to partner with the government and the domestic private sector in national development projects.⁷² Just as remittances are preferable to foreign aid for many governments, so investment from emigrant citizens is considered more desirable than investment by non-citizens and multinational corporations. Encouraging emigrants to invest money and technical skills at home requires states to explore new means and modes of reaching, then embracing, their emigrant citizens.⁷³

b. External Citizenship as Practiced by Emigrant Citizens

Emigrants' ongoing engagement with people, places, and institutions at home while abroad satisfies their need to stay in touch, to be remembered, and to remain a vital, contributing presence in their homeland. The citizenship that emigrants practice while abroad can fall along a continuum from private and individual to public and communal. External citizenship, in other words, "need not involve the state as an agent or the nation as an imagined political community."⁷⁴ Emigrants do not necessarily share the state's interest in national eco-

⁷¹ The effect of emigration and remittances on emigration states' economies and societies is by no means clear. Studies of the effects of migration and of large quantities of remittances on economic performance present mixed results, although both international migration and remittances do seem to have "a strong, statistical impact on reducing poverty in the developing world." INT'L LABOUR OFFICE, *supra* note 3, at 30 (discussing study assessing relationship between poverty, migration, and remittances for seventy-four low and middle-income developing countries). What is clear is that remittances are now the principal source of foreign exchange for many emigration countries that want to secure the continuous inflow from citizens abroad.

⁷² For an interesting study of "knowledge networks" linking countries to their skilled nationals abroad, see generally JEAN-BAPTISTE MEYER and MERCY BROWN, *SCIENTIFIC DIASPORAS: A NEW APPROACH TO THE BRAIN DRAIN* (UNESCO—Management of Social Transformations, Discussion Paper No. 41, 1999), available at <http://www.unesco.org/most/meyer.htm>. The internet has played a central role in these networks. See Moisés Naím, *The New Diaspora*, FOREIGN POL'Y, July–Aug. 2002, 96, 95–96 (citing survey by Public Policy Institute of California of highly skilled immigrants in Silicon Valley finding that half of respondents had "set up subsidiaries, joint ventures, subcontracting arrangements, or other business operations in their native countries" and that most of remainder were considering doing so, and suggesting "brain drain" has become "brain circulation").

⁷³ The image of states "embrac[ing]" citizens "in order to extract from them the resources they need," comes from Torpey's study of the emergence of passports and other state controls on movement. See JOHN TORPEY, *THE INVENTION OF THE PASSPORT: SURVEILLANCE, CITIZENSHIP AND THE STATE* 2 (2000).

⁷⁴ Bauböck, *supra* note 7, at 702 (referring to "migrant transnationalism").

nomic growth and development, although they are important contributors to it. In fact, emigration generally is driven by immediate, personal economic and welfare needs, not abstract national projects. International migration is frequently a strategy for family survival,⁷⁵ and resources often are pooled to enable a migrant to leave.⁷⁶ It is an investment made with expected returns; migration loans often are explicitly conditioned on sending remittances beyond the loan repayment.⁷⁷

Emigrant attitudes toward their states of citizenship are enormously varied. So too are their reasons for emigrating, their skill sets, ambitions, and statuses in the immigration state. Even those who originate in the same region and settle in the same immigration state may not have much in common and may share few if any legal obligations as co-citizens. Instead, their participation in the daily life of the home state—from phone calls and letters home to investments of time, money, technical expertise, contributions to political candidates, sending money and supplies after natural disasters, or supporting national sports teams—is a voluntary affair, grounded in their familial, communal, and legal bonds to a particular national society. Some emigrants choose to participate regularly and intimately, a few choose to leave without looking back, and most fall somewhere between these two extremes.⁷⁸

⁷⁵ See PEW HISPANIC CTR., *supra* note 43, at 4 (calling migrant families with members in both immigration and emigration states “highly integrated transnational economic units”).

⁷⁶ See STALKER, *supra* note 3, at 123–24 (noting that migrants who use labor brokers generally pay three to four months’ salary up front to secure work in and transportation to immigration states, and that payments to traffickers, which can be between \$500 and \$30,000 per person, contribute \$5–\$7 billion per year to global revenues); *On the Fence*, FOREIGN POL’Y, Mar.–Apr. 2002, at 22, 31 (interviewing Doris Meissner, former commissioner of U.S. Immigration and Naturalization Service, who states that smuggling rings from Fujian province in China charge \$40,000–\$60,000 per individual and demand \$5,000–\$10,000 down payment which requires that “[f]amilies basically mortgage themselves to traffickers”); John Salt & Jeremy Stein, *Migration as a Business: The Case of Trafficking*, 35 INT’L MIGRATION 467, 479–81 (1997) (describing methods migrants use to pay traffickers). In Central America, forty-one percent of survey respondents cited family loans as the source of financing emigration. PEW HISPANIC CTR., *supra* note 43, at 18.

⁷⁷ Cf. PEW HISPANIC CTR., *supra* note 43, at 18 (reporting that survey of remittance receivers in Mexico with family member who had emigrated within previous five years showed fifty-one percent of them had pre-departure commitment from emigrant to remit (citing 2003 joint studies by Pew Hispanic Center and Multilateral Investment Fund)).

⁷⁸ See Peggy Levitt et al., *International Perspectives on Transnational Migration: An Introduction*, 37 INT’L MIGRATION REV. 565, 569 (2003) (noting that contributing authors to journal volume on transnationalism shared premise that “not all migrants are engaged in transnational practices and that those who are, do so with considerable variation in the sectors, levels, strength, and formality of their involvement”).

Once outside the state's territorial hold, emigrants gain and lose power in their relations with the home state relative to their resident co-citizens. They are freer to flaunt the state's commands because they are less likely to be punished for doing so.⁷⁹ On the other hand, as nonresident citizens they may simultaneously become easier to ignore. Indeed, many states have forced, forcefully encouraged, or simply not impeded emigration as a means of easing dissent.⁸⁰ The current dependence of emigration states on emigrant earnings, however, means that emigrants as a group are increasingly difficult to overlook.

Even putting aside issues of long-distance participation at home, emigrants do not want to be entirely ignored by their states of citizenship because they still may need to invoke those states' protective authority. As foreigners often admitted specifically to do work that the citizen population refuses to do, emigrants are visible targets of discrimination and racism. Although emigrants work in almost every type of job, they tend to concentrate at the bottom and top of the employment hierarchy.⁸¹ Dreams of a better life easily can become nightmarish realities of uncertain, demeaning, threadbare existence.⁸² The situation is most grim for undocumented migrants who live and work under constant threat of arrest and expulsion.

The vulnerability of emigrants has been underscored in the most chilling way by the recent kidnappings of foreign workers in Iraq. In Nepal, India, Pakistan, Turkey, Egypt, Kenya, and the Philippines, citizens at home and abroad vigorously demanded that their governments safely deliver co-citizen hostages.⁸³ The perceived willingness of emigration state governments to protect and defend their citizens, who were risking their lives to support their families by working in Iraq, became a test of those states' commitment to the entire citizenry,

⁷⁹ See *supra* Part I.A.1 (discussing jurisdictional limitations on states' powers over non-resident citizens).

⁸⁰ See, e.g., Smith, *supra* note 1, at 737–38 (describing newly unified Italian state's promotion of emigration from relatively underdeveloped south as “safety valve” against tensions with relatively prosperous north).

⁸¹ [Ed.: See INT'L LABOUR OFFICE, *supra* note 3, at 10.]

⁸² The majority of migrant workers engage in “3-D” employment: dirty, dangerous, and difficult. Once these jobs become “migrant jobs,” they tend to remain migrant jobs. See INT'L LABOUR OFFICE, *supra* note 3, at 10.

⁸³ See, e.g., Hari Kumar & Amy Waldman, *Worried Families in India Wild Power of Publicity*, N.Y. TIMES, Aug. 5, 2004, at A11 (reporting on massive pressure on government from Indian public to secure release of three Indian hostages and noting that “[t]he government has learned that it appears insensitive at its peril”); *India Sends Hostage Envoy to Iraq*, BBC NEWS, July 31, 2004, http://news.bbc.co.uk/1/hi/world/south_asia/3941497.stm (reporting that “angry residents” of one hostage's home village “blocked traffic—demanding the government do more to secure the [hostages'] freedom”).

resident and emigrant. Assuming the mantle of champion of millions of Filipinos toiling under difficult conditions in the Middle East, East Asia, Europe, the United States, Canada, and at sea, President Gloria Arroyo of the Philippines ignored tremendous pressure from immigration state allies and acceded to the hostage-takers' demand that the Philippines withdraw its troops from Iraq immediately, explaining: "I cannot apologize for being a protector of my people. . . . Sacrificing [Filipino hostage] Angelo de la Cruz would have been a pointless provocation. It would have put the lives of 1.5 million Filipinos in the Middle East at risk by making them a part of the war."⁸⁴

II

THE RECONSTRUCTION OF CITIZENSHIP

By now it should be clear that emigration states are reconfiguring citizenship with the goal of increasing economic inflows from emigrant citizens. Using many of the same outreach resources available to states—relatively cheap and accessible international communication and transportation networks—emigrants are simultaneously discovering ways to reincorporate themselves into their home state societies and are sometimes demanding state recognition of their long-distance "presence." This Part describes how emigration states and their emigrant citizens are reconfiguring citizenship by negotiating their variously competing and overlapping objectives in three key areas. In the economic sphere, states have constructed emigrants as heroic citizens contributing to the national project by undertaking the great sacrifice of living abroad. Legally, emigration states are literally reconfiguring the rules regarding the retention and transmission of citizenship, including a growing acceptance of plural nationality. Finally, in the political sphere, emigrants are pressing for their reintegration into their state of citizenship as full, rather than nominal citizens, welcome to participate as much in their states' political realms as in their social and economic activities.

⁸⁴ Seth Mydans, *Looking Out for the Many, in Saving the One*, N.Y. TIMES, Aug. 1, 2004, at WK3. More than ten percent of the total Philippine population and at least one-fifth of its labor force are emigrant workers. Approximately 1500 Filipinos emigrate every day. See Mary Lou L. Alcid, *Overseas Filipino Workers: Sacrificial Lambs at the Altar of Deregulation*, in INTERNATIONAL MIGRATION AND SENDING COUNTRIES, *supra* note 10, at 99. At the same time that she agreed to withdraw Filipino troops from Iraq, President Arroyo issued an order banning Filipinos from working in Iraq. Carlos H. Conde, *Filipinos Still Seek Work in Iraq Despite Danger and Ban*, N.Y. TIMES, Sept. 3, 2004, at A9. The ban has sparked widespread protests by workers who want to go to Iraq despite the risks and the obvious limitations on the Filipino government's protective capability. *Id.* Said one, "I am sure that our employers and the Americans will protect us." *Id.*

A. *Economic Incorporation via Emigrant Remittances and Capital Inflows*

Emigration states have courted their emigrant communities most aggressively in the economic sphere. While there is a growing sophistication in schemes to attract emigrant remittances and investment among states with highly successful emigrant communities, for the most part, emigrant programs are in their early stages—ad hoc responses to the relatively recent discovery of the enormous value of capital inflows from citizens abroad.

Emigration states' efforts to capture a portion of emigrant earnings fall into three broad categories, each with its own advantages and pitfalls, and each reflecting a different construction of the role of emigrants in home state affairs: (1) States seek to sustain or increase inflows of remittances; (2) states seek to coerce economic contributions styled as taxes; and (3) states offer an array of benefits and incentives to attract capital and investment inflows from emigrants.⁸⁵ A single state might try some version of each approach, or only one at any given time.⁸⁶

1. *Encouragement of Remittances*

The first and most common approach is also the least intrusive and one that relies heavily on emigrant loyalty: States encourage emigrants to remit money, preferably through official channels. Bolstering rhetorical appeals to beloved, heroic, "gone but not forgotten" citizens with mostly financial incentives, states try to ensure that emigrants want to send money home and that they can do so using reliable means. In this approach, emigrants are constructed as absent but contributing members of the emigration state and emigration itself is framed as a tremendous and patriotic sacrifice. Emigrant contributions are emphasized publicly and repeatedly to reinforce the valued place of emigrants in the nation. The state addresses its emigrant commentary as much to the resident citizen population as to the non-resident emigrant population. "States deploy the language of nationalism precisely because migrants are outside state territorial borders

⁸⁵ Capital inflows in the context of migration are mostly in the form of repatriable deposits. They "affect the net wealth or debt position of the economy" because, "like any external borrowing which involves a subsequent outflow in repayment of the principal and payment of the interest, . . . the economy has to transform domestic resources into foreign resources." NAYYAR, *supra* note 61, at 10.

⁸⁶ India, for example, has implemented focused policies to incentivize capital inflows, but has done little to sustain or increase remittances. *See id.* at 99–103.

but within the boundaries of the imagined nation.”⁸⁷ Usually the effort to attract the greatest possible economic investment from emigrants has involved a wholesale reimagining of the emigrant in the national consciousness. Emigrants’ economic patriotism is highlighted; their literal “worth” to the state is invoked, conjuring a vision of citizenship by economic contribution. In embracing nationals abroad, at least symbolically and rhetorically, emigration states anticipate that emigrants will invest at home economically.

Not surprisingly, many emigrant communities are suspicious of their home states’ overtures and often are distrustful of remitting via official institutions which they may have experienced as corrupt, inefficient, and unreliable.⁸⁸ Emotional, nationalistic appeals rarely are sufficient to overcome emigrant misgivings about sudden state interest in monies they traditionally have sent home by private, informal means. As a result, emigration states have launched a slew of incentive programs designed to persuade emigrants that their personal economic interests are identical to those of their home states.⁸⁹ On some levels, state and emigrant interests are identical and in these cases, emigration states have been able to play the role of protector of their overseas citizens’ interests, often with positive results. The truest illustration of this is in the area of remittance fees charged by institutions in immigration states, which both emigration states and emigrants have actively fought to reduce.⁹⁰

2. *Taxes on Emigrant Citizens*

The second approach to capturing emigrant earnings is more stick than carrot. Here, emigrants are constructed as absent citizens with an ongoing legal (not merely sentimental or moral) obligation to contribute to the national purse, just as their non-emigrant co-citizens must do. Lack of enforcement powers and resources to pursue emigrants abroad means that the coercion option has seriously limited potential to generate a steady, reliable income stream. The prevailing

⁸⁷ David Fitzgerald, *Rethinking the ‘Local’ and Transnational: Cross-Border Politics and Hometown Politics in an Immigrant Union 4* (The Ctr. for Comparative Immigration Studies, Working Paper No. 58, 2002), available at <http://www.ccis-ucsd.org/publications/wrkg58.pdf>.

⁸⁸ Peter Bate, *A River of Gold*, IDBAMÉRICA, MAGAZINE OF THE INTER-AMERICAN DEVELOPMENT BANK, Sept.–Oct. 2001, <http://www.iadb.org/idbamerica/English/OCT01E/oct01e3.html> (discussing how emigrants’ mistrust of government creates obstacle to efforts to encourage remittances).

⁸⁹ [Ed.: *Id.* (discussing initiatives of Inter-American Development Bank’s Multilateral Investment Fund).]

⁹⁰ [Ed.: *Id.* (discussing Mexican President Vicente Fox’s efforts to persuade leaders of other Western Hemisphere nations to work to cut costs of wiring funds).]

view in the development field is that attempts to force emigrants to remit are ill-advised. A handful of international economists still supports the idea of taxing emigrants, but others warn against “kill[ing] the goose that laid golden eggs by hounding their migrants with taxes.”⁹¹

South Korea offers a rare example of an emigration state that successfully taxed at least some of its emigrant citizens, specifically, those working abroad under contracts negotiated by the Korean government. Under a labor-sending “package” scheme, the Korean government helped Korean construction companies to secure contracts for projects in the Middle East, using Korean workers.⁹² In addition to being required to withhold Korean income tax, the Korean companies were required to deposit a large portion of workers’ salaries in foreign currency accounts in Korean banks.⁹³ Although successful in the sense that the government secured the funds it sought, the system could be viewed as unfairly burdening those emigrants for whom the state had acted as a labor broker since other emigrants, including those working in significantly more lucrative fields abroad, probably were not subject to similar obligations.⁹⁴ Other emigrants, including

⁹¹ *Id.* Concerning the merits of such a tax, compare TAXING THE BRAIN DRAIN I: A PROPOSAL (Jagdish N. Bhagwati & Martin Partington eds., 1976), which discusses proposing a tax on the incomes of professional migrants from less developed countries to developed countries to offset the loss of human capital incurred by the “brain drain” from the South to the North, INCOME TAXATION AND INTERNATIONAL MOBILITY (Jagdish N. Bhagwati & John Douglas Wilson eds., 1989), which revisits issues posed by the “brain drain” tax and discusses how to design such tax system, and NAYYAR, *supra* note 61, at 121, which states: “[I]t is worth considering a tax on emigration to the industrialized countries, to compensate at least for the cost of higher education, either as a lump sum before departure or over a period of time after migration, though there may be a discrepancy between its desirability and its feasibility,” with GRAEME HUGO, MIGRATION AND DEVELOPMENT: A PERSPECTIVE FROM ASIA 29 (Int’l Org. for Migration, Migration Research Series No. 14, 2003), which advises emigration state governments “to emphasize opportunities for the diaspora and not to focus on, or be associated with, compliance, taxation and exploitation.”

⁹² See Shivani Puri & Tineke Ritzema, *Migrant Worker Remittances, Micro-finance and the Informal Economy: Prospects and Issues* 20 (Int’l Labour Org. Soc. Fin. Unit, Working Paper No. 21, 1999), at <http://www.ilo.org/public/english/employment/finance/download/wpap21.pdf> (attributing effectiveness of South Korean policy “to the unique features of the Korean labour exporting process” and contrasting less successful efforts by other states to force emigrants to remit where their emigrant workers “find employment overseas through ‘unofficial’ channels”).

⁹³ [Ed.: E-mail from Joon Park to Professor Kevin Davis, Professor of Law, New York University School of Law (July 21, 2005) (on file with the *New York University Law Review*) (citing S.K. Kim & D.G. Choi, Economic Effect Analysis of Manpower Export 74, 82, which describes arrangement made by Korean Overseas Development Corporation, special juridical entity wholly owned by Korean government, to withhold tax on income earned by Korean employees abroad).]

⁹⁴ *Id.*

those working in significantly more lucrative fields abroad, are not taxed.⁹⁵

Following a very different model, the government of Eritrea imposes a "voluntary tax" on its emigrant community. The fledgling state is heavily dependent on Eritreans abroad, as it was throughout the war with Ethiopia.⁹⁶ Once Eritrea formally came into independent existence, the government explicitly embraced Eritreans abroad as members of the national community. In the 1993 Referendum for Independence, 84,370 nonresident Eritreans cast ballots (about ninety-five percent of the estimated total of nonresident Eritreans).⁹⁷ The new state granted citizenship to all members of the diaspora without regard to their residence or legal status in other states.⁹⁸ Moreover, nonresident citizens were given an official role in the drafting and ratification of the country's constitution. Six of the fifty-member Assembly of the Constitutional Committee were nonresident Eritreans.⁹⁹ Eritreans who chose not to return home to help with the literal building of a nation were assigned a moral obligation, in the form of a tax, to contribute two percent of their annual income to the nation-building effort.¹⁰⁰ The "contribution" applied to Eritreans in every country, regardless of income, including the unemployed.¹⁰¹

⁹⁵ This problem of burdening those emigrants who least can afford to be taxed is echoed in South Africa where emigrant miners from Mozambique and Lesotho are subject to a Compulsory Deferred Pay system. A portion of their wages is automatically deducted and sent to Mozambique and Lesotho. See James Hall, *South Africa: Gov't Gives Mixed Signals on Immigration*, IPS-INTER PRESS SERVICE/GLOBAL INFO. NETWORK, Jan. 20, 2003; see also HUGO, *supra* note 91, at 22 (noting failed attempts to imitate South Korea by Philippines, Thailand, Pakistan, and Bangladesh and recent announcement by Sri Lanka that it would impose fifteen percent tax on US\$1.2 billion remittances received annually, which had to be withdrawn "in the face of a massive outcry").

⁹⁶ [Ed.: Khalid Koser, *Long-Distance Nationalism and the Responsible State: The Case of Eritrea*, in INTERNATIONAL MIGRATION AND SENDING COUNTRIES, *supra* note 10, at 176.]

⁹⁷ Nadjé Al-Ali et al., *The Limits to 'Transnationalism': Bosnian and Eritrean Refugees in Europe as Emerging Transnational Communities*, 24 ETHNIC & RACIAL STUD. 578, 583, 590 (2001).

⁹⁸ Koser, *supra* note 96, at 174. It is estimated that about three million Eritreans live in Eritrea and about one million Eritreans live outside the country. But Eritrea is not strictly an emigration state as defined in this Article. The fact that it has so many citizens living abroad is not because of steady labor emigration; many people granted Eritrean citizenship upon independence in 1993 already lived abroad. Through its broad grant of citizenship to nonresidents, however, Eritrea has as much in common with emigration states as it does with classic "diaspora" states. [Ed.: *Id.* at 172, 174-75.]

⁹⁹ [Ed.: *Id.* at 175.]

¹⁰⁰ Al-Ali et al., *supra* note 97, at 587.

¹⁰¹ *Id.*

In the eleven years following independence, the vast majority of nonresident Eritreans are thought to have paid the tax.¹⁰² Far from being resented as burdensome, payment of the “healing tax,” as it is often called,¹⁰³ is seen as an affirmation of citizenship, almost as important as an Eritrean passport. In the words of one Eritrean in Germany, nonpayment “would be declaring that I am not an Eritrean.”¹⁰⁴ Several reasons have been put forth to explain this extraordinary degree of loyalty and emigrant participation. The most compelling is that Eritreans abroad have been given full political citizenship and so are willing to carry out the full duties of citizenship, including paying taxes.¹⁰⁵ Another is that because social pressure within the diaspora is so great, and payments are made publicly, it is almost impossible not to contribute for fear of embarrassment or shame.¹⁰⁶

If reciprocity drives the Eritrea state-emigrant relationship, a perceived lack of mutual exchange has undermined that relationship recently. Emigrants have begun to express frustration at being called on for support that they sense is exclusively economic.¹⁰⁷ Some express concern that their early inclusion in political affairs was a mere formality and that further participation is unwelcome.¹⁰⁸ There is also a growing divide in Eritrea between those who are resentful of Eritreans who “sat out” the war abroad and still have not returned, and those who accept that Eritrea as a nation is made up of people living in many nations who contribute to the country in different ways. In the war’s immediate aftermath, the government of the Eritrean People’s Liberation Front rewarded emigrants for their efforts by welcoming them as active participants in early nation-building. Almost fifteen years later, the government of Eritrea has cast doubt on the “authenticity” and commitment of those citizens abroad who have failed to come home and have criticized the government from

¹⁰² See *id.* (noting that in one study, all respondents reported paying tax and describing “‘culture’ of contributing to the State within the Eritrean diaspora”).

¹⁰³ [Ed.: Koser, *supra* note 96, at 175 (citing R. Iyob, *The Ethiopian-Eritrean Conflict: Diasporic vs. Hegemonic States in the Horn of Africa*, 38 J. MOD. AFR. STUD. 659, 677 (2000)).]

¹⁰⁴ Quoted in Koser, *supra* note 96, at 171, 175. In Koser’s informal survey of Eritreans living in Europe, one hundred percent claimed to pay the tax annually. Al-Ali et al., *supra* note 97, at 587 (describing “a ‘culture’ of contributing to the State within the Eritrean community”).

¹⁰⁵ [Ed.: Al-Ali et al., *supra* note 97, at 587.]

¹⁰⁶ *Id.* at 593.

¹⁰⁷ [Ed.: *Id.* at 595; Koser, *supra* note 96, at 180–81.]

¹⁰⁸ For example, the Eritrean Constitution provides for multi-party elections and guarantees nonresident citizens the right to vote, but no elections have been held yet. Koser, *supra* note 96, at 175.

abroad.¹⁰⁹ The inclusive, thick, legal construction of Eritrean citizenship has not been able to guarantee the perception that resident and nonresident Eritreans are equal participants in the national project.

3. *Investment Incentives*

The third approach to economic incorporation of emigrants by emigration states involves creating investment incentives by rewriting citizenship and investment laws. The goal is to induce relatively wealthy emigrants to “provid[e] repatriable financial resources should they continue to live abroad and to make industrial investments should they wish to return.”¹¹⁰ India is at the fore of this strategy, offering select members of its diaspora preferential treatment under investment and banking laws.¹¹¹ Certain nonresident citizens and some former citizens are being courted as privileged partners in prominent national development schemes, “solicit[ed] and support[ed] . . . as a counterweight to too-powerful foreign capital and impotent local capital.”¹¹² Central to this outreach is defining who counts as a “Nonresident Indian” (NRI) and thus will be entitled to

¹⁰⁹ Cf. *id.* at 180–81 (discussing policy of government to “encourage autonomy of the diaspora”).

¹¹⁰ NAYYAR, *supra* note 61, at 102.

¹¹¹ *Id.* at 99–102. The term “Indian diaspora” is now in common usage in India; it is estimated at about twenty million people worldwide. HUGO, *supra* note 91, at 25. Indian migration history is commonly divided into several phases: The first, beginning in the nineteenth century and extending to the 1920s, was characterized by indentured labor migration to countries throughout the British empire, especially plantations in the Caribbean; another in the 1920s and 1930s involving skilled contract labor in Africa and the Middle East; a third between the 1950s and 1970s, marked by emigration of highly skilled professionals to the U.K., U.S., and Canada, and on a much smaller scale to Western Europe, Australia, and New Zealand; and the last from the mid-1970s onward, marked by large-scale contract labor migration to Arab Gulf states of largely unskilled and semi-skilled workers. See NAYYAR, *supra* note 61, at 1–3. Ethnic Indians with non-Indian citizenship generally are referred to as People of Indian Origin (PIOs), as opposed to Indians abroad, or Nonresident Indians (NRIs). The annual income of the diaspora (PIOs and NRIs) is thought to be around US\$400 billion, equivalent to 80% of the income generated by one billion Indians in India. HUGO, *supra* note 91, at 12. One million Indians, equivalent to about 0.1% of the total Indian population, live in the United States and earn the equivalent of 10% of Indians’ national income. *Id.*

¹¹² Johanna Lessinger, *Nonresident-Indian Investment and India’s Drive for Industrial Modernization*, reprinted in MIGRATION, DIASPORAS AND TRANSNATIONALISM 109 (Steven Vertovec & Robin Cohen eds., 1999) (explaining “enormous emotional appeal to NRIs” of state programs offering NRIs savings accounts and annuities at State Bank of India at interest rates higher than those available to Indians living in India). The profit motive sits alongside patriotism and emotional attachment as a motivating factor for emigrants. See, e.g., Praful Bidwai, *Flawed Bid to Woo Overseas Indians*, ASIA TIMES, Jan. 21, 2003, available at www.atimes.com/atimes/south_asia/EA21Df01.html (quoting Lakshmi Mittal, “world’s second largest steel producer and its richest person of Indian origin”: “I love my country—but I must get returns as well.”).

generous investment terms denied to resident Indians and to foreign investors. Broadly speaking, the more recent Indian emigrant populations in North America, Europe, and the Middle East are eligible to take advantage of state offers. The older emigrant populations, however, “lack the skills, the wealth, and the recent networks within India which make NRI investment possible.”¹¹³ The state maintains these classifications despite objections from both within the diaspora and India.¹¹⁴

The tale from a few years ago of Resurgent India Bonds is illustrative. In 1998, faced with international economic sanctions for testing nuclear devices, India issued bonds, but only to select nonresident Indian citizens and former citizens.¹¹⁵ Eligible buyers were non-residents who “at any time, held an Indian Passport, or [they] or either of [their] parents or any of [their] grandparents were a citizen of India by virtue of the Indian Constitution or the Citizenship Act, 1955.”¹¹⁶ This covered most members of the prosperous Indian emigrant communities in Europe, the United States, and Canada, but excluded descendants of earlier waves of emigrants in Africa and the Caribbean. Only the former were constructed as patriotic, loyal, reliable “departed native sons and daughters” abroad.¹¹⁷ The state’s appeal resonated with the targeted group: Even though the interest rates on the bonds did not reflect India’s (low) credit rating, the sale was overwhelmingly successful.¹¹⁸ It raised US\$4.2 billion, more than double the initial goal, from sales throughout Europe, the United States, and the Middle East.¹¹⁹

¹¹³ Lessinger, *supra* note 112, at 64. See also Puri & Ritzema, *supra* note 92, at 21 (explaining that using foreign currency accounts will appeal only to relatively skilled migrants who earn relatively higher incomes).

¹¹⁴ See, e.g., Bidwai, *supra* note 112 (describing rifts caused by NRI strategy, including accusations that government “is practicing ‘dollar and pound apartheid’—pampering [PIOs] from . . . industrialized countries, while treating the more numerous groups of Indians settled elsewhere with disdain and contempt”).

¹¹⁵ For a discussion of the rich history of the use of “diaspora bonds” by emigration states since the 1930s, see Anupam Chander, *Diaspora Bonds*, 76 N.Y.U. L. REV. 1005 (2001).

¹¹⁶ *Id.* at 1091 n.442 (quoting STATE BANK OF INDIA, OFFER DOCUMENT FOR RESURGENT INDIA BONDS 1 (1998)). The definition also explicitly excludes citizens of Bangladesh and Pakistan. *Id.* at 1093. It implicitly excludes members of the diaspora who are descendants of the first wave of emigrants—indentured laborers. This group is the poorest within the diaspora. *Id.* at 1093–94.

¹¹⁷ Somini Sengupta, *India Taps into Its Diaspora: Investing for Love of Country, and 7.75% Interest*, N.Y. TIMES, Aug. 19, 1998, at B1.

¹¹⁸ According to Chander, the interest yield on the bonds should have been 9.3% annually, but they were issued at 7.75% in the United States. Chander, *supra* note 115, at 1067 & n.323.

¹¹⁹ [Ed.: *Id.* at 1066.]

India and other emigration states are designing and implementing a range of policies to reach, and in some cases actively claim, money and other resources of their citizens abroad. Just as state programs run the gamut from nascent to sophisticated, so emigrant responses to state overtures are not uniform.

B. *Legal Incorporation*

The most literal reconstruction of membership in emigration states is reflected in changes to citizenship laws. Citizenship laws govern the transmission of citizenship within and outside the territorial state and define which rights of citizenship may be exercised from beyond the state territory. The rules governing the assignation, transmission, loss, and reclamation of citizenship status "are themselves deeply embedded in specific concepts of political community" and both construct and reflect understandings of national belonging.¹²⁰ The most far-reaching effort has been the embrace by some states of plural citizenship, reversing long-standing resistance to anything other than exclusive, permanent state membership.¹²¹

It is estimated that today around half of the world's countries recognize plural nationality.¹²² The realities of expanding global interconnection, including cross-national marriages and the interplay of *jus sanguinis* and *jus soli* rules, have led to a proliferation of plural nationals worldwide to the point "where multiple loyalties are more readily acknowledged and even embraced, [and] dual nationality has become respectable."¹²³ This is a remarkable change of attitude from

¹²⁰ BAUBÖCK, *supra* note 34, at 29–30.

¹²¹ This trend is not limited to select emigration states. In fact, the declining resistance to plural citizenship by many states around the world in recent decades marks a profound shift in thinking about citizenship. This development is so striking that it has been, and continues to be, the subject of extensive commentary by citizenship scholars. See, e.g., REINVENTION OF CITIZENSHIP, *supra* note 33 (discussing recent developments in dual citizenship in Europe and U.S.); Bosniak, *supra* note 20, at 29–30 (noting that scholarly commentary on rise of plural citizenship reflects various approaches and reaches differing conclusions); Spiro, *supra* note 20, at 1413–14 n.8 (citing law and political science literature relating to plural citizenship). Once again, however, the extended discussions of plural citizenship have been explored primarily from the perspective of immigration states, with only passing attention paid to the interests and objections of emigration states.

¹²² See *Dual Citizenship: Mexico Joins the List of Countries Accepting Dual Nationality, Germany Declines*, TRACES (Econ. & Soc. Res. Council, Transnational Communities Programme, Oxford, U.K.), Jan.–Mar. 1998, available at <http://www.transcomm.ox.ac.uk/traces/feature.htm>.

¹²³ Stephen Legomsky, *Dual Nationality and Military Service: Strategy Number Two*, in RIGHTS AND DUTIES OF DUAL NATIONALS, *supra* note 20, at 79; see also David A. Martin, *Introduction: The Trend Toward Dual Nationality*, in RIGHTS AND DUTIES OF DUAL NATIONALS, *supra* note 20, at 3–5 (attributing principal reason for growing acceptance of plural nationality to "the expanding interconnection of the world community").

as recently as thirty years ago when virtually all countries were committed to limiting the phenomenon.¹²⁴

Some emigration states not only have rejected long-held positions that nationality is a unique and exclusive status, but have gone beyond tolerating plural nationality to actively encourage their nationals abroad to take on the citizenship of their state of residence, while allowing them to retain or to recover their original citizenship.¹²⁵ Not all emigration states are pursuing all these reforms. Indeed many have made only symbolic gestures of emigrant inclusion in national projects, without touching the rules regarding legal membership. But the marked number of states that have chosen to offer the option of plural nationality/citizenship advance two goals at once: the creation of a class of dual national emigrants who (they hope) will become more integrated, wealthier, and more politically influential abroad; and the continuation of citizenship status at home, which is expected to promote emigrant engagement there. These ends are appealing for emigrants as well, many of whom see plural citizenship as a way of accommodating their multiple allegiances and fluid identities.

Mexico is one of several emigration states that recently changed its position on its citizens retaining Mexican citizenship even after they naturalize abroad. Since 1821 Mexico had an exclusive citizenship policy: Naturalization abroad meant automatic loss of one's Mexican nationality.¹²⁶ Law and policy were consistent through the

¹²⁴ Early international efforts to limit the existence of plural nationality began with The Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, Apr. 12, 1930, 179 L.N.T.S. 89, whose preamble states: "[E]very person should have a nationality and should have one nationality only." They continued through the 1963 European Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, *opened for signature* May 6, 1963, 634 U.N.T.S. 221, Europ. T.S. No. 43 (obliging state parties to provide for renunciation or loss of previous citizenship of naturalizing individual). The latter was amended by a 1977 protocol which accepts plural nationality. See Protocol Amending the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, *opened for signature* Nov. 24, 1977, Europ. T.S. No. 95; Additional Protocol to the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, *opened for signature* Nov. 24, 1977, Europ. T.S. No. 96; Second Protocol Amending the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality art. 15-16, *opened for signature* Feb. 2, 1993, Europ. T.S. No. 149; European Convention on Nationality, *opened for signature* Nov. 6, 1997, Europ. T.S. No. 166 (entered into force Jan. 3, 2000) (taking neutral attitude toward plural citizenship, neither requiring states to accept it nor legislate against it).

¹²⁵ [Ed.: For discussion of Mexico, the Philippines, Turkey, and India, see *infra* notes 152-59 and accompanying text.]

¹²⁶ [Ed.: Jorge A. Vargas, *Dual Nationality for Mexicans?: A Comparative Legal Analysis of the Dual Nationality Proposal and Its Eventual Political and Socio-Economic Implications*, 18 CHICANO-LATINO L. REV. 1, 36-39 (1996).]

1980s: Emigrants were generally regarded as having exited the national community. The Mexican state was “unengaged, even neglectful” of its citizens abroad,¹²⁷ providing only basic consular protection and intermittently promoting repatriation and “cultural nationalism.”¹²⁸

In 1996, the Mexican Chamber of Deputies, by a vote of 405 to 1, approved a constitutional amendment that would allow Mexicans who naturalized abroad to retain Mexican nationality.¹²⁹ President Zedillo described the amendment as an integral part of Mexico’s self-identification as an emigration state, explaining: “The Mexican nation goes beyond the territory contained by its borders. Therefore, an essential element of the ‘Mexican Nation Program’ will be to promote the constitutional and legal amendments designed for Mexicans to retain their nationality, independently of the citizenship or residence they may have adopted.”¹³⁰

The motivations for the amendment are rooted in broad policy changes in Mexican economic and foreign affairs. Mexico’s turn toward its emigrant citizens in the United States roughly parallels the country’s neo-liberal economic adjustment policies.¹³¹ As part of this reorientation, Mexico instituted a policy of *acercamiento* (getting closer) with the United States, “abandon[ing] its wary stance towards the United States”¹³² in favor of closer economic cooperation and integration. Once the government shifted its foreign and economic policy toward the United States—most significantly by entering into the North American Free Trade Agreement (NAFTA)—Mexicans

¹²⁷ Smith, *supra* note 1, at 729; see also Sherman, *supra* note 57, at 849 (arguing that Mexico pays least attention to Mexicans abroad during periods of political and economic stability in Mexico).

¹²⁸ Luis Eduardo Guarnizo, *The Rise of Transnational Social Formations: Mexican and Dominican State Responses to Transnational Migration*, in 12 *POLITICAL POWER AND SOCIAL THEORY* 45, 57–59 (Diane E. Davis ed., 1998).

¹²⁹ See *Mexico Passes Law on Dual Citizenship*, N.Y. TIMES, Dec. 12, 1996, at A8. The amendment was ratified by more than two-thirds of Mexico’s states and became effective in 1998. [Ed.: See Starita Smith, *Mexico Reopening a Door Once Barred to Emigrants*, AUSTIN AM.-STATESMAN (Texas), Mar. 10, 1997, at B1.]

¹³⁰ Decree Approving the National Development Plan, 1995–2000, *Diario Oficial de la Federación* [D.O.], 31 Mayo de 1995 (Mex.) (approving plan outlining “the national objectives, the general strategies and the priorities for the integral development of the country,” including discussion of need for constitutional and legal reforms to preserve nationality of Mexicans with foreign citizenship or nationality).

¹³¹ See Smith, *supra* note 1, at 728–37 (arguing that expanding conception of Mexican citizenship coincides with closer economic integration with United States); Sherman, *supra* note 57, at 849, 863 (arguing that Mexico’s incorporation of emigrants was one way of pursuing goal of economic integration).

¹³² See Smith, *supra* note 1, at 730; see also Sherman, *supra* note 57, at 863–64 (“Mexico, once characterized by nationalism, isolationism, and a strong anti-U.S. position . . . became focused on achieving cooperation with the United States in particular . . .”).

living in the United States moved from the periphery of Mexican state attention into the center.

At the same time, democratizing and decentralizing forces were transforming Mexico's political system, giving "migrants abroad points of access and influence in politics."¹³³ Well-organized emigrant lobbies began to pressure Mexico to permit dual citizenship.¹³⁴ In the face of growing American hostility toward a perceived mass influx of Mexican immigrants, many Mexicans living in the United States as noncitizens felt themselves targets of anti-immigrant legislation.¹³⁵ Without voting power, they were relatively helpless to protect themselves. Nor could Mexican emigrants count on the protection of their state of citizenship: There was little the Mexican government could do to change a political climate that branded immigrants a drain on American society. Ironically, perhaps the most effective protection Mexico could offer its citizens in the United States was to help them to take on the citizenship (and thus protection) of another sovereign. Meanwhile, the Mexican government was at pains not to agitate anti-immigrant sentiment in the United States and was well aware of the

¹³³ Smith, *supra* note 1, at 746.

¹³⁴ See S. Mara Perez Godoy, *From Internal Regime Ruptures to the Transnationalization of Mexican Politics* (Feb. 19, 1999) (unpublished manuscript), http://migration.ucdavis.edu/rs/more.php?id=45_0_3_0.

¹³⁵ The measure that most immediately triggered the Mexican government to act was Proposition 187, approved by the California electorate in November 1994. Its main objective is to deny public social services to anyone unlawfully present in the United States. [Ed.: Proposition 187: Illegal Aliens. Ineligibility for Public Services. Verification and Reporting (statewide general election, Nov. 8, 1994), http://library.uchastings.edu/ballot_pdf/1994g.pdf.] Although Proposition 187's provisions were aimed at excluding "illegal aliens," Mexico felt that all Mexican citizens in the United States eligible for U.S. citizenship—including the one million who became lawful permanent residents in 1991 as part of an amnesty—should apply for it. Concerns for legal resident noncitizens were confirmed with the passage in August and September 1996 of federal welfare reform legislation that made documented and undocumented immigrants ineligible for certain public benefits, including food stamps, disability payments, and Medicaid health coverage. See, e.g., Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 401, 110 Stat. 2105 (codified at 8 U.S.C. § 1611 (2000)) (denying federal public benefits to nonqualified aliens); Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 503, 110 Stat. 3009, 3009-671 (codified at 42 U.S.C. § 402(y) (2000)) (denying Social Security benefits to aliens not lawfully present in U.S.); § 562, 110 Stat. 3009, 3009-682 (codified at 8 U.S.C. § 1369 (2000)) (denying medical payments without verification of patient's immigration status). Some of these benefits eventually were restored. [Ed.: See Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998, Pub. L. No. 105-306, § 2, 112 Stat. 2926 (amending 8 U.S.C. § 1611(B) to restore Social Security and related benefits to aliens who were receiving them prior to 1996 legislation).]

controversy that might be provoked in the U.S. by dual citizenship legislation.¹³⁶

The compromise the government made was to amend the constitution by inserting the “no loss of nationality” provision.¹³⁷ Mexicans who naturalize abroad and the first generation born to them outside Mexico now may retain their Mexican nationality, but not their Mexican citizenship.¹³⁸ Unlike citizens, Mexican nationals may not vote in Mexican elections or hold high public office there. Dual nationals also are barred from functions related to national security and sovereignty.¹³⁹ They may, however, retain their Mexican passports, and hold property and businesses in their names in Mexico.¹⁴⁰

Beyond securing the status of Mexicans in the United States—a group that has long had one of the lowest rates of naturalization of all

¹³⁶ See, e.g., GEORGIE ANNE GEYER, *AMERICANS NO MORE* 68, 312 (1996) (strongly disapproving Mexico's proposed dual nationality amendment and likening dual citizenship to bigamy); *Naturalization Requirements and the Rights and Privileges of Citizenship*, 104th Cong. 253, 268 (1996) (statement of John Fonte, Visiting Scholar, American Enterprise Institute) (calling on United States to “insist on our new citizens renouncing Mexican nationality and giving up their Mexican passports” if proposed Mexican dual nationality legislation is implemented). Individuals who naturalize as United States citizens officially renounce their previous citizenship. See 8 U.S.C. § 1448 (2000). Unofficially, however, the renunciation oath is not enforced by U.S. officials, so if the state of origin does not treat the taking of the oath as a denaturalizing act, the naturalizing individual becomes a dual citizen. [Ed.: See Karin Scherner-Kim, *The Role of the Oath of Renunciation in Current U.S. Nationality Policy—to Enforce, to Omit, or Maybe to Change?*, 88 GEO. L.J. 329, 329–33 (2000).]

¹³⁷ Articles 30, 32, and 37 of the Mexican Constitution were revised and modified. CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [CONST.], *as amended*, Diario Oficial de la Federación [D.O.], 20 de Marzo de 1997 (Mex.).

¹³⁸ See CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [CONST.], *as amended*, Artículo 34, Diario Oficial de la Federación [D.O.], 20 de Marzo de 1997 (Mex.) (establishing that person born Mexican national becomes citizen at age 18). A five-year window was offered to eligible former citizens to reclaim Mexican nationality. CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [CONST.], *as amended*, Artículo Segundo Transitorio Reforma, Diario Oficial de la Federación [D.O.], 20 de Marzo de 1997 (Mex.).

¹³⁹ See *id.* at art. 34 (requiring that a deputy, senator, minister of the Supreme Court of Justice, state governor or state magistrate be a Mexican citizen by birth). [Ed.: Article 32 of the Mexican Constitution permits additional restrictions to be placed upon the rights of dual nationals. *Id.*]

¹⁴⁰ See Smith, *supra* note 1, at 734 (noting that Mexican nationals who are not Mexican citizens may hold Mexican passport or run for local office but may not vote). It has been suggested that the offer of Mexican “nationality” did not significantly change the legal entitlements that naturalizing Mexicans had before the amendment, and that it was largely advanced by the government for political gain among emigrant communities. See Vargas, *supra* note 126, at 16–19 (arguing that by emphasizing property rights component of dual nationality measure, government “chose to play on the mistaken ‘fears’” of emigrants that if they naturalized in United States and thereby became former citizens, they would lose important economic rights, when in fact basic property rights were well-protected under Mexican investment law).

immigrant groups¹⁴¹—former Mexican President Ernesto Zedillo made it explicit that he hoped to create a forceful pro-Mexican lobby in the United States made up of dual nationals and their descendants.¹⁴² The ability to retain Mexican nationality “could encourage millions of homesick Mexicans to pursue U.S. citizenship, thus increasing the political clout of Mexican-Americans.”¹⁴³ Pro-government private sector forces in Mexico saw in emigrants the same potential lobbying force. One such force, a television network “directly affiliated to Mexico’s pro-government Televisa empire,” tried to mobilize Mexicans resident in the United States to support NAFTA by sponsoring commercials on a major Spanish-language network urging Mexican emigrants in the U.S. to fulfill their national duty by supporting the accord.¹⁴⁴

If the success of the dual nationality provision is measured by the number of eligible Mexicans abroad who apply for Mexican nationality, it has not been a success so far.¹⁴⁵ Certainly the rate of Mexican permanent residents applying for U.S. citizenship has increased signif-

¹⁴¹ [Ed.: See U.S. CENSUS BUREAU, PROFILE OF THE FOREIGN-BORN POPULATION IN THE UNITED STATES: 1997, 20–21 (1999), available at <http://www.census.gov/prod/99pubs/p23-195.pdf>.] The relatively low rate of naturalization among Mexican immigrants has been the subject of much commentary. See, e.g., PETER H. SCHUCK, CITIZENS, STRANGERS, AND IN-BETWEENS: ESSAYS ON IMMIGRATION AND CITIZENSHIP 163–75 (1998) (positing that low naturalization rate suggests that immigration state citizenship is not sufficiently valued or valuable). But see Note, *The Functionality of Citizenship*, 110 HARV. L. REV. 1814, 1823–24 (1997) (criticizing this view of citizenship). It is also possible that some simply value their original citizenship more and so are not willing to renounce it, even in exchange for a very valuable United States citizenship status. While both explanations are plausible, the truth may be more pedestrian: Given that Canadian and Mexican immigrants have the lowest rates of naturalization, “geographical continuity may be a more decisive factor in deciding to obtain citizenship.” Vargas, *supra* note 126, at 12–13 (suggesting that ability to travel back and forth between Canada and the U.S., or between Mexico and the U.S., keeps one’s citizenship ties more intact than those farther from their countries of origin, and implying that latter nationalities find it easier to surrender their original citizenship because their contact with “home” is more protracted).

¹⁴² [Ed: Alfredo Corchado, *Zedillo Seeking Closer Ties with Mexican-Americans*, DALLAS MORNING NEWS, Apr. 8, 1995, at 11A.]

¹⁴³ *Id.* (discussing reaction of Texas Rep. Roberto Alonzo to Zedillo’s statement that he would consider allowing dual citizenship for Mexicans who become U.S. citizens). But see Eva Østergaard-Nielsen, *The Politics of Migrants’ Transnational Political Practices*, 37 INT’L MIGRATION REV. 760, 775 (2003) (finding little evidence that migrant political lobbying changes host state’s pre-existing foreign policy).

¹⁴⁴ JESÚS MARTÍNEZ SALDAÑA, AT THE PERIPHERY OF DEMOCRACY: THE BINATIONAL POLITICS OF MEXICAN IMMIGRANTS IN SILICON VALLEY 277–79 (1993) (noting that commercials also were aired on Telemundo).

¹⁴⁵ Interpretations of the naturalization figures vary, reflecting the difficulty of attributing any increases to a single “cause.” See, e.g., Aleinikoff & Klusmeyer, *supra* note 26, at 85 (“[A]t this point no evidence exists that the amendment has had an impact on Mexican naturalization rates.”); Paul Johnston, *The Emergence of Transnational Citizenship Among Mexican Immigrants in California*, in CITIZENSHIP TODAY, *supra* note 19, at 266–70 (dis-

icantly since 1995; at least some of that increase, however, can be attributed to the passage of Proposition 187 in California in 1994 and to the federal welfare reform legislation of 1996.¹⁴⁶ But early expectations on the part of both the Mexican and American governments that there would be a crush of naturalization and dual nationality applications now seem overblown.¹⁴⁷

The number of people who actually take advantage of the law's provisions, however, does not necessarily reflect the impact of the changes to Mexican citizenship law on a symbolic level. At the urging of the emigrant community in the United States—one growing in size as well as economic and political influence in both countries—the Mexican government and opposition parties have had to engage with the public in a debate about what it means to be Mexican, who is entitled to claim full membership rights, on what basis, and how to capture different tiers of membership in the laws governing citizenship. The discussion has garnered tremendous interest among all sectors of Mexican society. This marks a radical break with earlier conceptions of the criteria for national belonging. Just a few decades earlier, simply emigrating was synonymous with disloyalty and treason in public discourse.¹⁴⁸ Now the state itself, at the urging of emigrant

cussing numerous causes of “explosion” in 1997 of naturalization applications by Mexican immigrants without including passage of Mexican dual nationality law).

¹⁴⁶ See *supra* note 135. Some authors attribute the increased rates of naturalization entirely to “resurgent hostility toward aliens as well as recent legislation restricting their eligibility for public benefits and enhancing the risks of deportation.” Spiro, *supra* note 20, at 1412, 1457–58 (also recognizing that then-pending dual nationality provision in Mexico reflected new desire on part of emigration states to maintain ties with emigrants). The likelihood that Mexico's nationality legislation was also a factor in the increase, however, is consistent with recent data indicating that “immigrants from countries recognizing dual nationality average higher naturalization rates in the United States than countries that do not.” Michael Jones-Correa, *Under Two Flags: Dual Nationality in Latin America and Its Consequences for Naturalization in the United States*, 35 INT'L MIGRATION REV. 997, 998, 1000, 1017–18 (2001) (citing data from 1965–97, but also explaining that for six Latin American countries that adopted dual nationality provisions after 1991, naturalization rates among their nationals in United States were likely to have been positively affected by U.S. legislation in 1990s affecting immigrants).

¹⁴⁷ The Mexican Embassy initially estimated that three million naturalized emigrants would reclaim Mexican nationality. Alejandra Castañeda, *Roads to Citizenship: Mexican Migrants in the United States*, 2 LATINO STUD. 70, 77 (2004). By the expiration of the deadline for applications in March 2003, fewer than 70,000 had done so. *Id.*

¹⁴⁸ Emigrants who lived in the United States, whether or not they had become American citizens, generally were treated with disdain by the authorities. The situation was especially bad for returning emigrants who often were required to bribe their way through Mexican customs and immigration officials. One of the earliest symbols of the government's embrace of emigrants was the establishment of the Paisano Program in 1989, to discourage “shakedown” of returnees at the border. Gonzáles Gutiérrez, *supra* note 8, at 565.

citizens, has created a formal legal frame within which it actively hopes a robust dual national identity will emerge.¹⁴⁹

The message being conveyed is that emigrants are vital, welcome members of the Mexican nation who *should* also take on American citizenship: Emigrants who are eligible to naturalize fulfill a duty *to Mexico* by becoming Mexican and American, not merely Mexican-Americans. Official indifference to nonresident Mexicans, and a “healthy suspicion” of the Mexican government among emigrants has been replaced by a conception of the Mexican nation extending to wherever in the world Mexican citizens are located. Through literally redefining who is a part of the Mexican nation, the government has proclaimed to Mexicans in Mexico and abroad that belonging, membership, and national identity are not determined by territorial residence.

The dual nationality provision has been just as interesting for what it has not done vis-à-vis nonresident Mexicans. By declining to offer naturalizing emigrants full political citizenship, Mexico has chosen to continue to exclude nonresident citizens from an equal opportunity to participate in the governance of the state. In terms of political participation in Mexico, that is, voting in national elections, territorial residence remains a prerequisite for Mexican citizens.¹⁵⁰ American citizens who, following the constitutional amendment, are also Mexican nationals, have no franchise in Mexico. While Mexican-Americans are exhorted by the Mexican government to exercise their “increasing political clout” in the United States,¹⁵¹ they are not welcome to do so in Mexico (at least not formally). Nevertheless, the constitutional amendment gives dual nationals a solid legal status from which to claim further rights of inclusion in the Mexican nation.

Mexico is not the only emigration state to have adopted dual nationality or dual citizenship provisions as part of a national reorientation toward citizens abroad.¹⁵² The Philippines passed the

¹⁴⁹ See S. Mara Perez Godoy, *From Internal Regime Ruptures to the Transnationalization of Mexican Politics* (Feb. 19, 1999) (unpublished manuscript), http://migration.ucdavis.edu/rs/more.php?id=45_0_3_0 (noting that consensus among governing and opposition political parties on “no loss of Mexican nationality” constitutional amendment marked “historical juncture” when “all sought to advance transnational agendas of one form or another”).

¹⁵⁰ See Smith, *supra* note 1, at 735 (noting that “no loss of nationality” amendment “reserves direct participation in politics for those residing physically within Mexico on the logic that while the Mexican nation may extend the border, the effective Mexican polity and the vote do not”).

¹⁵¹ See *supra* note 143 and accompanying text.

¹⁵² See Eva Østergaard-Nielsen, *International Migration and Sending Countries: Key Issues and Themes*, in *INTERNATIONAL MIGRATION AND SENDING COUNTRIES*, *supra* note 10, at 3, 19 (noting that at least ten Latin American countries, several in Caribbean basin,

Citizenship Retention and Re-Acquisition Act of 2003 enabling former natural-born Filipino citizens who naturalized abroad, and their minor unmarried children, to reclaim their Philippine citizenship by taking an oath of allegiance to the Republic of the Philippines.¹⁵³

Turkey too passed dual citizenship legislation in 1995, and its consulate staff now encourage eligible emigrants residing in the European Union Member States to naturalize and become dual citizens.¹⁵⁴ Turkey also has created an intermediate membership tier for emigrants who are required to give up their Turkish citizenship when they naturalize abroad per the citizenship laws of the immigration state. These former citizens can, with permission of Turkish authorities, live and work in Turkey and can claim certain economic privileges.¹⁵⁵ This accommodation of some immigration states' continued resistance to dual citizenship has been criticized harshly by some Turks who interpret the quasi-dual citizenship status as a devaluing of Turkish citizenship vis-à-vis citizenship in an immigration state.¹⁵⁶

India also has taken limited steps toward affirming the right of emigrants to retain their Indian citizenship should they naturalize abroad. In January 2004, India provided for select emigrant citizens to become dual nationals.¹⁵⁷ Lending support to critics of the state's "dollar and pound apartheid," favoring only select emigrants for benefits at home,¹⁵⁸ only Indians who live in one of sixteen specified (immigration) states are eligible for dual nationality.¹⁵⁹ Dual citizens will not be able to vote in India or run for public office and will be ineligible to hold certain national security-related jobs.¹⁶⁰

Taken together, these examples of state practice indicate a trend toward expanding opportunities to retain and regain emigration state citizenship.

Thailand, Indonesia, and fifteen African countries permit dual nationality, with more poised to follow).

¹⁵³ Citizenship Retention and Re-Acquisition Act of 2003, Rep. Act No. 9225 (Phil.), available at http://www.immigration.gov.ph/immigration_laws09.php.

¹⁵⁴ See Østergaard-Nielsen, *supra* note 10, at 83.

¹⁵⁵ [Ed.: *Id.* at 83.]

¹⁵⁶ [Ed.: *Id.* (citing The Turkish Grand National Assembly, Question to the State Minister on the application of dual citizenship, 20/63, Jan. 23, 1998, Ankara).]

¹⁵⁷ The Citizenship (Amendment) Act, 2003, No. 6, Acts of Parliament, 2004 (India).

¹⁵⁸ See *supra* note 114.

¹⁵⁹ The countries are Australia, Canada, Finland, France, Greece, Ireland, Israel, Italy, the Netherlands, New Zealand, Portugal, Republic of Cyprus, Sweden, Switzerland, United Kingdom, and United States of America. The Citizenship (Amendment) Act, 2003, Schedule IV, Acts of Parliament, 2003 (India).

¹⁶⁰ *Id.* at § 7(B)(2).

C. Political Incorporation

By far the most controversial issues arising from emigration states' reconceptualization of citizenship relate to the political incorporation of emigrants. The citizenship constructions of most emigration states are thin with regard to nonresidents. That is, they envision emigrants as part of the larger national community—legal citizens who retain a strong sense of loyalty, affection, and even duty toward “home.” They often are styled as “national heroes” whose economic contributions in the form of remittances, investment, and “altruistic” ventures are vital for national development. But even though their economic engagement is welcome (and may even be framed as constitutive of their status as citizens), their direct participation in the national political community generally is not.

Until recently, few emigration states provided for the right to vote in national elections from abroad. Several, including Turkey, Mexico, and Taiwan, only allow emigrant citizens to cast a ballot if they return home to do so.¹⁶¹ Many states also bar nonresident citizens from running for political office.¹⁶² Few provide citizens abroad with any electoral representation of their interests at any level of government.¹⁶³ So for the vast majority of emigrants, the franchise and the opportunity to stand for elective office are effectively suspended for the duration of the migration.

Emigrants are not always willing to go along with this construction of citizenship as primarily an exercise in direct or indirect economic support of one's country. Many believe that their citizenship entitles them to the right to vote, to run for office, to participate in the public political sphere of their state of citizenship even when they live outside it. As citizens, they argue, their role in national affairs cannot legitimately be limited to the economic, social, cultural, and rhetorical spheres; they are entitled to full incorporation and inclusion in the

¹⁶¹ See Østergaard-Nielsen, *supra* note 10, at 20–87 [Ed.: Many states completely disenfranchise citizens living abroad. André Blais et al., *Deciding Who Has the Right to Vote: A Comparative Analysis of Election Laws*, 20 ELECTORAL STUDIES 41 (2001).]

¹⁶² Østergaard-Nielsen, *supra* note 10, at 20.

¹⁶³ Some countries do provide for formal representation of nonresident citizens as a group. Twelve seats in the French Senate, for example, are reserved for representatives of the nearly two million French nationals living outside France and its territories. Elizabeth Olson, *Americans Abroad Keep up Fight to Get a Delegate in Congress*, INT'L HERALD TRIB., Mar. 6, 2004, at 26, available at <http://www.iht.com/articles/509007.html>. Portugal, a former emigration state, provides for four emigrant parliamentarians, “two representing Portuguese citizens living in Europe and two for those living in the rest of the world.” *Id.* Ireland, another former emigration state that is now a state of immigration, is considering a constitutional amendment that would allow Irish emigrants to elect three senators. *Id.* Emigrant Colombians also elect a senator to represent them. See Jones-Correa, *supra* note 146, at 1002.

nation of which they are a member. These emigrants envision a robust long-distance citizenship that accommodates the exercise of the full range of their citizenship rights, including political. Emigrants' political membership claims are rooted in their legal citizenship status. They advance their claims from within a discourse of citizenship, and sometimes of international human rights.¹⁶⁴

Emigrants who want a thicker version of long-distance membership than the one on offer from the state are advancing counterclaims for the right to participate fully in their home state society beyond the economic sphere. Three themes recur in emigrants' political claim-making. The first is that just as emigrants can participate economically in state affairs from their states of residence, so should they be able to participate politically from abroad.¹⁶⁵ The second argument, advanced by mono-nationals, is that without the right to vote and otherwise participate in the political process at home, emigrants are deprived of that right entirely because, as noncitizens abroad, they are denied the franchise in their state of residence as well.¹⁶⁶ (Dual nationals argue that it is illogical that they can vote in their "new" country, but not at "home."¹⁶⁷). The third recurring theme is that emigrants already participate in the political process by contributing money, time, and support to political parties and candidates. Indeed, they are aggressively solicited for financial support, and even encouraged by politicians of all stripes to try to influence friends and family back home during elections.¹⁶⁸ Emigrants argue that if they are encouraged to play this type of informal role during elections, there is

¹⁶⁴ See *infra* text accompanying notes 165–68.

¹⁶⁵ See, e.g., Stevenson Jacobs, *Immigrants Seek Right to Vote in Mexico's Elections*, HOUSTON CHRON., Apr. 28, 2002, at 34A (quoting unnamed Mexican emigrant lobbying for voting rights as saying: "We haven't just left Mexico, . . . we're sustaining it"). It is not a stretch to analogize sending remittances to paying a voluntary tax.

¹⁶⁶ See Jessica Garrison, *Farmer Gives Up Mexican Mayoralty*, L.A. TIMES, Jan. 28, 2002, at B1 (quoting Guadalupe Gomez, leader of Southern California federation of clubs from Mexican state of Zacatecas as saying: "We had to leave the country because they couldn't provide us with a decent way of living . . . and we are not looked upon in the U.S. as first-class citizens and not there either, and we don't know which government is worse."). Although European Union (EU) citizenship arrangements are outside the scope of this Article, it is noteworthy that citizens of the EU who live outside their state of citizenship but in another EU Member State are entitled "to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State." Treaty Establishing the European Community art. 19, Feb. 26, 2001, 2002 O.J. (C 325) 45.

¹⁶⁷ See, e.g., Jacobs, *supra* note 165 (quoting emigrant Jorge Mujica as saying: "Up there we're already electing mayors and governors, but here we can't even vote. . . . It's crazy.").

¹⁶⁸ See *infra* note 193–93 and accompanying text.

no valid reason for excluding them from formal mechanisms for participation and representation.¹⁶⁹

These arguments have forced emigration states to reconsider just how far the rights associated with citizenship can be extended. In many cases, demands for fuller political rights from abroad (mostly the right to vote, run for office, and have elected emigrant representatives) have launched intense public debates on the place of emigrants in an emigration nation or state.¹⁷⁰ The state, emigrants, and resident citizens are confronted with a fundamental challenge to “the traditional assumption that domestic politics is exclusively decided within the internal arenas of the nation-state.”¹⁷¹ In many cases, the “emigrant vote” could be decisive in national elections, provoking serious concern about “external” interference in core matters of self-determination and governance.

In a few important cases, the result has been full (re)incorporation of emigrants into the political institutions of their state of citizenship. Colombians and Peruvians are entitled to cast absentee ballots for general elections at embassies and consulates abroad.¹⁷² Citizens of the Dominican Republic and the Philippines voted from abroad for the first time in 2004 in their countries’ respective presidential elections.¹⁷³ The legislation permitting voting by nonresident citizens was passed in 1987 in the Philippines¹⁷⁴ and in 1997 in the Dominican Republic,¹⁷⁵ but in both cases, legislators uncertain of the impact of the emigrant vote delayed passage of the necessary enabling laws. Interestingly, voters in both of these classic emigration states elected former emigrants to lead their countries: The Filipino President, Gloria Arroyo, is a Harvard-educated econo-

¹⁶⁹ [Ed.: See, e.g., Koser, *supra* note 96, at 180–81.]

¹⁷⁰ See, e.g., Østergaard-Nielsen, *supra* note 10, at 87 (discussing series of long parliamentary debates on subject of emigrant voting from abroad starting in 1986).

¹⁷¹ Bauböck, *supra* note 7, at 702. Bauböck actually uses this phrase to describe the challenges posed by candidates who campaign abroad and by migrant lobbying of immigration states with respect to policies towards the migrants’ state of origin. *Id.* It applies equally to the challenge of voting from abroad.

¹⁷² See Jones-Correa, *supra* note 146, at 1005, 1008.

¹⁷³ See Andrea Elliott, *For Dominicans, a New York Vote Cast Homeward*, N.Y. TIMES, May 17, 2004, at B1; Simon Montlake, *Filipinos Abroad Get Vote*, CHRISTIAN SCI. MONITOR, Mar. 17, 2004, at 7 (noting that Filipino emigrants could register with local consul and vote from abroad for first time). Filipinos abroad also may vote in state elections. *Id.*

¹⁷⁴ See Montlake, *supra* note 173 (noting that Filipino constitution drawn up after fall of Ferdinand Marcos extended franchise to Filipinos living abroad); see also Rodel E. Rodis, *Absentee Voting and Filipino TNTs*, GLOBAL NATION, Feb. 20, 2003, http://www.inq7.net/globalnation/col_gln/2003/feb20.htm (quoting congressman resisting implementation of absentee voting bills because he believed Filipino emigrants had “abandoned the Philippines”).

¹⁷⁵ See Elliott, *supra* note 173.

mist,¹⁷⁶ and Leonel Fernandez left the Dominican Republic as a boy with his family and lived in the United States until returning home for university studies.¹⁷⁷ These elections reflect a broad social consensus within the Dominican Republic and the Philippines that emigrants are part of the national landscape, welcome to participate as voters, candidates, and even victorious heads of state.

Other states, notably Mexico, India, and Turkey, have been much slower to respond to emigrant demands for full political inclusion.¹⁷⁸ In all of these countries, the issue of formal, direct emigrant electoral participation is closely tied to lobbying for dual citizenship. In the Philippines and the Dominican Republic, voting rights flowed from dual citizenship legislation. Mexico legalized voting from abroad in 1996—the same year of the constitutional amendment permitting dual nationality—but again the implementing legislation has been delayed repeatedly for political reasons.¹⁷⁹ The federal elections agency, the Instituto Federal Electoral (IFE), has since created an independent commission to look into the feasibility of implementing voting rights for the estimated eleven million eligible Mexican voters living abroad.¹⁸⁰ The IFE's final report, issued in 1998, concluded that absentee voting was "viable" and that eighty-three percent of Mexican emigrants wanted to vote from abroad¹⁸¹—findings that put even more pressure on the government to make absentee voting a reality.

¹⁷⁶ [Ed.: See Montlake, *supra* note 173.]

¹⁷⁷ [Ed.: See Jones-Correa, *supra* note 146, at 1004; Biography of Leonel Fernandez posted on the official website of the Presidency of the Dominican Republic (2004), <http://www.presidencia.gov.do/frontend/leonel.php>.]

¹⁷⁸ [Ed.: The discussion that follows focuses only upon Mexico. Turkey and India are discussed in Østergaard-Nielsen, *supra* note 10, at 87, 132.]

¹⁷⁹ [Ed.: See Smith, *supra* note 1, at 729 (discussing constitutional change removing prohibition upon voting from abroad in Presidential elections). On reasons for the delay in passing implementing legislation, see Antonio Olivo & Chris Kraul, *L.A. Man Shows Clout of Mexican Expatriates; Politics: Named to That Nation's Congress, He Says He Will Work For People Living on Both Sides of the Border*, L.A. TIMES, July 10, 2000, at B1.]

¹⁸⁰ See Smith, *supra* note 1, at 732 (noting that Instituto Federal Electoral (IFE) report "was itself partly a response to the demands of Mexican and Mexican-American immigrants and activists returning to Mexico during the spring of 1998 to publicly lobby for implementation of this right"); see also Jacobs, *supra* note 165 (noting that eligible emigrant voters number more than one quarter of all Mexicans who voted in 2000 Presidential election). An active emigrant lobbying group, the Coalition for Mexicans Abroad, was founded in 2000 and has tapped into political support among Mexican opposition party members, winning widespread media coverage of their efforts.

¹⁸¹ INSTITUTO FEDERAL ELECTORAL, INFORME FINAL QUE PRESENTA LA COMISIÓN DE ESPECIALISTAS QUE ESTUDIA LAS MODALIDADES DEL VOTO DE LOS MEXICANOS RESIDENTES EN EL EXTRANJERO [FINAL REPORT PRESENTED BY THE SPECIAL COMMISSION STUDYING VOTING BY MEXICANS ABROAD] 3, 15 (1998), available at http://www.ife.org.mx/InternetCDA/IFEInternacional/index.jsp?padre=IFE%20Internacional&hijo=Voto%20en%20el%20Extranjero&pagina=VOTO%20EN%20EL%20EXTRANJERO%20INFORME%20FINAL&menu=menu_Internacional.jsp. Reflecting the give-

Ironically, the state's encouragement of naturalization among Mexicans in the United States has strengthened emigrants' claim to fuller political incorporation in Mexico. By becoming American citizens, emigrants have increased their political power in the United States significantly, just as the Mexican government hoped that they would.¹⁸² As Mexico and the United States become more deeply integrated economically, however, Mexican-Americans' political leverage grows not only in the United States, but also with respect to the Mexican government.¹⁸³

Citizens of democratic polities are entitled not only to vote, they also may want to stand for elective office. Mexican law with respect to the validity of emigrants running for political office is "ambiguous."¹⁸⁴ In the federal elections of 2000, three Mexican emigrants in the United States (all U.S. citizens or permanent residents) ran for "at large" congressional seats.¹⁸⁵ The only victor, Eddie Varon Levy, plans to advocate for emigrant political rights: absentee voting, the addition of twenty-five seats to the Mexican Congress for deputies elected by Mexicans abroad, and reduction of the high fees charged in the United States to send money to Mexico.¹⁸⁶

Across emigration states, sub-state and non-state actors compete for emigrant engagement, affection, and affiliation. The Mexican state of Zacatecas, for example, amended its constitution in 2003 to

and-take nature of extraterritorial claims-making, in response to the IFE final report, the Federal Code for Electoral Processes and Institutions stipulated that the first step to establishing an absentee voting process would be the creation of a National Citizens Registry, enabling the state to locate its citizens abroad. Xochitl Bada, *The Movement to Enfranchise Mexican Expatriates: A Case Study of Market Membership Without Absentee Suffrage* (Nov. 25, 2003) (unpublished manuscript), available at <http://humanrights.uchicago.edu/workshoppapers/XochitlBada.pdf>.

¹⁸² See, e.g., Keith Epstein, *Bush, Kerry Jockeying for Votes of Latinos*, TAMPA TRIB., Apr. 10, 2004, at 1 (calling Hispanic voters [who number about 7.4 million, 56% of whom are Mexican-Americans] "a potentially deadlock-breaking commodity in the 2004 Presidential election"); Paul West, *Bush in Battle to Keep Hispanic Vote*, BALT. SUN, Aug. 23, 2004, at 1A (pointing out that in his reelection campaign for governor of Texas, Bush "aggressively courted Mexican-Americans and got almost half their votes").

¹⁸³ Smith, *supra* note 1, at 747 (pointing out that as importance of Mexican-Americans grows in U.S. politics, anti-Mexican policies may decline and implying that both U.S. and Mexico will need to become more solicitous of emigrant concerns).

¹⁸⁴ See Mena, *supra* note 1 (characterizing comments by IFE official Carlos Navarro).

¹⁸⁵ See Pam Belluck, *Mexican Presidential Candidates Campaign in U.S.*, N.Y. TIMES, July 1, 2000, at A3 (noting that Eddie Varon Levy and Jose Jacques Medina of Los Angeles and Raul Ross Pineda of Chicago ran for Congress on regional party slates).

¹⁸⁶ See Briseño & Kraul, *supra* note 1 (noting that other two candidates lost, and quoting Varon Levy as saying: "It's a breakthrough. I am going to be in the trenches fighting for Mexicans living abroad."); Antonio Olivo & Chris Kraul, *L.A. Man Shows Clout of Mexican Expatriates*, L.A. TIMES, July 10, 2000, at B1 (noting that Varon Levy, U.S. resident and Mexican citizen, planned to commute between his homes in West Los Angeles and Mexico when Congress is in session).

make it easier for migrants to participate in elections. The state has about fifty percent of its population (almost 1.5 million people) living in the United States. Zacatecas allocated two state congressional seats for migrants only. Part-time residents and U.S.-born citizens with Zacatecan parents also were permitted to run for office.¹⁸⁷ These state-level reforms were prompted by the uproar that followed the IFE's revocation of the election of Andrés Bermudez, a dual (Mexican-U.S.) national and U.S. resident, as mayor of the city of the Zacatecan city of Jerez.¹⁸⁸ The ruling—justified by Bermudez's non-residence in Jerez for the twelve months preceding the election (not by his U.S. citizenship)—was derided widely as improper interference by a federal institute in a provincial (state) level election matter.¹⁸⁹ It also confirmed many emigrants' suspicions that the federal government was reluctant to extend direct political participation to emigrants, despite their many public pronouncements to the contrary. In an open letter to the President, Bermudez supporters criticized the IFE's ruling that his residence in the United States made him ineligible for mayor, arguing: "Politically, this [Bermudez's] is a real and binational presence that questions the archaic ideas of the community and nation . . . concepts no longer in force . . . interpret[ed] . . . in an almost geographic way."¹⁹⁰ They proposed an understanding of presence based on emigrants' participation and contributions to Mexico.¹⁹¹

Short of full formal political incorporation, emigrants "find many other ways to participate in politics in their country of origin,"¹⁹² and

¹⁸⁷ See Olga R. Rodriguez, *Mexican State Poised to Put Migrants in Office*, SAN DIEGO UNION-TRIB., July 4, 2004, at A21. Zacatecas is also the home state of the first U.S. citizen ever to hold a seat in Mexico's Congress, Manuel de la Cruz, who was elected in 2003 while living in California. De la Cruz entered the United States illegally thirty years earlier and eventually became a citizen. See Mena, *supra* note 1 (quoting de la Cruz as saying his "top goal is to give [Mexican] immigrants a voice in this country [Mexico]").

¹⁸⁸ A *New York Times* headline neatly captured the dynamic: *Candidate Lives in U.S., but So Does Half the State*. Ginger Thompson, N.Y. TIMES, June 19, 2001, at A4. For background of the case through 2003, see Smith, *supra* note 1, at 732–37; *Mexican Migrants Force Political Change*, BBC NEWS, Oct. 14, 2003, <http://news.bbc.co.uk/2/hi/americas/3187738.stm>, as well as Rodriguez, *supra* note 187 (noting that Bermudez ran for public office in Zacatecas again in 2004).

¹⁸⁹ See Smith, *supra* note 1, at 732–37.

¹⁹⁰ *Translated and quoted in* Smith, *supra* note 1, at 735.

¹⁹¹ *Id.* at 735–36. Bermudez's subsequent election as mayor in 2004, following the amendment to the Zacatecan constitution in 2003, see *supra* note 187 and accompanying text, continued to be seen as controversial in many quarters. See, e.g., Phyllis Schlafly, *Oath of Citizenship Should Remain the Same*, TOWNHALL.COM, Sept. 22, 2003, <http://www.townhall.com/columnists/phyllisschlafly/ps20030922.shtml> ("Our government should revoke Bermudez's U.S. citizenship, as well as that of all other naturalized U.S. citizens who ran for public office in Mexico or voted in Mexico's elections.").

¹⁹² Østergaard-Nielsen, *supra* note 10, at 20.

groups in the home state find ways to involve emigrants. It is now commonplace for certain nonresident communities to be visited, often repeatedly, by a range of candidates actively campaigning for their financial, logistical, and moral support.¹⁹³ All of them pay lip service to the tremendous debt the home state owes the emigrants who face extraordinary challenges, discrimination, difficult work conditions, displacement, and alienation. Many make campaign promises to fully and permanently incorporate emigrants into the national polity.¹⁹⁴ Emigrants increasingly flex their economic muscle to affect political outcomes. The economic leverage of emigrant Dominicans, for example, was the central factor in their winning both the right to hold plural nationalities and to vote in Dominican elections from abroad. To draw attention to the potential power of their direct enfranchisement, Mexicans in Chicago have staged mock elections, casting symbolic votes to coincide with actual balloting in Mexico.¹⁹⁵ And every election season, thousands of emigrants dutifully return to their home countries to exercise their right as citizens to participate directly in electing their nations' leaders.¹⁹⁶ Although in most cases the number

¹⁹³ One study calculated that even before the absentee voting provisions, between ten and fifteen percent of donations made to Dominican political parties were raised among emigrants abroad. See Pamela M. Graham, *Reimagining the Nation and Defining the District: Dominican Migration and Transnational Politics*, in *CARIBBEAN CIRCUITS: NEW DIRECTIONS IN THE STUDY OF CARIBBEAN MIGRATION* 91, 101 (Patricia R. Pessar ed., 1997). Barely noticed is the recent reverse extension of international political campaigning by politicians from immigration states in emigration states, reflecting the perceived value at home of the "ethnic vote." See David Howard, *Dominicans Abroad: Impacts and Responses in a Transnational Society*, in *INTERNATIONAL MIGRATION AND SENDING COUNTRIES*, *supra* note 10, at 57, 66 (noting that recent gubernatorial candidates from New York both visited Santo Domingo "to illustrate their solidarity with the Dominican and Latino/a vote in their home constituencies"); Richard Pérez-Peña, *Pataki's Santo Domingo Tour Passes Into Tropic of Politics*, *N.Y. TIMES*, Feb. 20, 2002, at B1 (reporting campaign visits to Dominican Republic by Andrew Cuomo and George Pataki).

¹⁹⁴ See, e.g., Jones-Correa, *supra* note 146, at 1003–04 (citing Larry Rohter, *New York Dominicans Strongly Back Candidates on Island*, *N.Y. TIMES*, June 29, 1996, at B1) (noting that in 1996 Dominican Republic presidential election, winning candidate, who was raised in New York, announced plan to establish "Ministry of the Diaspora," and his defeated opponent promised to allow election of congressional deputies to represent nonresident Dominicans).

¹⁹⁵ Alfredo Corchado, *Fox Pushes for a More Open Border*, *DALLAS MORNING NEWS*, July 16, 2001, at 1A (reporting that in Chicago, local offices represent all three major Mexican political parties and hold mock presidential elections as part of absentee voting rights campaign).

¹⁹⁶ [Ed. See, e.g., Jean Merl, *Groups To Help Emigres Fly to Israel for Elections; Voting: Two Competing Political Factions Hope that Thousands Living Abroad Will Have an Impact on National Balloting*, *L.A. TIMES*, May 9, 1999 (noting émigrés returning to Israel to vote); BBC Worldwide Monitoring, Bulgarian news agency review of the Bulgarian press for October 21, 2003 (discussing Bulgarian emigrants in Turkey returning to vote); Patrizio Nissirio, *Greece: Countdown to Election Day*, *ANSA ENGLISH MEDIA SERV.*, Mar. 4, 2004 (highlighting emigrants returning to Greece to vote). Compare Tony Perry &

of emigrants who go home to vote represents only a small percentage of the total number of emigrant citizens, the fact that any make the journey at all indicates that among some emigrants there remains a deeply held desire to participate in the affairs of a country they still feel is their own.

CONCLUSION

This Article marks the beginning of an effort to isolate, describe, and analyze the range of relations between emigrants and emigration states that constitute external citizenship. It has attempted to capture the process of reconstructing citizenship by emigration states and their nonresident citizens by examining how citizenship is practiced by emigrants and how emigration states are trying to channel, engage, co-opt, encourage or discourage such practices. Both the increasing breadth and depth of these interactions are evidence that external citizenship is an evolving phenomenon deserving of scholarly attention. For those interested in "how migration impacts on conceptions of membership and rights,"¹⁹⁷ consideration of this data is essential.

I have argued that conceptions of citizenship that are being revised from an emigration perspective in a context of South-North migration differ from those being reconstructed simultaneously in immigration states. As such, the current citizenship discourse, which is mired in an unacknowledged immigration perspective, is unable to account for external citizenship. A broader conception of citizenship that is extraterritorial and nonresidential is required. Articulating the precise contours of a new paradigm will be the subject of future work but one can discern already its central concerns regarding the potentials of and limitations on citizenship exercised outside the territorial state.

Although it is tempting to describe evolving emigrant citizenship as eliminating geographic borders in some postmodern sense, such a conception is not accurate. The society in which the emigrant participates is still territorially bound. The context of modern emigration has expanded who can participate in the home state society. That society was, until very recently, almost wholly closed off to nonresidents, citizens or not. It now has been opened, extended in a sense, to include increasingly diverse forms of participation from citizens abroad.

Laura Castaneda, *Mexico's Landmark Vote; Emigres to U.S. Make a Weak Showing; Politics: Those Who Traveled From California for Balloting Are Outnumbered by Out-of-Town Voters From Other Regions of Mexico*, L.A. TIMES, July 3, 2000 at A17 (noting few Mexican emigrants returned to vote in 2000 elections).]

¹⁹⁷ Bauböck, *supra* note 7, at 700.

As this Article represents a preliminary positive account of what I argue is a growing phenomenon, I will offer only speculative conclusions with regard to likely developments. The first tendency is toward a gradual institutionalization of relations between most emigration states and their citizens abroad. The initiation of a state-emigrant dialogue founded on the perceived value of emigrants to the emigration state has created "a diasporic public sphere and strengthens the political membership of migrants."¹⁹⁸ A metaphoric or rhetorical strengthening of membership, however, is not in all cases sufficient to respond to emigrant claims for ever more institutionalized inclusion in the national polity. Second, as certain state-emigrant relations become more robust, immigration states will begin to intervene more in those relationships, be it in a monitoring capacity or more actively seeking to influence the content and nature of emigration state-emigrant activities. Moreover, relations between long-term emigrants and their states of citizenship may be seen as disruptive of immigration policies aimed at assimilation, which presume only a passive, sentimental attachment to the home state. Finally, as emigration states develop more sophisticated understandings of the role of emigrants' economic inflows and how to integrate those flows into their own economic development projects, they will continue to revise citizenship constructs and will continue negotiating with external citizens who seek to leverage their economic influence into meaningful long-distance participation at home.

¹⁹⁸ Smith, *supra* note 1, at 728.