

# TRANSNATIONAL POLITICS AND THE DEMOCRATIC NATION-STATE: NORMATIVE CHALLENGES OF EXPATRIATE VOTING AND NATIONALITY RETENTION OF EMIGRANTS

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*In this piece, Ruth Rubio-Marín discusses how emigrant citizenship (understood as emigrants' efforts to remain included in their national communities and the efforts by emigration states to encourage this) relates to the prevailing notion of the nation-state. She argues that emigrant citizenship challenges some of the traditional elements of the nation-state construct, such as the mutually exclusive and territorially bounded notion of political belonging, while, on the whole, reasserting the relevance of national membership. The piece then turns to the normative force of the concept of emigrant citizenship, focusing on two of the claims that are more commonly articulated by expatriates: absentee voting and a right to retain their nationality of origin even if they naturalize in the country of residence. Rubio-Marín argues that emigrants have a right to retain their nationality of origin, and with it, a sense of national identity, their ties with the country of origin, and the option to return, even if they naturalize abroad. Yet she finds that they do not have a similar right to absentee voting. Instead, absentee voting should only be seen as an option that, under certain circumstances, sending countries may legitimately embrace. This holds true, she claims, regardless of expatriates' contributions to the national economies through remittances or other forms of capital inflow.*

Literature dealing with the challenges that migration movements pose to notions of citizenship has focused on immigration countries. Emigration countries have, for the most part, been left out of the picture. To bring them back in, Kim Barry argues that “a broader conception of citizenship that is extraterritorial and nonresidential” is required.<sup>1</sup> According to Barry, this new notion of citizenship is not one that necessarily undermines the salience of national sovereignty by presenting postnational communities as alternatives to territorially bounded national polities. Rather, the new concept of citizenship needs to take into account the ways of *national* participation of non-resident citizens from abroad.<sup>2</sup>

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<sup>1</sup> Kim Barry, *Home and Away: The Construction of Citizenship in an Emigration Context*, 81 N.Y.U. L. REV. 11, 58 (2006).

<sup>2</sup> *Id.* at 58–59.

I devoted several years of my life to defending the political inclusion of immigrants *because* of their condition as residents and in spite of their lack of recognized status as members of the national community. In the spring of 2003 I taught a seminar on this subject at New York University. Kim Barry audited that seminar and became more and more interested in these issues. This is how I first met her. Afterwards, we became friends. I never imagined then that she would now give me, this soon and this tragically, an opportunity to reflect on the normative intricacies of the flip side phenomenon that Barry decided to focus on: emigrants' efforts to remain included in their national communities and in their political spaces (and the efforts by emigration states to encourage this) *in spite of* their nonresidence in the countries of origin. In her piece, Barry describes the traits of this phenomenon, dissecting it analytically in the language of citizenship. Here, I would like to move to a normative terrain in the conviction that, in shaping this broader conception of citizenship, she too would have had to deal with some of these theoretical quandaries.

In this Article, I intend to flesh out how emigrant citizenship relates to the prevailing notion of the nation-state, with particular attention to the normative implications of this phenomenon. In Part I, I argue that emigrant citizenship impacts the nation-state construct in a complex and fluid way that both reinforces and challenges elements of that construct. In Part II, I detail several basic national discourses of expatriation and explore how they affect the attitude of emigrants towards sending countries. In Parts III and IV, I explore the normative force of the idea of emigrant citizenship by discussing two of the main claims that are articulated around it, namely, absentee voting for expatriates and the right of expatriates to retain their nationality of origin even if they naturalize in the country of residence.

## I

### THE NATION-STATE CONSTRUCT CHALLENGED BY EXTERNAL CITIZENSHIP

There is a basic sense in which the model of citizenship Barry is arguing for is post-national. The notion of citizenship embraced by the traditional conception of the nation-state is fundamentally a territorial one.<sup>3</sup> It assumes that the world can be divided into political units—states—that are in potential conflict with each other. It also assumes that these states exercise territorial jurisdiction and sover-

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<sup>3</sup> See Rogers Brubaker, CITIZENSHIP AND NATIONHOOD IN FRANCE AND GERMANY 22–29 (1992) (explaining how differing definitions of citizenship in France and Germany have been shaped by different understandings of nationhood).

eignty and that they embody distinct nations. The people to whom the geopolitical space of the state is allocated are its nationals. As such, they are accorded a set of rights and duties which, when democratically conceived, entitle the members of the state to self-government in the pursuit of personal projects and collective well-being. Full equality remains a privilege of full members. While in the state, those who are not full members are subject to the jurisdiction of the state and enjoy an array of rights and duties. Several rights, however, including those that are most expressive of political membership, remain strictly reserved to the national citizen.<sup>4</sup> The full exercise of political rights, including the right to national suffrage, the right to hold public office, and the right to unconditional acceptance as a resident of the nation-state,<sup>5</sup> form part of that cluster of entitlements reserved for national citizens, and therefore are defining elements of full membership status.

External citizenship does not fit neatly into this picture because of its dislocated territorial dimension.<sup>6</sup> External citizenship is not a

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<sup>4</sup> International law confirms the allocation of political membership using the device of nationality, a concept which recognizes political rights as citizen rights and not just human rights. Article 21.1 of the Universal Declaration of Human Rights, for example, recognizes that "[e]veryone has the right to take part in the government of his country, directly or through freely chosen representatives," Universal Declaration of Human Rights, G.A. Res. 217A, art. 21.1, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948); *see also* International Covenant on Civil and Political Rights, art. 25, Dec. 19, 1966, 999 U.N.T.S. 171 (recognizing rights of citizens to vote, run for office, take part in conduct of public affairs, and have generally equal access to public service); American Convention on Human Rights art. 23, Nov. 22, 1968, 1144 U.N.T.S. 151 (referring to right to participate in government, including suffrage, access to public service, etc., as a right of citizens); Convention for the Protection of Human Rights and Fundamental Freedoms art. 16, Nov. 4, 1950, 213 U.N.T.S. 221, 234 ("Nothing in Articles 10, 11, and 14 [protecting rights of expression, assembly, association, and non-discrimination] shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.").

<sup>5</sup> *See, e.g.*, Universal Declaration of Human Rights, *supra* note 4, art. 13.2 (stating that everyone has right to return to his or her country); International Covenant on Civil and Political Rights, *supra* note 4, art. 12.4 ("No one shall be arbitrarily deprived of the right to enter his own country."); Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms art. 3.1–3.2, Sept. 16, 1963, Europ. T.S. No. 46 (providing that "no one shall be expelled from the territory of the State of which he is a national" or "shall be deprived of the right to enter the territory of the State of which he is a national"); American Convention on Human Rights, *supra* note 4, art. 22.5 ("No one can be expelled from the territory of the State of which he is a national or be deprived of the right to enter it.").

<sup>6</sup> Expressions of the territorial dimension of the nation-state construct account for a wide range of principles and state practices, including the principle of territorial sovereignty, the principle of territorial integrity, the principle of *jus soli* as a way to ascribe nationality, the practice of requiring non-nationals a certain residential status and duration before they can naturalize, the practice of taking away either nationality altogether or the possibility of exercising some rights for those who live abroad, the right of nationals always

matter of people leaving the national community in which they were born to join a different one (people who change membership from one "club" to join another); if it were, it would be sufficient to recognize the fluid nature of the system by acknowledging its porous limits. Rather, external citizenship is about people who, in spite of having left the nation-state as a territorial space of coexistence, aim to continue enjoying and exercising their political membership status (in terms of identity, legal status, and entitlements) from within the territory of another national community.

There is another sense in which external citizenship challenges the old nation-state scheme, namely, by generating not only extraterritorial membership, but also "overlapping boundaries of membership."<sup>7</sup> Indeed, the reality of nationals who leave their states behind, join a new society and sometimes a new polity, and yet claim active membership in their country of origin, requires us to abandon a neat picture of nation-states in which each state is allocated a distinct and separate geopolitical space inhabited by a group with a common political destiny and membership status. Because external citizens to some extent become internal citizens of the receiving country (either through naturalization or through the extension of most rights to permanent residents), we end up with a "messier" picture, one in which external citizenship often also means dual or multiple membership.

## II

### EXTERNAL CITIZENSHIP AS A PRODUCT OF THE NATION-STATE

Since the world has never been a tidy order of closed societies, this broader phenomenon now known as "political transnationalism" has its share of antecedents.<sup>8</sup> For instance, the participation of immi-

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to go back to the territory of their country of nationality, the right of former nationals to reacquire their nationality when they return to the country of origin, and the limitation of the right of expatriates to pass on their nationality indefinitely to future generations abroad.

<sup>7</sup> Rainer Bauböck, *Towards a Political Theory of Migrant Transnationalism*, 37 INT'L MIGRATION REV. 700, 703 (2003). The notion of exclusive political membership under the nation-state construct explains a whole range of principles and legal practices, including asking nationals to give up their nationality when they acquire that of a foreign nation or engage in certain conduct (e.g., joining a foreign government, voting abroad, or joining foreign military forces); requiring newcomers to give up their previous nationality as a condition for naturalization; asking expatriates who lost their nationality of origin to give up their new nationality before they can reacquire the old one; avoiding dual nationality at birth by ensuring that only the nationality of one of the parents is passed on to the children; or asking those who acquire several nationalities at birth to give up one of them.

<sup>8</sup> If "transnationalism" refers, among other things, to the increase in cross-national migration and the possibilities for transnational migrants to maintain meaningful ties to

grants or ethnic groups in the politics of their countries of origin is not new at all. If this phenomenon has become more vibrant and visible in recent times, this is at least partly because of external factors that now allow for it, such as developments in transportation and communications technologies that make it easier for emigrants to remain engaged with their countries of origin.<sup>9</sup> As Benedict Anderson has vividly put it:

The Moroccan construction worker in Amsterdam can every night listen to Rabat's broadcasting services and has no difficulty in buying pirated cassettes of his country's favorite singers. The illegal alien, *Yakuza*-sponsored, Thai bartender in a Tokyo suburb shows his Thai comrades karaoke videotapes just made in Bangkok. The Filipina maid in Hong Kong phones her sister in Manila and sends money electronically to her mother in Cebu.<sup>10</sup>

In other respects, however, the phenomenon of emigrant citizenship is not simply a natural result of globalization but is the calculated result of sending countries looking for new ways to participate in and profit from the world economy. José Itzigsohn describes a trend in the last two decades of an increasing number of countries that have failed to renegotiate their places in the world economy through the development of export sectors.<sup>11</sup> Faced with recurrent public deficits and systematic failures in their tax efforts, these countries have become more and more dependent on foreign capital.<sup>12</sup> It is in this context that migrant remittances, human capital, and investments have come to play an essential role in securing hard currency, fueling the economy, and helping low-income households survive.<sup>13</sup> To achieve this, sending countries have relied on the traditional techniques of nation-building, appealing to the loyalty, patriotism, and allegiance of its diasporic national community to ensure the ongoing economic contribution of its members. They have also engaged in such practices as changing their nationality laws to allow expatriates to retain their

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their countries of origin, Linda Bosniak, *Multiple Nationality and the Postnational Transformation of Citizenship*, in *RIGHTS AND DUTIES OF DUAL NATIONALS: EVOLUTION AND PROSPECTS* 27, 34 (David A. Martin & Kay Hailbronner eds., 2003) [hereinafter *RIGHTS AND DUTIES OF DUAL NATIONALS*], then according to Bauböck, political transnationalism should be conceived as not only encompassing the various forms of migrant participation in the politics of the country of origin via the political institutions of the host country, but also the ways migration changes the institutions and the conceptions of membership both in sending and receiving states. Bauböck, *supra* note 7, at 701–02.

<sup>9</sup> Barry, *supra* note 1, at 15.

<sup>10</sup> Benedict Anderson, *Exodus*, 20 *CRITICAL INQUIRY* 314, 322 (1994).

<sup>11</sup> José Itzigsohn, *Immigration and the Boundaries of Citizenship: The Institutions of Immigrants' Political Transnationalism*, 34 *INT'L MIGRATION REV.* 1126, 1143 (2000).

<sup>12</sup> *Id.*

<sup>13</sup> See Barry, *supra* note 1, at 28–30; Bauböck, *supra* note 7, at 709–10.

nationality after they have naturalized abroad.<sup>14</sup> By fueling this sense of loyalty, sending countries have also sought to have nationals abroad act as political lobby groups to advance their national interests in the receiving government.<sup>15</sup> Because the feeling of national belonging connects with basic human longings for communal experiences, expatriates, often subject to prejudice in their countries of residence, feel comforted and empowered by this new nationalist rhetoric. In turn, these emigrants embrace opportunities of dual nationality, such as the right to hold property or to invest without restrictions.<sup>16</sup>

To set this more recent phenomenon in context, it is worth remembering that in almost every country affected by large scale emigration there has been a place in the national imagination dedicated to those who emigrate. Just what place these emigrants occupy, however, has ranged between "traitors" and "missionaries in the service of their nation."<sup>17</sup> The role of emigrants often gets polarized in newly formed or threatened nation-states, which find their political and economic survival at stake. Before the industrial and the democratic revolutions, most states considered their subjects as their essential economic assets, "bound to their rulers by perpetual allegiance."<sup>18</sup> This made states extremely concerned about emigration, which was viewed as a sort of desertion. Today, however, the prevailing liberal ethos includes the subject's rights to leave the country and change nationality at least as long as there is another country willing to take the subject.<sup>19</sup> The focus now is rather on controlling entry, and the general attitude towards those who have left is disinterest, i.e., "as lost populations who have cut the ties to their origins."<sup>20</sup>

This being so, it seems that the initial formation of communities of external citizens with strong ties and involvement with their countries of origin has probably more to do with the domestic policies of

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<sup>14</sup> See generally Michael Jones-Correa, *Under Two Flags: Dual Nationality in Latin America and its Consequences for Naturalization in the United States*, in RIGHTS AND DUTIES OF DUAL NATIONALS, *supra* note 8, at 303, 303-33 (surveying practice of dual nationality in Western countries).

<sup>15</sup> Bauböck, *supra* note 7, at 709-10.

<sup>16</sup> Jones-Correa, *supra* note 14, at 312-13.

<sup>17</sup> Bauböck, *supra* note 7, at 711.

<sup>18</sup> *Id.* at 709; see Peter J. Spiro, *Dual Nationality and the Meaning of Citizenship*, 46 EMORY L.J. 1411, 1419-20 [hereinafter Spiro, *Dual Nationality*] (arguing that early models of citizenship relied upon relationship between individual and sovereign "rooted in the laws of nature and hence perpetual and immutable").

<sup>19</sup> See, for example, Article 13.1 of the Universal Declaration of Human Rights, *supra* note 4, Article 12.2 of the International Covenant on Civil and Political Rights, *supra* note 4, and Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 5, art. 2, all of which guarantee a person's right to leave any country, including her own.

<sup>20</sup> Bauböck, *supra* note 7, at 709.

receiving countries than with any deliberate attempt to shape such activity by the sending countries.<sup>21</sup> Thus, while first generations are almost invariably attached to the values, practices, and institutions of the country of origin, the second generation will probably identify more strongly with those of the receiving society—unless ethnicity or race get in the way of the integration process, and political exclusion, economic marginalization, or cultural oppression encourage later generations to remain oriented towards the countries of origin.<sup>22</sup>

Once the consciousness of separateness from the receiving state is formed, partly as a result of the “ethnicization” process of politics in wealthy postindustrial receiving societies,<sup>23</sup> any discourses of nationhood that emerge in the sending states are likely to find fruitful ground.<sup>24</sup> The depiction of emigrants as “heroic citizens contributing to the national project by undertaking the great sacrifice of living abroad”<sup>25</sup> influences the development of transnational patterns in countries which rely more and more on the economic input of those abroad. Such discourses have an impact on expatriates and their basic attitudes towards sending countries. They also have an effect on whether transnational political practices are limited to the first generation of immigrants or instead persist over generations among descendants.<sup>26</sup>

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<sup>21</sup> See *id.* at 710 (arguing that once migrants leave sending state, “the integration policies of receiving states become the strongest structural determinants for the process of settlement, for upward social mobility, for family reunification, for naturalization or for return migration”); Jones-Correa, *supra* note 14, at 329 (concluding that “immigrants are still much more sensitive to changes in the policies of receiving countries than to changes in sending country policies”).

<sup>22</sup> See Itzigsohn, *supra* note 11, at 1147 (concluding that while later generations of immigrants are more likely to identify as Americans than are first generation immigrants, sectors of later generations are likely to continue orientation toward countries of origin “due to the permanent contact with the first generation and pervasive racialization processes in American society”); see also JEFF SPINNER, *THE BOUNDARIES OF CITIZENSHIP: RACE, ETHNICITY, AND NATIONALITY IN THE LIBERAL STATE* 63 (1994) (arguing that economic domination and oppression lead to cultural pluralism).

<sup>23</sup> According to Anderson, “ethnicization” is the process of political life in the wealthy, postindustrial states that draws a line between the political nation and a putative original ethnoses to which immigrants can never truly aspire. Anderson, *supra* note 10, at 326.

<sup>24</sup> *Id.*

<sup>25</sup> Barry, *supra* note 1, at 34.

<sup>26</sup> See Bauböck, *supra* note 7, at 710–11 (arguing that nature and historic stages of domestic nation-building projects in sending countries may be relevant for explaining persistence of transnational political practices among certain immigrant populations).

### III NORMATIVE CHALLENGES OF EXPATRIATES' RIGHT TO VOTE

To test the normative force of external citizenship from a democratic perspective, I want to focus on what seem to be the two most common promises it entails: the right of expatriates to retain their nationality while abroad (even when they acquire the nationality of the country of residence), and the right to vote. Since the defining feature of external citizenship is the possibility of detaching the legal status and practice of citizenship (in terms of identity, but also engagement) from the territorially bounded nation-state, the more concrete questions are whether this can be fully done and whether or not it would be plausible.

#### A. *The Status Quo*

Two undisputed assets that all expatriates enjoy are diplomatic protection and the right to return to their countries of nationality. This is therefore the core of external citizenship as it currently exists.<sup>27</sup> The actual meaning or value of external citizenship will then largely depend on the treatment that immigrants receive and the experiences of integration they have while in their host societies. Clearly, the more immigrants are subject to discrimination and prejudice, the greater the value of the protection and exit option entailed by holding on to a certain nationality.<sup>28</sup>

If we look for common denominators from the receiving society's perspective, what we see is that permanent resident aliens, in spite of their non-nationality, are typically bearers of most rights and duties. As mentioned above, however, some forms of exclusion are common: Resident aliens are generally not granted full political rights, nor, in identity terms, are they perceived as equal members in the national community. Furthermore, they are usually not given the same degree of protection against deportations from the national territory and, as such, are perceived to be less connected to the polity's destiny. This, in a way, is the flip side of immigrants' "exit option." Finally, it is typically the case that certain duties, such as contributing to the military defense of the country or serving as a juror, are also reserved to citizens. In short, permanent resident aliens are typically excluded not

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<sup>27</sup> See *id.* at 712 (noting that rights to return and to diplomatic protection are core elements of external citizenship that respond to specific situation of emigrants).

<sup>28</sup> See Barry, *supra* note 1, at 33 (describing conditions of discrimination, economic uncertainty, and racism that emigrants face in receiving countries).



only from the benefits or privileges, but also from the duties, that are most expressive of the specifically political dimension of membership.

Departing from those common grounds means entering the realm of diverse practices. Some countries—but not all—recognize virtually equal socioeconomic rights and benefits for both citizens and permanent resident aliens.<sup>29</sup> Some countries have extended voting rights, mostly at a local level, to non-nationals, but often only to those of certain countries and to those in certain regions or municipalities.<sup>30</sup> Only a few countries have extended local voting rights to aliens without restricting them to certain territories or to citizens of specific countries.<sup>31</sup> Almost every country excludes resident aliens from

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<sup>29</sup> Some authors have contrasted Western European countries, which historically have combined comprehensive public benefits schemes with restrictive immigration and citizenship policies, with the United States, which has had fairly liberal immigration and naturalization policies but relatively stringent benefits policies. See, e.g., Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender, and Class*, 42 UCLA L. REV. 1509, 1523 & n.51 (1995). Nevertheless, permanent resident aliens enjoy most social benefits because these tend to be linked to residence much more than to nationality. Thomas Faist, *Transnationalization in International Migration: Implications for the Study of Citizenship and Culture*, 23 ETHNIC & RACIAL STUD. 189, 207 (1992). A basic distinction can nonetheless generally be made by type of benefit. Those benefits that derive their meaning and justification from their reference to work and that are intended to replace lost income when a person is unable to work because of injury, involuntary unemployment, or old age, are generally financed through employer and employee contributions and are generally granted to all workers (unemployment insurance and Social Security being relevant examples). Most people would probably agree that anyone granted access to the labor market should qualify for such directly work-dependent benefits. William Rogers Brubaker, *Introduction*, in IMMIGRATION AND THE POLITICS OF CITIZENSHIP IN EUROPE AND NORTH AMERICA 1, 21–22 (William Rogers Brubaker ed., 1989). Other social benefits have a different meaning, in that they are financed out of general revenues and thus find their justification in relation to membership and to some form of mutual aid. Family allowances and housing assistance are examples. Here membership might be interpreted restrictively to mean citizenship only, but it generally applies to all resident aliens thus excluding only those illegally or temporarily present. Finally, a third type of benefit is justified with respect to urgent need and this includes emergency medical care and emergency assistance generally. The latter are usually extended to all persons in need whatever their membership status, thus including illegal immigrants.

<sup>30</sup> Since 1993 and as a result of the Maastricht Treaty coming into force, local franchise has been introduced in EU countries, but only for Union citizens residing in other member states. Other countries such as Portugal and Spain have recognized alien suffrage but only under the condition of reciprocity. Harald Waldrauch, *Electoral Rights for Foreign Nationals: A Comparative Overview of Regulations in 36 Countries* 23 (Nat'l Europe Ctr., Paper No. 73, 2003), available at [http://www.anu.edu.au/NEC/waldrauch\\_paper.pdf](http://www.anu.edu.au/NEC/waldrauch_paper.pdf). The privileged granting of electoral rights for citizens of certain countries has also allowed for the expression of past colonial ties, as is the case in the United Kingdom, Australia, and New Zealand. *Id.*

<sup>31</sup> These countries are: Denmark, Estonia, Finland, Hungary, Iceland, Ireland, Lithuania, New Zealand, the Netherlands, Norway, the Slovak Republic, Slovenia, and Sweden. *Id.* at 24.

national suffrage and holding public office.<sup>32</sup> Some go so far as to draw constitutional distinctions between citizens and non-citizens with respect to politically-charged civil liberties, such as freedom of association and assembly.<sup>33</sup> In some European countries, including Germany, France, and Italy, legislation to introduce local franchise for third-country nationals was ultimately blocked because of political and constitutional obstacles.<sup>34</sup> Many more would probably have to amend their constitutions before similar initiatives could pass successfully.<sup>35</sup>

If we look at the rights afforded to external citizens by sending countries we find less variation. For one thing, lacking jurisdiction over the territory in which their expatriates reside, sending countries cannot guarantee them a minimal set of rights.<sup>36</sup> Similarly, the state generally will not be able to enforce duties, such as income taxation or military service, on its citizens abroad.<sup>37</sup>

As for voting rights, most democracies require that citizens reside in the country to participate in elections and virtually all of those that have extended voting rights to non-nationals have made such an extension contingent on residence.<sup>38</sup> Residence-based restrictions have taken three basic forms.<sup>39</sup> One of them is blanket ineligibility to vote for nonresident citizens.<sup>40</sup> Another approach is to disqualify citizens after a certain period of nonresidence.<sup>41</sup> Finally, some states allow nonresidents to vote, but only if they return home to cast bal-

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<sup>32</sup> The great exception is New Zealand, where all permanent residents have been able to vote in national elections since 1975 (although aliens do not have the right to be elected). Bauböck, *supra* note 7, at 703.

<sup>33</sup> See RUTH RUBIO-MARÍN, *IMMIGRATION AS A DEMOCRATIC CHALLENGE: CITIZENSHIP AND INCLUSION IN GERMANY AND THE UNITED STATES 187-90* (2000), for a discussion of the recognition by the German Constitution of freedom of assembly and association to citizens despite shared belief that aliens enjoy some constitutional protection in the exercise of the equivalent statutory freedoms.

<sup>34</sup> Bauböck, *supra* note 7, at 703; see RUBIO-MARÍN, *supra* note 33, at 199, 201 (discussing legal and constitutional debate over alien suffrage in Germany).

<sup>35</sup> See Waldrauch, *supra* note 30, at 25 (discussing constitutional obstacles to extension of voting rights in European countries).

<sup>36</sup> Bauböck, *supra* note 7, at 712.

<sup>37</sup> *Id.*

<sup>38</sup> See Waldrauch, *supra* note 30, at 24 (discussing conditioning of right to vote on residency in European countries).

<sup>39</sup> Peter J. Spiro, *Political Rights and Dual Nationality* [hereinafter Spiro, *Political Rights*], in *RIGHTS AND DUTIES OF DUAL NATIONALS*, *supra* note 8, at 137.

<sup>40</sup> *Id.* This is the case, for example, in Denmark, El Salvador, Hungary, Ireland, Italy, Nepal, Slovakia, and South Africa. *Id.*

<sup>41</sup> *Id.* In the United Kingdom, for example, this period lasts ten years, while in New Zealand, it only lasts three years. *Id.*

lots.<sup>42</sup> Only a few have granted the franchise to nonresident citizens, including dual nationals, permitting ballots to be cast either through the mail or at embassies and consulates.<sup>43</sup> Perhaps the most far-reaching scheme of democratic representation for external citizens is one in which a certain number of seats are kept in the national legislative body to represent the emigrant constituency, an approach taken by several countries in recent years.<sup>44</sup> Most countries, however, require or take for granted that citizens must live in the country to hold an elected position there, although this too might be starting to change.<sup>45</sup>

*B. The Expansion of External Citizenship Through Absentee Voting: A Matter of Right?*

Regardless of state practices, normative questions remain. Is the extension of citizen rights to expatriates a sign of progress towards a more inclusive democratic system? Should such an extension be encouraged? Should the sending countries that do not yet allow for absentee voting be criticized for acting in a less inclusive manner than those who do? Or should those states that have embraced a fuller notion of external citizenship by allowing absentee voting be condemned for undermining basic notions of democratic accountability?<sup>46</sup>

One traditional argument in favor of linking suffrage to residence within a certain political community is that in order to exercise suffrage in a minimally responsible way, voters must be sufficiently informed. If voters are living abroad, they may be so much less informed about state affairs that they cannot cast their votes in a minimally responsible way. However, it may also be argued that, in the era of telecommunications technology, information knows no geo-

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<sup>42</sup> *Id.* This is the case in the Dominican Republic, Israel, Italy, Mexico, Taiwan, and Turkey. *Id.*

<sup>43</sup> Bauböck, *supra* note 7, at 712–13. Colombia and Peru are among the countries that have allowed voting from their consulates overseas. Jones-Correa, *supra* note 14, at 316–17.

<sup>44</sup> Colombia, France, and Portugal reserve parliamentary seats for their nationals abroad, while similar arrangements have been proposed in the Dominican Republic and Mexico. Bauböck, *supra* note 7, at 713; Spiro, *Political Rights*, *supra* note 39, at 138.

<sup>45</sup> See Barry, *supra* note 1, at 12 (discussing recent election to public office in Mexico of longtime residents of United States).

<sup>46</sup> In discussing absentee voting, one should distinguish between those nationals who happen to be out of the country for relatively short periods of time (who may not qualify as permanent residents abroad), those who live between two countries, and those who live as permanent residents only in one country while holding on to the nationality of the country of origin. Each of these may be differently positioned regarding the conventional reasons why voting is generally tied to residence. Here the focus is on those who have settled abroad.

graphical boundaries. Internet, phone, electronic newspapers, satellite, cheap airfares, and cable television allow people to remain vividly informed of the evolution of public affairs in their countries of origin.<sup>47</sup> Moreover, there is evidence that when a numerically significant national group consolidates itself within a given receiving country, the dynamics of competitive party politics also play themselves out in that country. Parties campaign abroad to gather political and financial support and involve local immigrant organizations in the process.<sup>48</sup> A final criticism of the argument that informed voting requires residence in the country is that it does not take into account the process of self-selection. Because in some countries absentee voting is not allowed (and even when it is allowed, it requires people to register in advance) and one has to travel back to cast one's vote, it is not far-fetched to assume that those who make the effort to participate under such conditions are sufficiently informed to know what they are doing.<sup>49</sup> Existing evidence shows low electoral turnout of absentee voters,<sup>50</sup> and this can only lend support to the self-selection theory.

Another reason that is commonly given to justify why absentee voting should not be allowed is that people who live abroad do not have a sufficient stake in the community because they are not directly affected by the decisions that political bodies take, are not subject to its laws, and therefore have no incentive for responsible voting. Against this it has been rightly said that although emigrants are not subject to the laws and policies enacted by their governments, there are reasons to believe that many emigrants have vested interests in the well-being of their country and hence can be trusted to vote responsibly.<sup>51</sup> Many own property or have families back home to which they may send remittances. Some plan on returning sooner or later, and some invest or plan to invest their savings there.

In my view, although these are valid reasons to assume that allowing expatriates absentee voting does not generally pose a

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<sup>47</sup> Spiro, *Political Rights*, *supra* note 39, at 140.

<sup>48</sup> Bauböck, *supra* note 7, at 714; Itzigsohn, *supra* note 11, at 1144.

<sup>49</sup> See Spiro, *Political Rights*, *supra* note 39, at 140 ("One's physical location now need have little bearing on access to political information.").

<sup>50</sup> See *id.* at 138 ("Anecdotal evidence suggests that 'turn-out' levels among eligible nonresident voting populations is [sic] low.").

<sup>51</sup> See *id.* at 139 (arguing that nonresident citizens often have significant policymaking interests in their home countries); Bauböck, *supra* note 7, at 714 (arguing that migrants who "move back and forth between countries of origin and immigration, who send remittances or invest their earnings in their hometowns, and who are committed to returning . . . assume a fair amount of responsibility for the outcome of the collective decisions in which they participate").

problem in terms of ensuring the overall conditions for responsible voting (in the way that, for instance, enfranchising minors or the mentally handicapped would), they are not sufficient reasons for people living permanently abroad to claim a *right* to political equality expressed through equal participation in voting. Democratic legitimacy and popular sovereignty require that the people subject to the law and state authority be included, as a matter of right, in the process of shaping how that authority will be formed and exercised. The exercise of public authority affects mostly those who live subject to the jurisdiction of such authority. Since states are geographically bounded communities and their borders express the limits of their jurisdictions, democratic states generally have good reasons to restrict participation in the political process to those who reside within their territorial borders.<sup>52</sup> This would then justify the exclusion of expatriates from the political process as they are not directly and comprehensively affected by the decisions and policies that their participation would help to bring about even if they are likely to be affected by some of those decisions, such as those concerning remittances, nationality, and military service laws.<sup>53</sup>

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<sup>52</sup> There is no doubt that in an increasingly interrelated global order with an uneven distribution of both political and economic power, it is difficult to assume that the authority exercised in some countries will not have spillover effects on the lives of many outside their boundaries. In fact, this is why new forms of transnational political accountability are called for. The criterion of "affectedness" may not only be underinclusive (it leaves out people whose lives will be affected by the decisions made by others somewhere else) but overinclusive, because, for a whole set of reasons, not everyone living in a certain territory will be affected in a similar way by all the decisions taken by the political authorities of the day. But in general we can assume that territorial state sovereignty, still a basic instrument of political organization in a world of states, "frames geographical, institutional and regulatory spheres of jurisdiction, defining the global conditions for human interaction through political freedom in particular societies." RUBIO-MARTÍN, *supra* note 33, at 29. This is why, although "not all the laws of a country will necessarily affect all of its residents and some of these laws may greatly affect transients, tourists or, increasingly, nonresidents," one could expect that individuals permanently living in these societies "will share common concerns in that they will more often and more pervasively be affected by the collectively binding decisions taken in them." *Id.*

<sup>53</sup> It may still be argued that, although not currently subject to most of the laws and policies of their countries of origin, many immigrants go back. The lasting wish to return to the place, region, or country of origin, explained by the great role of our first locus in life as a place of primary socialization and by the human desire for continuity, TOMAS HAMMAR, *DEMOCRACY AND THE NATION STATE* 203 (1990), has never been easier to fulfill than in an era where emigration often does not require the dramatic severing of ties. If this is so, then emigrants' destinies are more and more tied to those of their countries of origin, to which they will eventually return. They too ultimately will be comprehensively affected by the long term consequences of the political choices that are made. Clearly, unlike mononationals back home, they still have the option of not returning if things do not turn out the way they want or if they simply change their minds in view of their life experiences. Many in fact do not return. This is why although I do believe that when there is evidence of a high rate of return migration it is, in principle, legitimate for a country to allow for

Barry refers to at least two reasons commonly put forward by external citizens to back their claims to full political participation. The first is the fact that since the country of residence does not offer voting rights to non-national residents, if they are not allowed to formally participate in the political process of the sending country, they have effectively become disenfranchised.<sup>54</sup> The second refers to external citizens' claims that, given their economic involvement and contribution in their countries of origin, it is simply not fair to have no political voice. In other words, the claim is that what Barry calls "economic" citizenship and "political" citizenship should go hand in hand.<sup>55</sup> Both reasons deserve closer attention.

As to the former, one could imagine at least two different scenarios. In one of them, the country of residence does indeed reserve voting rights, at least in national elections, to its own nationals, but also allows or encourages resident aliens to naturalize after a certain number of years in the country. In the second scenario, the receiving country holds such a narrow conception of nationality that those who do not acquire it automatically at birth (most typically through *jus sanguinis* or some combination of *jus sanguinis* and *jus soli*) do not have a very good chance of joining the political community afterwards. Naturalization is either conceived as a privilege granted at discretion or under the strictest conditions. In the first of the two scenarios, it can be said that the person's lack of political agency in the country of residence expresses more of a personal choice than in the second, where the person is effectively not granted a reasonable opportunity to gain political voice in the receiving society. The crucial question, however, remains the same: Which of the two countries should bear primary responsibility for the person's political disenfranchisement? If the answer is, as I have argued elsewhere, that the country of residence is primarily responsible for the inclusion of its resident population,<sup>56</sup> then the country of origin should arguably not bear the obligation to make up for it by allowing emigrants and their

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absentee voting of first generation immigrants, I do not think that these considerations are sufficient to ground a claim of political equality and hence a right of suffrage on the part of expatriates comparable to that of their co-nationals as a basic condition of democratic inclusion. Also, it may be worth thinking about additional caveats that may qualify the legitimacy of granting expatriates the external vote, including cases in which the external vote might be so large in proportion to the resident vote that it raises the justified concern as to whether external citizens should be able to outvote those who live in the country. In certain cases, the possibility of the external vote might also generate concerns about soft irredentism and political divisiveness in multination states that a state may also legitimately want to take into account. I thank Rainer Bauböck for his insight on these two points.

<sup>54</sup> Barry, *supra* note 1, at 52.

<sup>55</sup> *Id.* at 36, 52–53.

<sup>56</sup> See generally RUBIO-MARÍN, *supra* note 33.

descendants to decide the political future of those who stayed behind.<sup>57</sup>

C. *Absentee Voting and Expatriates' Economic Contribution to the Home Country: Voting Rights for Sale?*

The final argument in favor of fuller political inclusion of expatriates through such rights as absentee voting centers on their economic contribution to the home country. Sometimes encouraged by a national rhetoric that exalts their virtues as economic heroes abroad, emigrants often feel that exercising full political rights is the only logical equivalent to their condition as "economic citizens," especially since they often participate in the political process through informal ways, such as financially contributing to political campaigns.<sup>58</sup> In fact, it is economic leverage that has allowed emigrants to organize locally to advance such claims in the first place.<sup>59</sup> Barry uses the term "economic citizenship" to refer to the various forms of economic participation and support that immigrants lend to their countries of origin. Since the term does not directly correspond to any of many meanings commonly ascribed to citizenship, it deserves further commentary. In what way do these forms of economic contributions turn emigrants into "economic citizens"? What ought to be the connection between "economic participation" and "political participation"?

Barry refers to several forms of economic contribution by expatriates as forms of participation in "economic state-building."<sup>60</sup> Most of this contribution takes the form of remittances sent by expatriates to their families. Although the impact of such remittances on long-term economic development remains a contested issue,<sup>61</sup> such remittances are generally said to have a positive effect on the overall economy of the country. Capital and investment inflows from emigrants are a second source of contribution that states try to capture.<sup>62</sup> One function of the notion of economic patriotism, then,

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<sup>57</sup> See Bauböck, *supra* note 7, at 714–15 (arguing that receiving state, not sending state, should address obligation to enfranchise migrants).

<sup>58</sup> See Barry, *supra* note 1, at 52–53 (describing emigrants' economic influence over political campaigns and elections in home countries).

<sup>59</sup> See Itzigsohn, *supra* note 11, at 1145–46 (arguing that economic weakness and political opening of sending countries gives migrants political leverage); Jones-Correa, *supra* note 14, at 309 (noting that as result of providing remittances to their families or contributing to campaign funds, immigrants have leverage with their countries of origin that they do not have with their countries of residence).

<sup>60</sup> Barry, *supra* note 1, at 28.

<sup>61</sup> *Id.* at 29 & n.63.

<sup>62</sup> *Id.* at 28.

appears to be the encouragement of contributions and investments that are, for the most part, voluntary.

The connection between wealth and political power is a controversial one in modern democracies. During the nineteenth century, the two were indeed related precisely through suffrage entitlement. Wealth, often in the form of land ownership, together with masculinity, were the most commonly required conditions for suffrage before universal suffrage imposed itself gradually after the turn of the century. The most common justification given was twofold: First, it was assumed that those who had more wealth (and, typically, more land) would have larger interests vested in public matters (the *res publica*), and hence could be trusted to exercise political power more objectively in the name of the common well-being. The second justification was that wealth was a guarantee of free judgment. Precisely because people who were well-off were not in need, they could exercise the political freedom in a wise, detached, rational, and dispassionate manner. All these arguments of course came to be discredited by the theories supporting universal suffrage. For such theories, it was men's and women's common humanity and equal freedom that called for equal participation in the collective process of self-government that would shape the polity and everybody's lives.

One may argue that it is not wealth per se but economic contribution that we should focus on when discussing the grounds for the political inclusion of expatriates in their home countries. The most typical form of involuntary economic contribution from citizens in modern states is taxation. Most states link taxation to residence, regardless of citizenship. In fact, Barry acknowledges that only a tiny percentage of the contribution of expatriates comes from taxes.<sup>63</sup> Although some states try to tax their citizens abroad, this is the exception.<sup>64</sup> The lack of enforcement powers and resources to pursue emigrants abroad accounts for this in part.<sup>65</sup> There is also a legitimacy question if we think of states as internal schemes of cooperation or "mutual benefit societies."<sup>66</sup> As mutual benefit societies, states use taxation to build a

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<sup>63</sup> *Id.* at 28–29.

<sup>64</sup> *See id.* at 37 (discussing South Korea as "rare example of an emigration state that successfully taxed at least some of its emigrant citizens"); Bauböck, *supra* note 7, at 712 n.2 (noting that United States is "quite exceptional in taxing income from foreign sources of its citizens living abroad").

<sup>65</sup> *See* Barry, *supra* note 1, at 36.

<sup>66</sup> *See* Robert E. Goodin, *What Is So Special About Our Fellow Countrymen?*, 98 ETHICS 663, 675–78 (1998) (explaining "mutual benefit society" model as one in which "imposing harms is always permissible—but only on condition that some positive good comes out of it and only on condition that those suffering the harm are in some sense party to the society in question").



safety net that will ensure a minimum of equality of opportunities and to provide certain public goods from which all can benefit (e.g., public health, national security, pollution control, and a strong national economy). Of course, some of these public goods (such as national security) have spillover effects that go beyond national frontiers, but for the most part it is residents who will get to enjoy the benefits of this cooperation. Thus, even if we could avoid the practical problem of taxing nonresidents and find ways to export some of these benefits from the home country to the emigrant abroad, taxing nonresidents would still pose a basic legitimacy question.<sup>67</sup>

Be that as it may, we have seen that expatriates' economic contribution is of a different kind in that it results from personal choices aimed at maximizing individual profit or advancing personal interests. In assessing the political relevance of this kind of contribution, it should be compared to that of entrepreneurs and successful economic agents in the country. In doing so, we come to realize that although the activities of the latter group may indeed be a great asset to the joint economic pursuit, there is no connection between this contribution and the recognition of political rights. Being economically productive is not a required civic virtue in our democracies. Poor artists count as much as rich entrepreneurs in terms of votes. People contribute in myriad ways to the society in which they live, none of which privileges them when it comes to the benefits of citizenship.

The construct of democratic citizenship, then, has as one of its fundamental virtues the setting of some limits on the way in which economic power or agency translates into political power. If that is so, we should be wary of expressing the economic practices of expatriates as "economic citizenship" or as the basis for "political rights." These economic practices are not the result of any "citizen duty." And while it is true that these practices are, in general, taken to have a positive impact on the national economy, it is not clear what their relevance should be for the allocation of political rights.

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<sup>67</sup> We are familiar with the "no taxation without representation" claim. Ideally people who are required to pay taxes that are decided through a political process should have a say in that process. See RUBIO-MARIN, *supra* note 33, at 56–59 (examining claim of full inclusion of aliens in political realm on basis of fairness). This, however, is not the right paradigm for thinking of emigrants' economic contribution. Once again, emigrants' most significant contributions are through voluntary remittances and investment. See *supra* text accompanying notes 58–62. For it to be the right paradigm, the state would have to accord resident and nonresident nationals equal fiscal treatment. To do so would be virtually impossible, and even if it were not, it would generate legitimacy concerns that go beyond those of democratic participation, raising the question of a fair balance between contribution and enjoyment of benefits, services, and public goods discussed in the text.

Finally, sometimes the argument is made that because expatriates already influence the political process in informal ways, such as through campaign contributions to political parties, they should also be granted a formal right to vote. In my view the reasoning should be exactly the opposite. If we believe that granting voting rights to expatriates permanently settled abroad may, under certain circumstances, pose a problem of democratic accountability, then we must take this problem into account when discussing other forms of political influence. Benedict Anderson defines the larger problem that emigrant unaccountability poses to politics in this way:

The participant rarely pays taxes in the country in which he does his politics; he is not answerable to its judicial system; he probably does not cast even an absentee ballot in its elections because he is a citizen in a different place; he need not fear prison, torture, or death, nor need his immediate family. But, well and safely positioned in the First World, he can send money and guns, circulate propaganda, and build intercontinental computer information circuits, all of which can have incalculable consequences in the zones of their ultimate destinations.<sup>68</sup>

Expatriates who have permanently settled abroad are not subject to the jurisdiction of their countries of origin and are not as comprehensively affected by those countries' policy choices as are those nationals left behind. It is therefore legitimate for those states which link suffrage and residence to continue doing so. That said, under certain circumstances a country may democratically decide to allow for absentee voting of the first generation, thereby including expatriates in the political process. They may do so in recognition of the fact that it is now easier than ever to remain connected to home state politics from abroad, and thus easier to understand the set of concrete political options that a country may face. They may also do so in recognition of the fact that many emigrants live between two countries, as well as the fact that their return is increasingly becoming a real option because being abroad no longer requires the definite severing of ties that it did in the past. However, if a country does embrace absentee voting, it should not distinguish on the basis of economic contribution, just as it is not allowed to use this as a determining factor with respect to its resident nationals when recognizing political rights.

Whether, in reality, it is due respect for the kinds of considerations mentioned above or the sheer economic leverage of expatriates that will convince local elites to share their power with new elites abroad is a different question. In all of this we should not forget that,

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<sup>68</sup> Anderson, *supra* note 10, at 327.

as Itzigsohn recognizes, although transnational politics has opened spaces for participation of previously marginalized groups, it also “creates a new elite of people who live abroad and act at home” and who are generally “the better-off among immigrant groups, those who have the time and resources to engage in transnational politics.”<sup>69</sup>

#### IV

#### HOLDING ON TO NATIONALITY AS A MATTER OF EXTERNAL CITIZENSHIP

##### A. *The Status Quo*

Traditionally, states have full sovereignty in deciding the rules of national belonging, including both access to, and loss of, nationality.<sup>70</sup> Indeed, customary international law leaves a wide margin of deference to states to determine their rules of nationality.<sup>71</sup> Only a minimal connection is required between the state and the prospective national.<sup>72</sup> From the perspective of the individual, while a generic right to *some* nationality has been recognized as a human right under international law (in recognition of the extreme vulnerability that statelessness represents), this right has never been phrased as the right to any *specific* nationality, no matter how close the ties or links between the individual and the national community.<sup>73</sup>

<sup>69</sup> Itzigsohn, *supra* note 11, at 1146–47.

<sup>70</sup> 1 FRIEDRICH BERBER, *LEHRBUCH DES VÖLKERRECHTS* 364–65 (1960) (stating rights afforded to both non-citizens residing domestically and to citizens residing abroad).

<sup>71</sup> Kay Hailbronner, *Rights and Duties of Dual Nationals: Changing Concepts and Attitudes*, in *RIGHTS AND DUTIES OF DUAL NATIONALS*, *supra* note 8, at 19, 20; *see, e.g.*, Convention on Certain Questions Relating to the Conflict of Nationality Laws art. 1, Apr. 12, 1930, 179 L.N.T.S. 89 (“It is for each State to determine under its own laws who are its nationals.”).

<sup>72</sup> *See* Nottebohm Case (Liech. v. Guat.), 1955 I.C.J. 4, 23 (Apr. 6). The court said: [N]ationality is a legal bond having at its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred either directly by the law or as the result of an act of the authorities is in fact more closely connected with the population of the State conferring nationality than with that of any other State.

*Id.*

<sup>73</sup> Rut Rubio Marin & Rory O’Connell, *The European Convention and the Rights of Resident Aliens*, 5 EUR. L.J. 4, 69 n.3 (1999). Some international instruments recognize everybody’s right to a nationality. *See, e.g.*, Universal Declaration of Human Rights, *supra* note 4, art. 15 (“Everyone has the right to a nationality.”); American Convention on Human Rights, *supra* note 4, art. 20.1 (same). But again, this right is never expressed as the right to a specific nationality such as the nationality of the country in which one is a permanent resident. The closest one gets to the recognition of a right to a specific nationality are duties related to the need to avoid the status of statelessness. Convention on the Reduction of Statelessness, Dec. 4, 1954, 989 U.N.T.S. 175 (“A Contracting State shall

The instrumental value of retaining one's nationality is connected to what we have called the core element of external citizenship: diplomatic protection and the possibility of return. Beyond that, its value depends on whatever other rights or benefits the country of origin recognizes for its expatriates. Yet the feeling of membership that national citizenship conveys should not only be judged instrumentally. For some, such membership provides experiences that are valuable in themselves.<sup>74</sup> National citizenship, it has been said, provides a "focus of political allegiance and emotional energy on a scale capable of satisfying deep human longings for solidarity, symbolic identification, and community," serving as an enclave to define oneself and one's allegiances more locally and emotionally.<sup>75</sup> While the actual importance attached to nationality, especially when one does not live in the national community, will vary greatly depending on contingent factors, we can assume that most people have some sort of attachment to their national cultures. The national culture renders vivid the set of options that people have in life, gives people a sense of effortless belonging and rootedness, and allows for a sense of intergenerational connectedness and thus historical transcendence and continuity. The social profile that the receiving society attaches to the different national groups will also have a likely impact on the perceived importance of holding onto a certain national identity as a locus of belonging, sharing, and equal recognition. Other factors may also play a role, including the possibility of reproducing communal cultural experiences with other expatriates in the country of residence, the recognition that a nation gives to its emigrants, and the meaning that the national rhetoric attaches to the very experience of emigration.

Given the importance attached to the retention of one's nationality, most countries, including sending countries, do not force expatri-

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grant its nationality to a person born in its territory who would otherwise be stateless."). *But see*, American Convention on Human Rights, *supra* note 4, art. 20.2 ("[E]very person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality."). Occasionally, one also finds a reference to the right not to be arbitrarily deprived of one's nationality, American Convention on Human Rights, *supra* note 4, art. 20.3, but no specification is added to explain what arbitrary deprivation might mean. This leaves the state practically free to interpret when the ties between it and its former nationals have been severed.

<sup>74</sup> See Frederick Schauer, *Community, Citizenship, and the Search for National Identity*, 84 MICH. L. REV. 1504 (1986) (examining relationship between community and sacrifice of self-interest); Frederick G. Whelan, *Citizenship and Freedom of Movement: An Open Admission Policy?*, in OPEN BORDERS? CLOSED SOCIETIES? THE ETHICAL AND POLITICAL ISSUES 32 (Mark Gibney ed., 1988) (examining inherent value of community membership).

<sup>75</sup> 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, *supra* note 29, at 65.

ates to relinquish their nationality even when they decide to settle abroad permanently. The problem arises typically when the person naturalizes in the country of residence and either the sending or the receiving country makes the relinquishing of the previous nationality a condition or a consequence of the acquisition of the second nationality. States have been traditionally opposed to dual nationality, and both domestic and international law have treated dual nationality as deeply undesirable. This aversion is probably the result of both a conceptual logic that historically postulated national loyalties as exclusive and indivisible and of concerns with practical difficulties regarding conflict of laws, diplomatic protection, military service, civil status, or taxation.<sup>76</sup> Since exclusive allegiance to the state used to be a defining feature of the state-citizen relationship, dual nationality was perceived as some kind of political oddity. Indeed, in the traditional literature, national belonging was often represented as a sort of political marriage, while dual nationality was imagined as an objectionable act of bigamy.

In recent decades, there has been a gradual shift towards accepting dual nationality, a change which is reflected both in domestic and international law and practice.<sup>77</sup> This shift has been welcomed by a growing literature that has seen in dual nationality an opportunity to foster global peace, international trade, the spread of democratic values, and the observance of human rights.<sup>78</sup> Domestically, the change in thinking has meant that some countries have amended their nationality rules and stopped demanding that nationals give up their nationality of origin when acquiring that of another state or asking foreigners to relinquish theirs when acquiring that of the

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<sup>76</sup> David A. Martin, *Introduction: The Trend Toward Dual Nationality*, in RIGHTS AND DUTIES OF DUAL NATIONALS, *supra* note 8, at 4. The Hague Convention of 1930 codifies the existing global doctrine on the conflict of nationality laws and states that: "[E]very person should have a nationality and should have one nationality only." Convention on Certain Questions Relating to the Conflict of Nationality Laws, *supra* note 71, pmbl.

<sup>77</sup> The 1963 European Convention on the Reduction of Cases of Multiple Nationality and of Dual Military Obligations was amended by several Protocols that relaxed the stance about dual nationality. This was especially true of the Second Protocol Amending the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, *opened for signature* Feb. 2, 1993, Europ. T.S. No. 149. More recently, the 1997 European Convention on Nationality does not limit the right of a state to decide whether renunciation or loss of another nationality should be a condition for the acquisition or retention of nationality except where such renunciation or loss is not possible or cannot reasonably be required. European Convention on Nationality arts. 15–16, *opened for signature* Nov. 6, 1997, Europ. T.S. No. 166.

<sup>78</sup> See Spiro, *Dual Nationality*, *supra* note 18, at 1461–65 (arguing that fundamental changes in international system have led to diminished costs of dual nationality).

country of residence.<sup>79</sup> In other cases, the principle of nonacceptance has essentially remained unmodified, but with more and more exceptions. For example, countries like Germany and the Netherlands have been interpreting in an increasingly liberal way their renunciation requirements when the country of initial nationality makes it difficult or unreasonably costly to secure the release.<sup>80</sup> Finally, some states have simply continued to pay lip service to the principle of single nationality while not really enforcing it.<sup>81</sup>

From the perspective of receiving countries, these changes reflect a growing awareness that the only way to have an inclusive polity is to encourage naturalization of those who might otherwise remain in a permanent condition of political exclusion and social marginalization. Asking for the renunciation of the previous nationality as a condition is a great disincentive for naturalization given the manifold reasons immigrants have to maintain connections with their countries of origin.<sup>82</sup> The problem is even more acute in those countries that favor *jus sanguinis* as a main mode of ascribing nationality at birth but have become in recent times net receivers of migration. Indeed, the combination of *jus sanguinis*-based ascriptive nationality and low rates of naturalization means the perpetuation of disenfranchised generations of foreigners in the country. This explains why countries such as Germany, which traditionally privileged *jus sanguinis* ascription at birth and disfavored dual nationality, have relaxed their attitude towards the latter.<sup>83</sup>

Similarly, there has also been a deeper understanding of the "politically harmless" reasons that may make such renunciation difficult for immigrants. It is now more widely accepted that what is at stake for many immigrants has less to do with political allegiance and

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<sup>79</sup> If we look at the legislation of the first fifteen E.U. member states, we see that Austria, Denmark, Germany, Luxembourg, the Netherlands, and Spain, as a general rule, still require immigrants to give up their nationality of origin, even though both in Germany and in the Netherlands more and more exceptions have been carved out, some of which are now being debated. Belgium, Finland, France, Greece, Ireland, Italy, Portugal, Sweden, and the United Kingdom allow multiple nationality and of these, Finland, Italy, and Sweden have amended their legislation over the last fifteen years to do so. That is also the case for Australia and Canada.

<sup>80</sup> Martin, *supra* note 76, at 6.

<sup>81</sup> The example of the United States is paradigmatic. The naturalization laws have required foreigners to relinquish prior allegiances when acquiring U.S. citizenship since 1975, but the U.S. Department of State has systematically treated this requirement as unenforceable. Spiro, *Dual Nationality*, *supra* note 18, at 1459.

<sup>82</sup> Hailbronner, *supra* note 71, at 21-22.

<sup>83</sup> See RUBIO-MARÍN, *supra* note 33, at 227-32 (discussing debate in Germany over reform of naturalization and nationality laws); Marianne Wiedemann, *Development of Dual Nationality Under German Law*, in RIGHTS AND DUTIES OF DUAL NATIONALS, *supra* note 8, at 338 (same).

more to do with cultural identity and the possibility of preserving privileges in the sending state (e.g., owning or inheriting property, maintaining a return option, and the ability to travel back and forth easily). Accordingly, receiving states are now less inclined to interpret immigrants' unwillingness to give up their nationality of origin as an expression of strong and active political allegiance that might come into conflict with the "political rebirth" that naturalization is generally considered to be.

As for sending countries, they too have been shifting gears. A concern with avoiding statelessness has undermined the practice of removing the nationality of nationals who would thereby become stateless, no matter how detached, distant, or disloyal they may be perceived to be. Additionally, although many countries used to remove nationality from those acquiring another one abroad (and some still do), this practice has changed. By the 1990s, many key sending countries had stopped treating their expatriates "as prodigal sons and daughters who had abandoned their national family and who therefore should not be allowed to retain the original nationality"<sup>84</sup> and started to see some of the advantages of allowing for the retention of the original nationality, sometimes going so far as to simultaneously encourage naturalization abroad.<sup>85</sup> The reasons for this were multifaceted and included the idea that preserving ties to the "diasporic nation" would boost the sending countries' national economies and help advance their national agenda abroad.<sup>86</sup> Protecting expatriates against anti-immigrant policies in the First World, which they could escape only by naturalizing, has also been said to be a motivating factor.<sup>87</sup> Another reason for this relaxed view of dual nationality is the understanding that emigrants might have good and practical reasons for acquiring the nationality of their country of residence without intending to sever ties with a country of origin that they very likely left out of sheer necessity. In this way, dual nationality finds acceptance

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<sup>84</sup> Martin, *supra* note 76, at 7.

<sup>85</sup> See Jones-Correa, *supra* note 14, at 304–12 (describing development of Latin America's interest in recognizing dual nationality). In Latin America there has been an acceleration of interest in dual nationality. Before 1991 only four Latin American countries—Uruguay (1919), Panama (1972), Peru (1980), and El Salvador (1983)—had opted to recognize dual nationality as a general principle. Between 1991 and 1998 an additional six countries have recognized dual nationality. *Id.* at 304–06.

<sup>86</sup> *Id.* at 316; Martin, *supra* note 76, at 7.

<sup>87</sup> Martin, *supra* note 76, at 7–8 (discussing Mexican government's efforts to protect rights of Mexican citizens living in United States in wake of Proposition 187).

as the legal expression of hyphenated identities or as a practical decision.<sup>88</sup>

Part of what has enabled this interpretation is the fact that, apart from the right to return, most of the other external citizenship rights of dual nationals can be deactivated.<sup>89</sup> In fact, there are different legal mechanisms that allow for the decoupling of dual nationality from dual citizenship. The example of the dormant and active nationality regime adopted by some countries as a way of solving conflicts in cases of dual nationality more generally is probably the best one. According to this model, dual nationals are allowed to have one active citizenship at a time: that of the country of residence. The citizenship that is active will determine where the person exercises political rights, pays taxes, performs military service, and which country should grant that person diplomatic protection.<sup>90</sup>

Most countries, however, have not taken measures to exclude dual nationals per se from eligibility for voting rights.<sup>91</sup> Rather, by making residence a condition for the exercise of suffrage, electoral positions, or civil service positions, many dual nationals (those living abroad) are effectively excluded from acting as dual citizens. Only a few sending countries seem to accept dual nationality and dual citizenship as part of the same process of politically including the geographically absent national community. Most have been leery of extending political rights for their nationals abroad even after embracing dual nationality.<sup>92</sup> Thus, although there is a growing tendency to allow or

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<sup>88</sup> Jones-Correa explains that the acceleration of interest in dual nationality in Latin America has taken place according to two different modes: a top-down approach, orchestrated from within the legislature with little pressure from the immigrant community abroad (as in Brazil, Costa Rica, El Salvador, Panama, Peru, and Uruguay) and a bottom-up approach, responding to pressure from overseas communities (as in Colombia, the Dominican Republic, Ecuador, and Mexico). Jones-Correa, *supra* note 14, at 306.

<sup>89</sup> See Bauböck, *supra* note 7, at 715–16 (explaining how willingness of receiving states to tolerate dual nationality is partly due to fact that external citizenship rights of dual nationals, unlike right to return, can be deactivated).

<sup>90</sup> Spain had a long policy (starting in the 1950s and going into the 1970s) of signing dual nationality treaties with Latin American countries using this active-dormant nationality technique. These treaties include those signed with Argentina, Bolivia, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, Guatemala, Honduras, Nicaragua, Paraguay, and Peru.

<sup>91</sup> HAMMAR, *supra* note 53, at 185–86; see Spiro, *Political Rights*, *supra* note 39, at 137 (discussing restrictions on political participation applied to nonresident citizens).

<sup>92</sup> The Mexican government has drawn a distinction between the recognition of dual nationality and dual citizenship. The holders of Declaration of Mexican Nationality IDs cannot vote, hold political office, or serve in the armed forces in Mexico. What these holders of the Mexican nationality can now do is buy and sell land free of the restrictions imposed on aliens, receive better treatment under investment and inheritance laws in Mexico, attend public schools and universities, and access other Mexican government services and jobs. Similarly, under pressure by the German government, the Turkish govern-



tolerate dual or multiple nationality, this does not necessarily mean that there is an equivalent tendency to favor dual political citizenship. Rather, it seems that the notion of dual nationality has taken on a life of its own, partly because it departs from its traditional understanding as primarily an expression of dual political loyalties.

*B. Emigrants Retaining Their Nationality: A Matter of Right?*

The question now is whether, on normative grounds, there is something that we can draw from the experiences of those sending countries that have shifted toward allowing their nationals to retain their nationality abroad in spite of their prolonged absence or even when they take on another nationality.<sup>93</sup> Should those sending countries which still ask their nationals to give up their nationality when they naturalize elsewhere be criticized? Should the fact that many expatriates may be playing such an important role in fueling the national economies of their countries of origin be relevant in answering this question? And should we criticize those states that do allow the retention of prior nationality under such circumstances but do not allow for the full exercise of dual citizenship by declining to extend dual voting rights?

As mentioned above, traditionally states have considered themselves fully sovereign in deciding the rules of national belonging, including both access to and loss of nationality. While some have argued that this sovereignty should be constrained, consensus in this area (except maybe for the growing consensus around the need to avoid statelessness) is slim.<sup>94</sup>

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ment stopped granting dual citizenship and introduced a sort of dual nationality with the so-called "pink-card" in late 1997. Faist, *supra* note 29, at 202. While Colombia and Peru have allowed voting from their consulates overseas, other Latin American countries exploring the option of expatriate voting have postponed making any commitments. Mexico, the Dominican Republic, and Haiti, all of which talked of allowing voting abroad at some point, seem to have frozen their plans indefinitely. Jones-Correa, *supra* note 14, at 316–17.

<sup>93</sup> It is important to bear in mind that the right to retain the nationality of origin would need to be asserted against both the sending and the receiving society to the extent that the right exists not only in spite of one's emigration, but also in spite of one's nationalization abroad. Since here I am focusing on the notion of external citizenship in terms of the relationship between expatriates and the sending country, and I am exploring the different rights claims that may ground such a relationship, I will not discuss the claim as exercised against the receiving society.

<sup>94</sup> See RUBIO-MARÍN, *supra* note 33, at 20–41, for the argument that such sovereignty should be further constrained and that, to the extent that receiving countries continue linking full rights (including the core political rights) to the legal status of nationality, they should grant permanent residents their nationality automatically and unconditionally after a certain number of years of residence to ensure the democratic legitimacy of their authority without asking them to give up their prior nationalities.

I want to show that there is an argument to be made in favor of recognizing a right to retain the nationality of origin. Since avoiding statelessness and the vulnerability that it entails should be a priority, sending countries should not ask expatriates to give up their nationality until they acquire that of the country of residence. The more controversial case, however, is that of expatriates who live abroad on a permanent basis and are naturalized there. Yet even when they naturalize abroad there are many reasons why expatriates may want to preserve their nationality, including the need to travel back and forth to visit family and friends, investment opportunities, the possibility of returning for good, and identity-related reasons.

All of the above may be politically sound reasons to argue against asking immigrants to give up their original nationality when naturalizing abroad. However, in my view, the ultimate reason for granting expatriates a *right* to retain their nationality of origin is the fact that most people feel significantly attached to their national societies and cultures. While this is not necessarily true for everyone, and everyone should have the right to give up their nationality of origin at least as long as they can acquire another one, this is probably true of most people. The fact that some people are compelled to leave their countries in search of a better life does not mean that this is not a very difficult choice for most.<sup>95</sup> Although some world migration is voluntary, this is not representative of most migratory trends. In spite of growing migration, most people still prefer to remain within their national cultures rather than emigrate to a foreign country, even if this means forgoing a better life in many other respects. This fact is telling of the attachment that most people feel to their national communities as their first locus of socialization. True, we may argue that there is a process of self-selection and that those people who ultimately decide to leave their countries and to acquire another nationality are those who are, in fact, the least attached. However, I think that this is only partly true. There are many reasons why somebody may want to naturalize abroad (including for instance, guaranteeing his or her residential status, or, less instrumentally, expressing a political or cultural attachment to the country of residence and wanting to become fully engaged within it) that have nothing to do with a lack of attachment to their national identities or interests in preserving ties to their coun-

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<sup>95</sup> See Ruth Rubio-Marín, *Exploring the Boundaries of Language Rights: Insiders, Newcomers, and Natives*, in SECESSION AND SELF-DETERMINATION 136, 139 (Stephen Macedo & Allen Buchanan eds., 2003) (challenging assumption that immigration is to be seen as act of voluntary cultural uprooting from sending society). Note that this does not mean that people should be granted the right to pass their nationality on to future generations born abroad indefinitely.

tries of origin. Without the promise of greater opportunity for flourishing for themselves and their children, most people would probably rather not leave their countries of origin. Since it is the sending country that cannot guarantee such vital options, that country should at least allow expatriates to retain their nationalities of origin and spare them the choice of either giving up ties to the sending country or remaining perpetually second-class citizens in the receiving country.<sup>96</sup> Sending countries should therefore change their nationality laws to accommodate this claim, as should receiving countries, which should stop asking immigrants to renounce their nationality as a condition for naturalization.

What about the relevance of emigrants' economic contribution to this? Could it be argued that this contribution grounds a rights-based claim for expatriates to be able to retain the nationality of origin? This is an interesting question and we should be careful not to apply double standards when answering it. It is widely known that most immigration-receiving states do indeed take into account their economic interests when shaping their admission policies. However, access to political membership through nationality has thus far rarely been linked to economic status or economic contribution potential in a significant way in contemporary times.<sup>97</sup> Similarly, sending countries (which cannot rely as much on admission policies, strictly speaking) are now using the rhetoric of national loyalty, virtue, or commitment with the aim of furthering their economies through their expatriates. Under the circumstances I do not think that this is, *a priori*, morally objectionable, at least not more so than making admis-

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<sup>96</sup> In reality, this may not be such a difficult choice for many emigrants. The imbalance between the visa regimes of sending and receiving countries allow many emigrants to keep up ties with the sending country whether or not they are allowed to formally retain those passports. Thus, a Colombian immigrant will probably not have problems traveling with his U.S. passport to visit his family in Colombia. The holding of a passport and one's national identity may even be completely disentangled when viewed in such an instrumental way. However, political considerations may still hinder this process, as demonstrated by travel restrictions imposed on Cuban-Americans on travel to Cuba to visit family members there. This shows precisely why the individual should be able to assert the possibility of traveling back and forth as a matter of right attached to her nationality regardless of the politics between the receiving and sending countries.

<sup>97</sup> Naturalization fees are required in some countries but they are not generally conceived of as an economic screening process. Some countries have granted certain privileges, for instance, shorter naturalization residence requirements for those performing in certain jobs or industries; but this is clearly more the exception than the rule. Some countries do require proof of a certain economic or professional status as one of the conditions for naturalization but rarely is this the main condition. Where it applies it is often taken as a proxy for societal integration or economic self-sufficiency, not as an expression of the immigrant's potential contribution to the national economy.

sion policies hinge on the national economy.<sup>98</sup> This, however, does not mean that emigrants are entitled to claim a right to retain their nationalities on the grounds of their economic contribution to the sending countries. Political membership, expressed in nationality, generally is not for sale, nor should it be. It would be morally objectionable, for instance, to allow only those emigrants who can prove their actual economic contribution to retain their nationality.

Finally there is the question of those countries that allow for the retention of prior nationality, but not for the full exercise of equal political rights to their dual nationals and the impact this may have on expatriates who naturalize abroad. Since I have already discussed and defended the overall moral legitimacy of preserving suffrage linked to residence, the question would then be whether a country that allowed for absentee voting of its nationals residing abroad could exclude those who have naturalized abroad from this option. This, in my view, would not be justified.

Traditionally, one of the most commonly alleged reasons against dual voting rights for dual nationals is that it presents a conflict of loyalty or allegiance. However, the scenarios in which one can imagine an actual conflict of loyalty hinging on the exercise of suffrage are extremely rare. What is much more likely is that dual nationals who have ties to both the country of origin and residence will take that complex set of perspectives and interests into account when casting a vote. In a democracy, nothing should prevent one from doing so, just as nothing should prevent a person who takes herself to be a cosmopolitan and engaged citizen of the world to cast a vote thinking of what will maximize the well-being of the most disadvantaged people in other parts of the world. After all, multiple identifications, mixed identities, and complex loyalties are the norm in modern societies.<sup>99</sup>

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<sup>98</sup> As I will explain below, my concern is much more with the consequences that the display of such nationalist rhetoric may have on the attitude of receiving countries and the way this may play out in the treatment they give to their immigrant populations.

<sup>99</sup> RUBIO-MARÍN, *supra* note 33, at 53 (arguing that in "an increasingly interrelated world of states, double attachments should be recognized as something other than a pathology in a system of perfectly delimited communities"); Tomas Hammar, *State, Nation, and Dual Citizenship, in IMMIGRATION AND THE POLITICS OF CITIZENSHIP IN EUROPE AND NORTH AMERICA*, *supra* note 29, at 81, 89; see Martin, *supra* note 76, at 11 (arguing that "modern democracies . . . tolerate or encourage a wide range of competing loyalties and affiliations in civil society"). Kay Hailbronner thinks that there is still a concern with equality that makes dual voting undesirable and recommends that dual nationals should only be allowed to vote where they reside. See Hailbronner, *supra* note 71, at 26 ("Political rights should be attached to the state of permanent residence."). According to him, if dual nationals can vote in two separate polities, they achieve a status that is at least symbolically superior to their fellow citizens. As discussed above, I think that the concern with equality

## CONCLUSIONS AND FINAL CONSIDERATIONS

While migrant transnational politics are challenging some of the core notions of the old nation-state construct (such as the idea of states organizing mutually exclusive political membership or territorially bounding national belonging and political agency), they are also reasserting the prevalence of others, such as the meaningfulness of national membership. Keeping an eye open as to which of the elements are transformed and which remain should enable us to sort out, from a normative perspective, the challenges posed by these new realities to our longstanding democratic commitments. Here, I have suggested that emigrants have a right to retain their nationality of origin (and with it a sense of national identity), their ties to the country of origin, and the option to return there, even if they naturalize abroad. However, I have also argued that they do not have a similar right to determine the political destiny of the community they left behind through absentee voting and other forms of political participation. Absentee voting is an option that, under certain circumstances, sending countries may legitimately embrace; it is not a right that diasporic national communities can simply assert, especially not on the grounds of their economic contributions to the national economies through remittances or other forms of capital inflow. This holds true even if that contribution is one of the main reasons for the use of nationalist diasporic rhetoric by sending countries themselves.

Although there is nothing inherently wrong nor particularly new about constructing nationhood to further the national economy, we should be wary of the possible effects that the use of nationalist rhetoric and the project of turning emigrants into national diasporic political communities may have on their chances to be fully incorporated in the political communities in which they have chosen to reside. Under certain circumstances it is likely that the active involvement of expatriates in the politics of the country of origin would be taken by

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comes from allowing absentee voting, not from allowing dual voting as, in any event, dual nationals are only allowed to vote once in every polity. Therefore as long as their votes are not aggregated at a higher level, there really is not a problem. Bauböck, *supra* note 7, at 717; see Spiro, *Political Rights*, *supra* note 39, at 143 (challenging argument that nonresident voting by dual nationals violates equality norm central to modern ideas of citizenship). It is of course true that dual voting would express the idea that dual nationality can mean overlapping and dual membership and, in that respect, would symbolize a departure from citizenship as exclusive membership. However, if that is what reality calls for, mono-nationals should accept it. Dual membership often entails dual obligations, incredible life hurdles and adaptation challenges that mono-nationals are typically spared. Having said that, it is true that "not all dual nationals are transnationals" as many engage "in successive, rather than simultaneous membership experiences." Bosniak, *supra* note 8, at 41. This is why I think that residence rather than nationality should be the leading factor in determining inclusion in active political membership.

some to show that immigrants can be perceived as socioeconomic members of the receiving society who, politically, remain active members of the sending societies. The existence of closer links to the home country, expressed through immigrants' economic and political involvement abroad together with the retention of their nationalities, could be pointed at to show that the possibility of return, far from a theoretical option, is a very concrete and real option. Fears that immigrants are manipulable by the sending state, or that they will act as "fifth columnists," could also be raised as concerns about foreign politics interfering in domestic affairs. All of these arguments might help to frame increasing resistance to the easy naturalization of immigrants, the tolerance of dual nationality and alien suffrage, and thus increase the marginalization of immigrants in receiving societies.

It may turn out that some of these precautions are not necessary because in an era of political apathy, any attempt to politically mobilize large masses is to some extent doomed to fail. As Benedict Anderson has put it, "[passports] are less and less attestations of citizenship, let alone of loyalty to a protective nation-state, than of claims of participation in labor markets."<sup>100</sup> Thus, even if given the option, and even if encouraged by a discourse that describes them as heroic citizens, it is likely that most expatriates will simply not care to devote much energy to engaging in the politics of the country of origin. In fact, dual nationality policies embraced by sending countries seem to have had less of an impact than sending countries may have wished for and than receiving countries might have feared. The same applies to absentee voting, as indicated by the low electoral turnouts in those places where it has become an accepted practice.<sup>101</sup> But precisely because the promise of advancing toward full external citizenship may be either vacuous nationalist rhetoric or an elitist project that works far better through informal channels of political influence and economic power than through formal egalitarian channels of rights to participation, we should be aware of its possible effects on the majority of the immigrant population in the country of residence.

Even if one believes, as I do, that dual political allegiances should be accepted and rarely pose a problem in the modern world of democratic states, to the extent that there are elements in the prevailing conceptions of the nation-state that still perceive dual allegiance as suspicious, we should be careful before pushing the full agenda of external citizenship lest it legitimize practices of political exclusion

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<sup>100</sup> Anderson, *supra* note 10, at 232.

<sup>101</sup> Jones-Correa, *supra* note 14, at 330–31.

that are already too common in receiving countries.<sup>102</sup> In other words, we should not let a few people's illusion of being full citizens from abroad relegate the majority to the condition of being "just workers" or "less than equal citizens" in the societies where they chose to live on a permanent basis. National discourses exalting the patriotic virtues of emigrants who feed the economy and thereby save the country may indeed provide an experience of political empowerment and become a source of self-esteem, pride, and psychological comfort for those who, far too often, are ethnicized and treated as worthless and subhuman in the communities in which they live. But we should also be concerned about how such rhetoric can instrumentally be deployed to render national heroes into sacrificial lambs: absent in the countries of origin, silenced in the countries of residence.

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<sup>102</sup> In this regard I agree with Linda Bosniak who has argued that to support the emerging tolerance of states towards dual nationality while ensuring the right of people to enjoy full rights and status where they actually make their lives, we should treat multiple nationalities as more routine, rather than as a departure from longstanding citizenship concepts and practices. Bosniak, *supra* note 8, at 48.