The Meanings of Citizenship

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The Meanings of Citizenship

Linda K. Kerber

It is no accident that this annual meeting is devoted to a grand advanced course in citizenship. As the twentieth century draws to a close, events conspire to demand that we be attentive to the meanings of citizenship. (So many historians responded so creatively to our invitation to explore those meanings that sessions on citizenship absorbed nearly two-thirds of the program.)

The last great periods of attentiveness to citizenship in the United States occurred amid the massive immigration of the turn of the century and again in the late 1930s, when the flood of refugees from Nazi Germany challenged the residents of democracies to decide whom they would accept as fellow citizens. At the end of the Cold War, we again find ourselves in a time of extraordinary political fluidity. Is national citizenship, a concept that was invented in the era of the American and French revolutions, sufficiently resilient in a post–Cold War world?

All over the globe individuals' rights as citizens are being recast. The status of citizen, which in stable times we tend to assume is permanent and fixed, has become contested, variable, fluid. Fluidity can mean advantage: Travelers holding the burgundy-colored European passport whisk through checkpoints; students in the European Union's Erasmus Project can wander across Europe as they pursue university degrees. We hear voices announcing that national citizenship will be a thing of the past; it's multinational citizenship that we need.

But many elements of destabilized citizenships remain problematic. Ask the members of the United States Congress who voted for the 1996 Personal Responsibility and Work Opportunity Reconciliation Act how they have reconstructed the relationship between citizens and legal immigrants or, better yet, ask the citizen spouse of a legal immigrant.[1] Ask the citizens of California who voted for Proposition 187, making radical changes in the relationship of citizens to undocumented aliens. Ask the citizens of Hong Kong. Two years ago, when we chose the theme of this meeting, we could not have predicted that the meanings of citizenship would be so destabilized.

Modern citizenship was created as part of the new political order courageously constructed in the era of the American Revolution. Reaching back to the Greeks and

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[1] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 110 Stat. 2105 (1996).

reinventing what they found, the founding generation transformed the relationship between king and subject. They constructed a new and reciprocal relationship between state and citizen.

"Citizen" is an equalizing word. It carries with it the activism of Aristotle's definition—a citizen is one who rules and is ruled in turn. We describe rights and obligations in egalitarian language and in generic terms: all citizens pledge allegiance to the flag, using a capacious rhetoric that ignores differences of gender, race and ethnicity, and class. At its founding, the United States government assumed that any free person who had not fled with the British or explicitly denounced the Patriots was a citizen. It radically disconnected religion and political participation: Congress may make no religious test.[2] The United States has no formal categories of first- and second-class, or active and passive, citizens.

Most people who become citizens do so by being born on American soil; they claim *jus soli,* the common-law right of the land. Others, born elsewhere on the globe to parents who are American citizens, claim citizenship by descent; they claim *jus sanguinis,* right of blood. And United States citizenship can be acquired by naturalization. The citizenship acquired in all of these three ways is essentially the same, except that only those who acquire citizenship at birth may stand for election to the presidency.[3]

The idea of *jus soli* has been treated much more capaciously in the United States than elsewhere; for example, in France children born on French soil to aliens may be citizens *if* they reach the age of eighteen, have lived in France for five years, and have committed no crime. In some other countries, citizenship is ascribed *only* on the basis of descent. Birth on German soil and prolonged residence have no bearing on citizenship. German opposition parties have recently proposed that children born in Germany be citizens. Children born on United States soil to aliens become citizens at birth.

But members of the founding generation left few explicit definitions of what they meant by citizenship. The federal Constitution says little other than "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." The text takes for granted that we know what those "privileges and immunities" are. It spends its energy policing the boundaries of citizenship—enunciating the obligations not to commit treason and not to harbor fugitive slaves. (The traitor seeks to undermine the citizenry; at the other extreme, the fugitive seeks to blend into it.) After the Civil War, the Fourteenth Amendment expanded the concept of national citizenship, defining all persons "born or naturalized in the United States" as citizens of the United States and of the states in which they reside and guaranteeing them the "equal protection of the laws." But the amendment assumed everyone knew the "privileges and immunities" to which citizens were entitled, leaving changes up to the political process.[4]

[2] U.S. Constitution, art. 6.
[3] Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge, Mass., 1992), 80, 87.
[4] U.S. Constitution, art. 4, sec. 2, amend. 14, sec. 1.

One example of what everyone "knew" can be found in an opinion written by Justice Bushrod Washington of the Supreme Court in 1823. He described what he understood to be the common sense of the "privileges and immunities" that all citizens share. His vision was expansive and made no distinctions among citizens:

> Protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety . . . to claim the . . . writ of habeas corpus; to institute and maintain actions of any kind in the courts of the state.[5]

Washington was engaging in what some commentators have recently decried as "rights talk." But emphasis on rights is the most progressive characteristic of American legal traditions, the aspect of American law and social practice that is most admired abroad and best understood at home. People unversed in legal complexity understand that they are entitled to free speech, to a right against self-incrimination, to religious freedom, to a jury trial, to the vote. The Tenth Amendment is crucial: "rights not granted to the state are *reserved* to the people." It is not a bad thing to live in a system in which we have so many rights that we cannot list them all.[6]

In liberal tradition, rights are implicitly paired with obligations. The right to enjoy a trial by jury is mirrored by an obligation to serve on juries if called. The right to enjoy the protection of the state against disorder is linked to an obligation to bear arms in its defense. The right to enjoy the benefits of government is linked to an obligation to be loyal to it and to pay taxes to support it.

But the word "obligation" is confusing. In common speech we may refer to our civic obligation to vote, which is a responsibility voluntarily assumed. But the primary meaning of obligation is to be under compulsion. This is not so pleasant to contemplate. If the duty of loyalty were not so difficult, the punishment for treason would not be so severe; if the duty to defend the nation were not so distasteful, there would never be need for a draft.

Some obligations are wide-ranging, applying not only to citizens and resident aliens but to anyone on American territory; among these are the general obligation to obey criminal and civil laws and administrative requirements (such as the requirement to pay the minimum wage or not to discriminate on the basis of race). All citizens have five specific obligations. Two are shared with all inhabitants: the obligations to pay taxes and to avoid vagrancy (that is, to *appear* to be a respectable working person). Three are incumbent on citizens specifically: the negative obligation to refrain from treason, the obligation to serve on juries, and, most significant, the obligation to risk one's life in military service, to submit to being placed

[5] *Corfield v. Coryell,* 5 F. Cas. 546 (C.C.W.D. Pa. 1823) (No. 3230). The issue was the extent to which the state of New Jersey could limit the taking of oysters by inhabitants of other states.

[6] James H. Kettner, *The Development of American Citizenship, 1608–1870* (Chapel Hill, 1978), 259–60. Michael Les Benedict points out that the concept of a national citizenship had wide-ranging potential; antislavery lawyers concluded "that free African Americans had rights as national citizens, whether their states recognized them as state citizens or not." Michael Les Benedict, *The Blessings of Liberty: A Concise History of the Constitution of the United States* (Lexington, Mass., 1996), 164. U.S. Constitution, amend. 10.

in harm's way when the state chooses. This last obligation has slipped out of common conversation since the advent of the all-volunteer army in 1975, but it is a real one, and when we consider the meanings of citizenship we ignore it at our peril.

American political theory has traditionally had much to say about rights and little to say about obligation. This tendency too is wholesome; beware the polity where obligation talk is expansive. But it has camouflaged some of the complexities of the meanings of citizenship. Tonight I want to try to place the term in historical context, not to undermine it—it still carries its vision of equal status—but to demystify it, to show how the American dream of equal citizenship has always been in tension with its nightmares.

A Braided Citizenship

The meanings of citizenship have been inconsistent from the beginning. Here are nine groups who have experienced the meaning of United States citizenship substantially differently:

—women (as distinct from men);
—Africans brought enslaved and their descendants;
—Native Americans, who did not as a group have citizenship conferred on them until 1924 (whether or not they wanted it);
—other categories of involuntary immigrants: people of Mexican birth or identity, who "became" American when the United States acquired Texas, New Mexico, and other territory after the Mexican War (In effect, the United States came to Chicanos.);
—"noncitizen nationals," who lived in possessions that never became states: Filipinos between 1898 and 1946, Puerto Ricans between 1900 and 1917, Virgin Islanders between 1917 and 1927, persons born in American Samoa now;
—voluntary immigrants from Europe, all of whom were *eligible* for naturalization and citizenship;
—voluntary immigrants from Asia and elsewhere, who for long periods were *ineligible* for naturalization;
—refugees who can never return to their homelands;
—refugees uprooted by disruptions in which they have reason to believe the United States was complicit, for example, Vietnamese "boat people."

Envisioned this way, citizenship does not seem stable at all. It is commonly said among family therapists that two children are never born into the "same" family. The eldest child, who enters a family in which he or she is the only child, has a different experience of family life than the youngest child, who enters a differently configured family in which space is already taken up by siblings and complex intergenerational relationships. The citizenship of a child whose ancestors could not claim citizenship by birth carries different historical freight from the citizenship

of a child whose ancestors could and did. When Americans today tell their children stories of what it has meant in their families to be citizens, the word may be the same but the stories vary. American citizens carry with them *different* histories of rights and different memories of accomplishing citizenship. The United States that was for my father's family a refuge from pogroms was simultaneously a state that countenanced lynching of its own citizens. There are profound differences between a citizenship accomplished, as my mother's was, by birth in the United States to parents who landed on Ellis Island and remained legal immigrants all their lives (because they never learned enough English to pass the naturalization test) and that of a Californian who is a citizen by birth but spent her childhood in the internment camp at Manzanar, or that of a Texan who is a citizen by birth but whose parents were forced back to Mexico during Operation Wetback in 1954. It was the citizens born in California and Texas who were deracinated. Noncitizens, my grandparents, lived securely all their lives.

It is, I think, because so many of the differences in the experience of citizenship I have listed are linked to ethnic or cultural difference that multiculturalism has come to be so great a source of anxiety. Behind the emphasis on multiculturalism lurks the knowledge that not everything melted in the melting pot, that the experience of difference has been deeply embedded in the legal paths to citizenship. The definition of "citizen" is single and egalitarian, but Americans have had many different experiences of what it means to be a citizen; indeed, over the centuries since 1789 the number of different categories of experience has increased. To deny those different histories is hypocritical. Denial sustains anxieties. Denial of historical reality leads to false premises in contemporary argument and to uninformed judgments when public policy choices have to be made.

Tonight I want to consider the braided history of citizenship in the United States and to reflect on the choices we have made and are now making about sustaining or undermining differences in the experience of citizenship. A braid is of a single length, as citizenship at its best is a single status, but a braid is made of several strands that twist around each other, and each strand (as in the braids we make of hair or rope) may itself be composed of many threads gathered together. To focus on the braidedness of the national narrative will place in the background, for the moment, the dream of an uninflected, ungraded citizenship and foreground the distinctions that were historically experienced: for example, that men and women gained rights such as suffrage and assumed obligations such as jury service on different timetables; that, although there have not been religious tests for office, there have been ethnic boundaries; and that people of European, African, and Asian descent have distinctive histories of assuming rights and obligations.

I tell my students that the phrase "race, class, gender" is a cliché, and I challenge them to avoid it. But the strands of the braided narrative of citizenship as experienced historically in the United States are the nine that I listed a moment ago woven into the three ropes of race, class, and gender—the categories I have tried to avoid but find impossible to ignore. Let me describe, briefly, some of these historical dynamics.

A Japanese American girl awaits transportation to internment camp, April 1942.
Photo by Clem Albers. Courtesy National Archives, Washington, D.C.

Gender

At its founding, the United States absorbed, virtually unrevised, the traditional English system of law governing husbands and wives. The old law of domestic relations began from the principle that at marriage the husband controlled the physical body of the wife. There was no concept of marital rape in American law until the mid-1970s. There followed from this premise the elaborate system of *coverture:* the married woman's civil identity was "covered" by her husband's. Since her husband controlled the body of his wife, he controlled her will. It followed logically that he controlled her property. Lacking property or a will of her own, a married woman could not make contracts without her husband's special permission. Early treatises are clear about the logic. If a married woman were to enter a contract, she might break it, and then she would be imprisoned for debt, and then the husband would be denied access to the body of his wife, "which," wrote the author of one treatise, "the law will not countenance." But if he were a traitor and exiled, or imprisoned, he would be denied access to her body anyway, so the wife of an exile or an imprisoned criminal could make a contract.[7]

[7] Tapping Reeve, *The Law of Baron and Femme, Parent and Child, Guardian and Ward, Master and Servant, and of the Powers of the Courts of Chancery* (1816; Burlington, 1846), 98–99.

Are we anachronistic to imagine that the Founders could have thought to change this system? We know that they did revisit it. Under the old law of domestic relations, the killing of a wife by a husband was murder, but the killing of a husband by a wife was *petit treason,* analogous to the killing of a king and punished more severely than murder. The Founders eliminated the crime of *petit treason* from the new constitutions of the Republic. They knew what they were doing when they left coverture in place. Every free man, rich or poor, white or black, gained something from the system of domestic relations already in place; they had no need of change.[8]

Throughout the history of the United States, virtually all married women's identities as citizens were filtered through their husbands' legal identities. Many scholars have written as though coverture and the problems it raised faded before the Civil War. But the erosion of coverture has been an extended process, accompanied by an almost willful insistence by many scholars that coverture and the problems it raised never really existed. Some of the most forceful later Supreme Court decisions sustaining the power of husbands over their wives—*Thompson v. Thompson* (1910), which denied a wife damages against violent beating by her husband on the grounds that to give her damages would undermine "the peace of the household," or *Breedlove v. Settles* (1937), which upheld a Georgia law excusing women who did not vote from the poll tax, thus rewarding women for not voting—do not appear in the standard histories. The Supreme Court did not rule that the power of husbands over wives is no longer recognizable in law until 1992. Even now elements of the old understanding of domestic relations remain embedded in our social practices.[9]

The rules of naturalization were bent by gender. The first Naturalization Act of 1790 provided that all children of citizens were citizens wherever they were born, except that "the right of citizenship shall not descend to persons whose fathers have never been resident in the United States." Thus from the very beginning, mothers were situated differently than fathers. Subsequent variations on naturalization law would skew the claims toward fathers. Until 1934 a legitimate child born abroad was a birthright citizen only if its father was a citizen who had resided in the United States before the child's birth. Nothing was said about citizen mothers.[10]

The history of the experience of rights has been different for women than for men. Everyone knows that the history of voting has been different. So long as voting was tied to property holding and married women lost control of their property and earnings at marriage, a voting, married woman was almost inconceivable. Before there could be a Nineteenth Amendment in 1920, there had to be expansive married women's property acts, and those developed slowly over time. The first were in the antebellum era, but others were still being revised deep into the twentieth century.[11]

[8] Linda K. Kerber, "The Paradox of Women's Citizenship in the Early Republic: The Case of *Martin v. Commonwealth,* 1805," *American Historical Review,* 97 (April 1992), 349–78.

[9] *Thompson v. Thompson,* 218 U.S. 611 (1910); *Breedlove v. Settles,* 302 U.S. 277 (1937); *Planned Parenthood of Southern Pennsylvania v. Casey,* 505 U.S. 833 (1992).

[10] Stephen H. Legomsky, *Immigration Law and Policy* (Westbury, 1992), 1032–33.

[11] Diane Avery and Alfred S. Konefsky, "The Daughters of Job: Property Rights and Women's Lives in Mid-

The Nineteenth Amendment *authorized* women's voting but did not guarantee that *all* women could vote. Where African Americans were barred from polling places—and that was most of the South, for most of the twentieth century—black women fared no better than black men. Because the Bureau of Insular Affairs decided that the Nineteenth Amendment did not stretch to the territories, a separate struggle for women's vote had to take place in Puerto Rico. Nor did the right to vote always include the right to hold office; in Iowa it took a separate campaign, unsuccessful until 1926; the first woman legislator did not take her seat until 1929.[12]

We have only recently come to recognize that the right of citizens to be secure in their households—the Fourth Amendment right of privacy—became in practice the right of the male head of the household to bar police against surveillance of domestic violence.[13] The claim of women to "custody of our persons" has not necessarily meant access to birth control or to medically safe abortion.

The right to custody of children has not been the same for fathers and for mothers. Under the old law of domestic relations, the father was the primary guardian of the child. His judgment on apprenticeship prevailed. The death of the father often made the child an orphan even if the mother was alive, and "half-orphans" were vulnerable to foster care and the guardianship of strangers.[14]

Most significant, women have not had the same obligation of loyalty to the state that men have had. Under the old laws of domestic relations, as one lawyer expressed it, "a married woman has no political relation to the state more than an alien." Her civic identity filtered through her husband's; if he was a Loyalist, she was not expected to take an oath of loyalty to the revolutionary republic. It followed from that principle that when American-born men married foreign women, the women automatically gained United States citizenship, but—and this was established by statute in 1907—when an American-born woman married a foreign man, she *lost* her citizenship. (When President Ulysses S. Grant's daughter married an Englishman in 1874 and went to live with him in England, she lost her citizenship, which was reinstated by a special act of Congress in 1898.) When Ethel MacKenzie,

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Nineteenth Century Massachusetts," *Law and History Review,* 10 (Fall 1992), 323–56; Norma Basch, *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth-Century New York* (Ithaca, 1982); Reva Siegel, "Home as Work: The First Women's Rights Claims Concerning Wives' Household Labor, 1850–1880," *Yale Law Journal,* 103 (March 1994), 1073–1217.

[12] Suzanne Lebsock, "Woman Suffrage and White Supremacy: A Virginia Case Study," in *Visible Women: New Essays in American Activism,* ed. Nancy Hewitt and Suzanne Lebsock (Urbana, 1993), 62–100. Suffragist groups mobilized in Puerto Rico with support from the National Woman's Party. In 1929 the territorial legislature granted suffrage, restricted by a literacy requirement, to women, but not until Puerto Rico became a commonwealth in 1952 was universal suffrage established. On Iowa, see Suzanne Schenken, *Legislators and Politicians: Iowa's Women Law Makers* (Ames, 1995).

[13] See Elizabeth M. Schneider, "The Violence of Privacy," *Connecticut Law Review,* 23 (Summer 1991), 973–99. More generally, see Mary E. Becker, "The Politics of Women's Wrongs and the Bill of Rights: A Bicentennial Perspective," *University of Chicago Law Review,* 59 (Winter 1992), 453–517.

[14] See Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill, 1985); Michael Grossberg, *A Judgment for Solomon: The D'Hauteville Case and Legal Experience in Antebellum America* (New York, 1996); and Kenneth Cmiel, *A Home of Another Kind: One Chicago Orphanage and the Tangle of Child Welfare* (Chicago, 1995).

who had worked hard here in California for woman suffrage, attempted to vote, she was turned away. Her British husband offered to naturalize, but MacKenzie did not think he should have to. She appealed to the United States Supreme Court; she lost. Marriage to a foreign man, the Court held, "is as *voluntary and distinctive as expatriation* and its consequence must be considered as elected." Not until the mid-1930s were most of the effects of the 1907 law reversed. Even today, it is not clear that the adult children of native-born women who were expatriated before 1934 can claim American citizenship, and immigration law still filters some claims for legal immigrant status through a spouse, disadvantaging some married women and also people in same-sex partnerships.[15]

Other obligations of citizenship have been experienced differently by men and by women. Structures of taxation have been substantially different. The Supreme Court did not rule that men and women were equally obligated to serve on juries until 1975 or that peremptory challenges could not be guided by considerations of gender until 1994. Men and women may volunteer for military service, but women have never been drafted for military service.[16]

Race

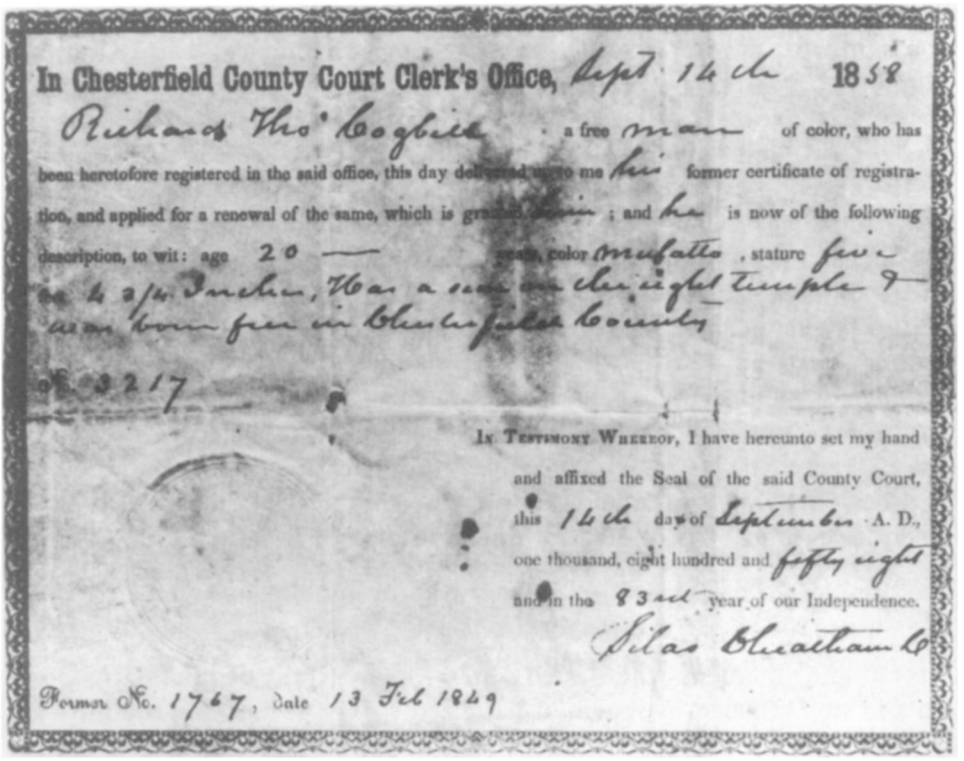
At its founding moments, the United States simultaneously dedicated itself to freedom and strengthened its system of racialized slavery. It included the three-fifths "compromise" and the fugitive slave clause in the Constitution.

People of African descent who were not enslaved were everywhere constrained in systems of caste that have been publicly underacknowledged, despite their documentation by many historians. The first Naturalization Act of 1790 was generous in requiring only two years of residency, proof of "good character," and an oath to "support the constitution of the United States." But the welcome was offered only to "free white persons." By racializing the qualifications for newcomers, the first naturalization statute recalibrated the relationship to the political order of the free blacks and free whites who were already resident in it and set strict limits on future access to citizenship. Only after 1870 could people of African birth or descent be naturalized.[17]

[15] See Kerber, "Paradox of Women's Citizenship in the Early Republic." U.S. H.R.J. Res. 238, 55th Cong. 2d Sess. 30 Stat. 1496 (1898); John L. Cable, *Decisive Decisions of United States Citizenship* (Charlottesville, 1967), 41–42; *MacKenzie v. Hare,* 239 U.S. 299 (1915). See Candice Dawn Bredbenner, *A Nationality of Her Own: Woman, Marriage, and the Law of Citizenship* (Berkeley, forthcoming); Legomsky, *Immigration Law and Policy,* 1036–37; and Rogers M. Smith, "'One United People': Second-Class Female Citizenship and the American Quest for Community," *Yale Journal of Law and the Humanities,* 1 (1989), 229–93. For the persistence of these issues into our own time, see *Elias v. U.S. Department of State,* 721 F. Supp. 243 (N.D. Cal. 1989); *Adams v. Howerton,* 673 F.2d 1036 (1982); Janet Calvo, "Spouse-Based Immigration Law: The Legacies of Coverture," *San Diego Law Review,* 28 (Summer 1993), 593–644; and Felicia E. Franco, "Unconditional Safety for Conditional Immigrant Women," *Berkeley Women's Law Journal,* 11 (1996), 99–141.

[16] See Edward MacCaffery, *Taxing Women* (Chicago, 1997); and Linda K. Kerber, *No Constitutional Right to Be Ladies: Women and the Obligations of Citizenship in American History* (New York, forthcoming).

[17] Ironically, although Dred Scott could bring a suit in a federal court, the Supreme Court ruled that he and other blacks could not enjoy the privileges and immunities of citizenship. Kettner, *Development of American Citizenship,* 325.


In Chesterfield County Court Clerk's Office, Sept 14th 1858

Richard Tho' Cogbill a free man of color, who has been heretofore registered in the said office, this day delivered up to me his former certificate of registration, and applied for a renewal of the same, which is granted him; and he is now of the following description, to wit: age 20 —, sex male, color mulatto, stature five feet 4 3/4 Inches, Has a scar on the right temple & was born free in Chesterfield County

No. 3217

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the said County Court, this 14th day of September A. D., one thousand, eight hundred and fifty eight and in the 83rd year of our Independence.

Silas Wheatham C

Former No. 1747, Date 13 Feb 1849

Free African Americans were frequently required to carry legal evidence of their status at all times: this certificate of freedom was issued by the clerk of the Chesterfield (Virginia) County Court.
Courtesy Moorland-Spingarn Research Center, Howard University.

The term "free blacks" appears to be a counterpart to "free whites," but it never was. Before the Civil War, free African American men could not serve in the militia or carry the mail. "Free" blacks were forbidden to move into some states, and slave states often required emancipated slaves to move out of the state and never return. "Free" African American men were often denied suffrage or subjected to property requirements that their white fellow citizens did not face; when New York lifted property requirements for suffrage for white men in 1825, only sixteen "free" African American men could meet the property levels still required of them. The Fifteenth Amendment provision that suffrage may not be denied on the basis of race was widely ignored; suffrage would not become a federally protected right until the Voting Rights Act of 1965. Not until 1991 did the Supreme Court rule that peremptory challenges to prospective jurors could not be guided by considerations of race.[18]

[18] Leon Litwack, *North of Slavery: The Negro in the Free States, 1790–1860* (Chicago, 1961), 31–40; David Montgomery, *Citizen Worker: The Experience of Workers in the United States with Democracy and the Free Market*

Asians have encountered extensive racially based barriers to citizenship. In the late nineteenth century, statutes in California and other western states, strengthened by federal legislation in 1882, barred Chinese immigrants from citizenship. These laws were expanded, sometimes silently, sometimes explicitly. Chinese women seeking to immigrate had to prove that they were not prostitutes—a more formidable burden than the usual requirement for evidence of good character demanded of all immigrants. In the 1920s, the Supreme Court "declared" various groups to be "non-white" and ineligible for citizenship: 1922 / Japanese; 1923 / Hindus; 1925 / Filipinos. In 1925, burdens of gender and race intersected for Ng Fung Sing. Although she was born in the United States, she was expatriated when she married a Chinese man, and she was refused admission to the United States when she tried to return. These exclusions were embarrassing during World War II; to express support for our ally, Congress exempted the Chinese from them. Japanese women were not eligible to marry American soldiers until the cautiously worded Soldier Brides Act of 1947. In short, the "citizenship" that people of Asian descent ultimately were able to claim—Chinese after 1943, Japanese after 1952—was psychologically and historically different from the citizenship claimed by people of European descent who had never been barred from it. The differences were reinforced during World War II by sharply distinctive treatments of "alien enemies"—German aliens were monitored on their own recognizance (although this carried its own ironies; many refugees from the Nazis were located as "alien enemies"); American *citizens* of Japanese descent as well as Japanese aliens were interned. Not until 1965 were racial qualifications fully removed from immigration law.[19]

Class

One of the most important elements of the federal Constitution is what it did not say about class. The Articles of Confederation denied the privileges and immunities of citizenship to paupers and vagabonds, but the federal Constitution did not repeat the phrase. The extent to which citizenship means equal access to social and economic institutions—what fifty years ago the British sociologist T. H. Marshall called social citizenship, "the right to share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society"—has been at issue throughout American history. (For Marshall, the characteristic institution for civil citizenship is the court of justice, for political citizen-

during the Nineteenth Century (Cambridge, Mass., 1993), 19, 21. When the United States took over Louisiana, free Negroes aggressively claimed the rights of citizenship and briefly maintained a militia. See Ira Berlin, *Slaves without Masters: The Free Negro in the Antebellum South* (New York, 1975), 118–28. For not using peremptory challenges on the basis of race, see *Batson v. Kentucky,* 476 U.S. 79 (1986); and *Powers v. Ohio,* 499 U.S. 400 (1991).

[19] See Lucy E. Salyer, *Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law* (Chapel Hill, 1995). In Canada, Chinese immigrants could be naturalized as British subjects. See Constance Backhouse, "The White Women's Labor Laws: Anti-Chinese Racism in Early Twentieth Century Canada," *Law and History Review,* 14 (Fall 1996), 321. *Ex parte (Ng) Fung Sing* 6 F.2d 670 (W.D. Wash. 1925). See Legomsky, *Immigration Law and Policy,* 1039; and Gerald L. Neuman, *Strangers to the Constitution: Immigrants, Borders, and Fundamental Law* (Princeton, 1996), 37.

ship the legislature, and for social citizenship the educational system and social services.) The long history of efforts by local and national governments to sustain social standards can be traced from the use of the police power to put ceilings on the price of bread in the colonial period, through the Homestead Act of the nineteenth century, through the New Deal's "second Bill of Rights," centered on decent work and broad social provision. A full range of social provision has long been defended on the grounds that the federal government was established, among other things, to promote the general welfare.[20]

But class location has significantly affected the ability of an individual to claim the privileges and immunities of citizenship. In the nineteenth century, the boundaries between slavery and freedom were roughened by the phenomenon of indenture. Masters brought slaves into the free territories of Ohio, Indiana, and Illinois and quickly turned them into indentured servants, vulnerable to punishments that included whipping; Illinois enforced such indentures until 1850. Not until the 1820s was it clear that a free white worker who signed an annual contract could quit without criminal sanctions, and the entire argument had to be revisited and refought for freed people after Reconstruction.[21]

At the founding, voting was everywhere constrained not only by race but also by class; property requirements and poll taxes prevented paupers from voting. Deep into the nineteenth century, the right to travel was restrained by strict local laws defining who could gain a "settlement" in a town and in that way a claim on town charity. Since the status of her husband was ascribed to any impoverished woman who married, if he did not have a secure settlement in any town, she would not be able to claim a settlement for both of them in the town of her birth. By her marriage she would become vulnerable to treatment as a vagabond until she was widowed. Not until 1941 was the right of the poor to travel freely within the boundaries of the United States explicitly secured as a privilege of citizenship. In 1969 the Supreme Court invalidated residence requirements for welfare benefits, a move that some have seen as contributing to a substantial increase in welfare claims, the backlash against which we are feeling today.[22]

The obligation not to be perceived as a vagrant has borne heavily on the poor

[20] T. H. Marshall, "Citizenship and Social Class" (1949) in T. H. Marshall, *Class, Citizenship, and Social Development: Essays by T. H. Marshall* (Westport, 1973), 71–72. On the nineteenth century, see William J. Novak, *The People's Welfare: Law and Regulation in Nineteenth-Century America* (Chapel Hill, 1996).

[21] Neuman, *Strangers to the Constitution,* 35–37; Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* (Chapel Hill, 1981), 92–100; Montgomery, *Citizen Worker,* 32. See Richard B. Morris, *Government and Labor in Early America* (New York, 1946); and Robert J. Steinfeld, *The Invention of Free Labor: The Employment Relation in English and American Law and Culture, 1350–1870* (Chapel Hill, 1991). For Indiana, we will be indebted to Bridgett Searle-Williams, "Resolving the Revolution: Dependency and the Problem of Inequality in Early Indiana, 1795–1835," draft Ph.D. diss., University of Iowa (in Bridgett Searle-Williams's possession). For the permeable boundaries between slavery and freedom in the upper Midwest, see Lea Vander Velde and Sandhya Subramanian, "Mrs. Dred Scott," *Yale Law Journal,* 106 (Jan. 1997), 1037, 1047–50.

[22] See Linda K. Kerber, *Women of the Republic: Intellect and Ideology in Revolutionary America* (Chapel Hill, 1980), 142–43. On the right to travel, see *Mayor of New York v. Miln,* 36 U.S. (11 Pet.) 102, 142–43 (1837); *Prigg v. Pennsylvania,* 41 U.S. (16 Pet.) 539, 625 (1842); and Neuman, *Strangers to the Constitution,* 23–31. *Edwards v. California,* 314 U.S. 160 (1941). On residence requirements, see *Shapiro v. Thompson,* 394 U.S. 618 (1969).

and has been differently calibrated for men and for women of different races. Freedwomen emerged from slavery into a society that countenanced sporadic work by impoverished white women but expected freedwomen to enter extended work contracts or be treated as vagrants or prostitutes. Used selectively, vagrancy laws could force men and women who were out of work to choose between prison and working for a particular employer. Used widely, they could reconstruct a peonage system even though work or imprisonment for debt had been outlawed in 1867.[23]

The ability of the New Deal coalition firmly to establish social citizenship was undermined by its dependence on votes from segregationists. New Deal legislation was often carefully crafted to exclude African Americans in the South and women, black and white, throughout the country. It was also constructed in conformity with contemporary white Americans' assumptions about the dynamics of a respectable family and their belief that it was appropriate that black women *not* be shielded from the obligation to work. By excluding from the original Social Security legislation all agricultural and domestic workers and workers in many occupations heavily dominated by blacks and women, and by not requiring states to standardize eligibility for unemployment benefits and for Aid to Dependent Children, the drafters of the original legislation conveyed the message that millions of people were, in effect, not really working and that they therefore were not entitled to Social Security benefits of their own.[24]

These patterns would be strengthened, as William E. Forbath has recently argued, by the subsequent filtering of many elements of social provision—especially health insurance—through employment entitlements in union contracts in the 1950s and 1960s.[25] Social Security, as a system of social provision that from its origins distinguished between payments understood as entitlement to male wage earners and payments understood as charitable support to "dysfunctional" female-headed families, has placed men and women of different classes in different relationship to the economic benefits paid for by all taxes.

[23] See Kerber, *No Constitutional Right to Be Ladies.* See also William Cohen, *At Freedom's Edge: Black Mobility and the Southern White Quest for Racial Control, 1861–1915* (Baton Rouge, 1991); and Tera W. Hunter, *To 'Joy My Freedom: Southern Black Women's Lives and Labors after the Civil War* (Cambridge, Mass., 1997), 227–32.

[24] Because eligibility for unemployment benefits was not standardized from state to state, some people who were regarded as not working and thus entitled to benefits in one state would be regarded as refusing employment and not entitled to benefits in another. Joanne Goodwin has described the use of eligibility requirements to create the category of the "employable mother." Although Aid to Dependent Children / Aid to Families with Dependent Children (ADC/AFDC) benefits were supposed to keep mothers out of the work force, southern state administrators of those benefits judged *some* mothers "employable," generally black mothers in seasons when white farmers needed field hands or when jobs doing housework were available. As the original legislation had envisioned, some states treated most mothers' care of their children as work. But other states treated only some mothers' care of their children as work (and they treated poor black women's care of their children as non-work). See Joanne Goodwin, "'Employable Mothers' and 'Suitable Work': A Re-evaluation of Welfare and Wage-Earning for Women in the Twentieth-Century United States," *Journal of Social History,* 29 (Winter 1995), 253–74; Alice Kessler-Harris, "Designing Women and Old Fools: The Construction of the Social Security Amendments of 1939," in *U.S. History as Women's History: New Feminist Essays,* ed. Linda K. Kerber, Alice Kessler-Harris, and Kathryn Kish Sklar (Chapel Hill, 1995), 87–106; and Jill Quadagno, *The Color of Welfare: How Racism Undermined the War on Poverty* (New York, 1994), 157.

[25] William E. Forbath, "Race, Class, and Equal Citizenship," unpublished essay, 1997, 89–96 (in William E. Forbath's possession). I am grateful to William Forbath for sharing this paper with me.

In short, the dream of an unranked citizenship has always been in tension with the waking knowledge of a citizenship to which people came by different routes, bounded by gender, race, and class identities.

Citizens, Immigrants, Borders

Situated on the fringes of an expansive empire, dependent for their prosperity on a steady stream of European immigrants, the constructors of American citizenship understood their relationship to the state in a global context. In a century of international wars in which imperial boundaries were constantly shifting and American ports were crowded with ships bringing newcomers—adventurers, indentured servants, slaves—borders and immigrants were rarely far from the minds of the founding generation. The Boston Tea Party was set off by the recalibration of English trade with India. Among the "long train of abuses" cataloged against George III in the Declaration of Independence was the complaint that he had obstructed the laws for naturalization of foreigners and failed "to encourage their migration hither."[26]

James Madison and Albert Gallatin held that the protections of the Constitution were available to "persons," not just citizens. We know from early congressional debates that the protections of the Constitution had been intended for "persons." Great care was taken to distinguish in time of war between "alien friends," whose rights as persons would be respected, and "alien enemies."[27]

The *Dred Scott* decision of 1857 destabilized this understanding, attaching the rights of citizens to white people alone and also constructing a chilling linkage of basic rights to citizens rather than persons. In promising that "all persons" are entitled to equal protection of the law, the Fourteenth Amendment was intended not only to overturn the *Dred Scott* decision but also to melt that link. The pattern it established—that the nation be one in which basic values are available to all persons within the landscape—endured as the major characteristic of American life and tradition.

The principle was tested in 1886, here in San Francisco, at a time when all Chinese were excluded from citizenship. A city health ordinance required that laundries in wooden buildings be licensed. All Chinese laundries in the city were in wooden buildings; all were denied licenses. (Virtually all laundries owned by whites located in wooden buildings received licenses.) Yick Wo, a laundryman, refused to pay what he believed to be a discriminatory fine, challenging the courts to consider the tensions between the "privileges and immunities" that citizens may claim and the "equal protection of the laws," in which aliens as well as citizens participate. The Supreme Court unanimously ruled in his favor, holding that "aliens within the United States—*including those who are unlawfully present* are persons

[26] Declaration of Independence para. 9 (U.S. 1776).
[27] Neuman, *Strangers to the Constitution,* 61.

Dred Scott, oil on canvas, unknown artist, probably modeled on the woodcut from a daguerreotype taken for *Frank Leslie's Illustrated Magazine* in 1857. *Collection of The New-York Historical Society.*

entitled to constitutional protection. . . . the equal protection of the laws is a pledge of the protection of equal laws."[28]

The decision in *Yick Wo* was not a chance event. Repeatedly the Supreme Court sustained the right of undocumented aliens to due process and to bring suits in the courts of the United States. In some states and territories, aliens were encouraged to vote even before they became citizens, sometimes with only modest residency requirements, sometimes with merely a declaration of intent to become a

[28] *Yick Wo v. Hopkins,* 118 U.S. 356 (1886). Emphasis added. "Nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Constitution, amend. 14.

citizen someday. The practice did not end until World War I.[29] Much significant New Deal legislation—the Social Security Act of 1935 and the amendments of 1939, the Fair Labor Standards Act, the National Labor Relations Act—was framed in terms of persons and made no distinctions between aliens and citizens. Other practices eased the transition to citizenship. Until deep into the twentieth century, foreign women who married American citizens automatically became citizens themselves; they did not even have to take an oath of allegiance. After World War II the War Brides Act simplified the naturalization of foreign spouses of American service people. The Immigration and Nationality Act of 1965 eliminated racial barriers to immigration. In 1982 the Supreme Court struck down a state attempt to deny free public education to children of undocumented immigrants.[30]

But this tradition of capacious definition has been challenged by a skeptical tradition. The "exclusion of aliens from the United States on grounds of their political views or their race" was key to immigration and naturalization law for forty years, from the early 1920s to 1965.[31] This skeptical tradition has been strengthened by long periods of absolute exclusion of Asians and by the definition of ethnic and racial intermarriage as miscegenation. In 1914 the Supreme Court upheld the right of Pennsylvania to forbid aliens to hunt; in 1923 the Court upheld a law limiting the right of Japanese aliens to own or rent land. During the greatest tensions of the McCarthy era, suspicion of aliens was embedded in the McCarran Immigration and Naturalization Act of 1952. In that era the Supreme Court held that aliens who had not gotten further than Ellis Island were not entitled to due process. In 1953 the Supreme Court denied the reentry of an immigrant who, after living in the United States for twenty years, visited his dying mother in Romania. His time in Eastern Europe made him an object of suspicion. The Supreme Court said suspicion was enough: "Whatever the procedure authorized by Congress is, it is due process as far as alien denied entry is concerned." He spent more than four years suspended in statelessness on Ellis Island before the Immigration and Naturalization Service allowed him reentry.[32]

Skepticism was refreshed in the 1970s. When the Supreme Court ruled that the United States Civil Service's regulations excluding from competitive civil service

[29] *Wong Wing v. U.S.,* 163 U.S. 228 (1896); *Takahashi v. Fish and Game Commission,* 334 U.S. 410 (1948); Neuman, *Strangers to the Constitution,* 63; Montgomery, *Citizen Worker,* 21.

[30] Social Security Act, c. 531, 49 Stat. 620 (1935); Fair Labor Standards Act, c. 676, 52 Stat. 1060 (1938); National Labor Relations Act, c. 372, 49 Stat. 449 (1935); Immigration War Brides Act, c. 591, 59 Stat. 659 (1945); Fiancees of Veterans Admission Act, c. 520, 60 Stat. 339 (1946). Gabriel J. Chin, "The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965," *North Carolina Law Review,* 75 (Nov. 1996), 275. Chin reports that although the McCarran Act set Asia's quota at 28,000, 238,500 Asian immigrants entered between 1953 and 1965 as refugees, relatives, or persons with special skills. *Plyler v. Doe,* 457 U.S. 202 (1982).

[31] Neuman, *Strangers to the Constitution,* 14. Lisa Lowe has observed that in the twentieth century, the United States defined itself substantially by its victories in Asian wars—in the Philippines, Japan, and Korea—while a tradition of the exclusion of Asians from naturalization and citizenship has meant that the American citizen has "been defined over against the Asian *immigrant.*" Lisa Lowe, *Immigrant Acts: On Asian American Cultural Politics* (Durham, 1996), 4.

[32] Peggy Pascoe, "Miscegenation Law, Court Cases, and Ideologies of 'Race' in Twentieth-Century America," *Journal of American History,* 83 (June 1996), 44–69; Patrick J. Bruer, "Alienage and Naturalization," in *The Oxford Companion to the Supreme Court,* ed. Kermit L. Hall (New York, 1992), 25. *Shaughnessy v. U.S. ex. rel. Mezei,* 345 U.S. 206 (1953).

positions all persons except American citizens and natives of American Samoa violated the due process clause of the Fifth Amendment, President Gerald R. Ford reinstated the exclusion by executive order. The exclusion was upheld in the federal courts and subsequently reframed in law. In the 1970s and early 1980s, some states limited state civil service positions to citizens of the United States, and federal statutes expanded the categories of private employers who were prohibited from hiring undocumented workers.[33]

Skepticism is again on the rise. "In a recent *L.A. Times* poll, 86 percent of Californians described illegal immigration as a major or moderate problem; 52 percent say that even legal immigration should be cut drastically."[34] California voters passed Proposition 187, which would deny public education and nonemergency public health care to children of illegal immigrants. Recent welfare legislation substantially denies benefits to legal immigrants as well as to undocumented ones, although how much this will reduce welfare costs and discourage illegal immigration is unclear. Last year the Republican party, forgetting its own history of sponsorship of the Fourteenth Amendment, proposed to eviscerate it by denying citizenship to children born in the United States whose parents were undocumented aliens.

Meanwhile a mythology has been constructed about the immigration of the early twentieth century, a mythology that depicts the immigrants of those years as more congruent demographically with each other and with American citizens than the confusing mass of people coming today from Asia, Africa, and Latin America. But the worry that we hear today that immigrants from the Third World contribute to a host of cultural ills also pervaded the native-born middle class at the turn of the century. Jane Addams walked city streets populated with recent immigrants, and she and her colleagues perceived them as a wide range of people. She made distinctions among Polish Christians, Polish Jews, and Russian Jews, Bohemians and Slovaks, Germans and Lithuanians. She did not see Italians, but Neapolitans, Sicilians, Calabrians, Venetians. She would not have been dumbfounded to hear that one hundred languages are spoken today in Los Angeles public schools. When confused welcome gave way to fear, we had the Immigration Restriction Act of 1924; now we have Proposition 187 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.[35]

As the Cold War fades into history and the twentieth century comes to a close, we are challenged to consider the concepts that define our understanding of citizenship. The more citizenship is experienced as economic entitlement or passive obedience to law rather than an active engagement in civic life, the harder it is to dis-

[33] *Hampton v. Mow Sun Wong,* 426 U.S. 88 (1976); Exec. Order No. 11,935, 41 Fed. Reg. 37,303 (1976); *Mow Sun Wong v. Campbell,* 626 F.2d 739 (9th Cir. 1980); cert. denied 450 U.S. 959 (1981). See Linda J. Wong, John E. Huerta, and Morris J. Baller, "The Legal Rights of the Immigrant Poor: A Legal Analysis," mimeographed manual from Mexican American Legal Defense and Educational Fund, San Francisco, 1983 (Library of University of Iowa School of Law, Iowa City).

[34] Peter Skerry, "Beware of Moderates Bearing Gifts," *National Review,* Feb. 21, 1994, p. 25.

[35] Immigration Restriction Act, c. 190, 43 Stat. 153 (1924).

tinguish between citizens and noncitizens. Of the eligible United States electorate, 60 percent do not vote. In 1994, 65 percent of eligible voters told pollsters that "public officials don't care much what people like me think." In 1993 less than 13 percent of the public described "themselves as belonging to groups involved in any way in politics." Why is that figure so low?[36]

Many persuasive reasons are being offered, some at this annual meeting. David Thelen has pointed to the thousands of thoughtful letters constituents wrote to members of Congress during the Iran-Contra hearings as evidence of a desperate effort to construct a "participatory arena" for politics in everyday life and to resist the management of opinion by spin doctors, pollsters, and advertisers. Robert D. Putnam and others have pointed to social developments that undermine the building of social trust: among them the all-volunteer army and the fragility of public schools, which decrease the likelihood of cross-class encounters and friendships; or slum clearance projects, which bulldoze close-knit neighborhoods; or gated communities and private athletic clubs, which pull the upper classes out of contact with the middle classes.[37]

To these I would add the squandering of public trust in all agencies of government that accompanied the Vietnam War and from which we have not yet recovered. Congress authorized each phase of the war—from the Tonkin Gulf Resolution in 1964 through the secret war in Laos, the invasion of Cambodia in 1970, and the bombing of Cambodia after the last American troops had left South Vietnam—but it accompanied everything it did with what the distinguished constitutional lawyer John Hart Ely has called "studied ambiguity." From the time when President Lyndon B. Johnson gave Sen. J. William Fulbright "assurances . . . that the Tonkin Gulf Resolution was not going to be used for anything other than the Tonkin Gulf incident itself" to the withdrawal from Saigon, when the United States ambassador gave repeated assurances of sanctuary to Vietnamese people whose lives were at risk because they had worked for the United States and then left them behind, everyone was given extensive lessons in distrust, in the frustrations and dangers of activism, in the weakness of the promises of citizenship. Congress staged an apparent debate over the Gulf War in January 1991, but by the time of the debate, Ely has reminded us, "the President had massed over 400,000 troops in the area—the same order of magnitude as Vietnam at its peak. . . . There was no doubt that there was going to be a war." The Vietnam War, wrote Russell Baker, "turned us into a people who know we can't believe anybody anymore, including ourselves." We spent an enormous amount of social capital and social trust in the years 1965–1973, and it seems to me clear we have not yet restored it. Many of the questions raised in the context of the new multiculturalism about the multiple meanings of citizenship, particularly of civic obligation, of what we owe to a gov-

[36] David Thelen, *Becoming Citizens in the Age of Television: How Americans Challenged the Media and Seized Political Initiative during the Iran-Contra Debate* (Chicago, 1996), 199; Robert D. Putnam, "Bowling Alone: America's Declining Social Capital," *Journal of Democracy,* 6 (Jan. 1995), 68. See Gabriel A. Almond and Sidney Verba, *The Civic Culture: Political Attitudes and Democracy in Five Nations* (Princeton, 1963), 261–99; and Michael Walzer, *Obligations: Essays on Disobedience, War, and Citizenship* (Cambridge, Mass., 1970), 224.

[37] Thelen, *Becoming Citizens,* 193–217; Putnam, "Bowling Alone," 73–77.

ernment capable of such misuse of our trust, were first raised in the context of the Vietnam War.[38]

"If the citizen is a passive figure," observes Michael Walzer, "there is no political community. The truth, however, is that there is a political community within which many citizens live like aliens. They 'enjoy' the common liberty and seek no further enjoyment."[39] All too many American citizens now live like aliens in their own land—passive, sour, anxious, suspicious of civic engagement. It may be that so many of us resent aliens because we are so much like them.

Postnational Citizenship

Do we need citizenship? We are embedded in postnational and transnational relationships that may be reconstructing the meaning of citizenship out of recognition. The distinguished anthropologist Arjun Appadurai has suggested that the United States is in transition from being "a land of immigrants" to being "one node in a postnational network of diasporas." Our world is flooded with refugees: in 1983 "western European and North American states recorded some 92,000 asylum applications. . . . by 1991 they had nearly 650,000." And that was six years ago, before the upheavals in Bosnia, Rwanda, or Hong Kong. Appadurai points to "refugee camps, refugee bureaucracies . . . refugee-oriented transnational philanthropies all [of which] constitute one part of the *permanent* framework of the emergent, postnational order."[40]

In such a world, international human rights take on overwhelming significance. For increasing numbers of us, writes Yasemin Nuhoglu Soysal, they have replaced national rights: "the rights and claims of individuals are legitimated by ideologies grounded in a transnational community, through international codes, conventions, and laws on human rights, independent of their citizenship in a nation state." In such a world, Appadurai reminds us, individuals need to have multiple memberships: "Chinese from Hong Kong buying real estate in Vancouver; Haitians in Miami, Tamils in Sri Lanka, Moroccans in France." They may be citizens of one country who are legal permanent residents of another or people with dual citizenship. Nations themselves are embedded in postnational relationships, notably in western Europe. There "citizenship in one EC [European Community] member state confers rights in all of the others," citizens of member states can move freely across borders, and citizens vote not only in elections in their own state but also in local European Union elections for representatives in a supernational legislature, thus breaking, Soysal points out, the traditional "link between the status attached to citizenship and national territory."[41]

[38] John Hart Ely, *War and Responsibility: Constitutional Lessons of Vietnam and Its Aftermath* (Princeton, 1993), 12, 50. For Russell Baker's 1973 remark, see the epigraph to Ely. *Ibid.*

[39] Walzer, *Obligations,* 210.

[40] Arjun Appadurai, "Patriotism and Its Futures," *Public Culture,* 5 (Spring 1993), 423, 419; Robert Miles and Dietrich Thranhardt, eds., *Migration and European Integration: The Dynamics of Inclusion and Exclusion* (London, 1995), 17.

[41] Yasemin Nuhoglu Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago, 1994), 142, 147; Appadurai, "Patriotism and Its Futures," 424.

The United States, writes Appadurai, "always in its self-perception a land of immigrants, finds itself awash in these global diasporas, no longer a closed space for the melting pot to work its magic, but yet another diasporic switching point, to which people come to seek their fortunes but are no longer content to leave their homelands behind."[42] A taxi driver from Zaire recently explained to me that, although he was grateful for many opportunities, he had not become a citizen, unable to overcome his deep resentment against the United States for complicity in the destabilizations that accompanied the assassination of Patrice Lumumba in 1961, which had forced his family to flee. A woman from Guatemala told a National Public Radio (NPR) reporter last year that taking the oath of citizenship meant for her simultaneously a commitment to the United States, where she had lived for decades, and the wistful abandonment of a dream that someday she would run for office in a democratic and stable Guatemala. These people look on the Statue of Liberty with a decidedly bifocal gaze.

International conventions that ascribe universal rights to persons "oblige nation-states *not* to make distinctions on the grounds of nationality in granting civil, social, and political rights." The Universal Declaration of Human Rights (1948) unequivocally asserts that "all human beings are born free and equal in dignity and rights."[43]

What elements of citizenship are needed in this postnational world, where there are plenty of universal declarations of rights but precious few instruments to enforce them? Individuals need multiple memberships, but they also need reciprocal ones. A citizenship defined only by entitlement is not resilient; it does not build the social capital that sustains vibrant communities in which people understand justice to be done. Moreover, the more citizenship is equated with receiving tangible, material benefits from the state, the more incentive citizens have to deny citizenship to outsiders whom they perceive as prospective free riders, that is, to draw a sharp line between citizens and noncitizens. In a postnational world we will need more not fewer, expanded not narrower, networks of civic engagement. We will need much greater investment in what political scientists call social capital, that is, "features of social organization such as networks (of civic engagement), norms, and social trust that facilitate coordination and cooperation for mutual benefit . . . [and to] allow dilemmas of collective action to be resolved."[44] If there are answers to my question, they will not be found in modes of citizenship that are so passive that a citizen can be mistaken for an alien.

We already have some powerful experiments in the building of social trust and civic engagement in a transnational world, an international citizenship in a postnational world. We have seen within the last five years a successful campaign—energized, alas, by horrors in Bosnia-Herzegovina—to declare rape a war crime and to expand the boundaries of human rights to include women's right to protection against violence. In the last months we have seen a promising campaign to set

[42] Appadurai, "Patriotism and Its Futures," 424.

[43] Soysal, *Limits of Citizenship,* 145.

[44] Putnam, "Bowling Alone," 67; Robert D. Putnam, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton, 1993), 163–85.

boundaries to the exploitation of workers by multinational corporations. It is not clear whether all the organizers know that they are following in the footsteps of Florence Kelley and the National Consumers' League of the early twentieth century, but these modes of international intervention rely on an expansion of the strategies of traditional organizations and on familiar tropes of local civic sociability.

But transnational civic life remains embryonic, even in its most developed formations, as in the European Community, the European Court of Justice, or the United Nations. Citizens of European member states may move from one state to another, but they must continue to rely on their home states for social security and other social provisions; they may not become burdens to their hosts. It is not at all clear that the National Consumers' League has made a dent in the exploitation of factory workers in a global context. When Fauziya Kassindja fled genital mutilation in Africa last year, it was to the United States's national practice of asylum that she appealed—after much delay and anguish, with success—not to a court of international justice or international human rights.[45]

Long ago Hannah Arendt stressed that our inheritance from the era of the American and French revolutions is simultaneously an expanded understanding of the "Rights of Man" and a tight linkage of human rights to national identities. That link is more elastic than it was, but it remains in place. What Arendt wrote about the impact of World War I retains its appropriateness as a descriptor of Vietnamese refugees in the 1970s and 1980s and Rwandan refugees today: "Once they had left their homeland they remained homeless, once they had left their state they became stateless; once they had been deprived of their human rights they were rightless." The next time you are boarding an international flight, watch for the difference in the treatment of people with passports and of those with international "travel documents." The basic international distinction remains the experience of ease or anxiety at the checkpoint.[46]

I want to end with a story. It is not easy for me to be in San Francisco, because the city will always be associated for me with a classic ordeal of citizenship: The first time I saw it was almost exactly thirty years ago when my husband shipped out from Oakland into a war that we both believed was deeply wrong. Last winter we returned to Vietnam to visit, and that was not easy, either. Everywhere people reminded us that Ho Chi Minh had quoted the Declaration of Independence and offered alliance to Harry S. Truman; had we been more trusting and less fearful, they suggested, we could have made a history without My Lai, a literature without Tim O'Brien's *Going after Cacciato,* a journalism without Michael Herr's *Dispatches.*[47] I moved through Vietnam cautiously, troubled by much of what I saw, and although people were gracious and never once made me feel as though it were my

[45] *New York Times,* Oct. 12, 1996, sec. A, p. 1; *ibid.*, Sept. 11, 1996, sec. A, p. 1.

[46] Hannah Arendt, *The Origins of Totalitarianism* (1951; New York, 1967), 267. For a moving account of the experience of statelessness today, see Rashid Khalidi, *Palestinian Identity: The Construction of Modern Consciousness* (New York, 1997), 1–6.

[47] Tim O'Brien, *Going after Cacciato* (New York, 1978); Michael Herr, *Dispatches* (New York, 1977).

personal fault, I dragged my younger self with me, aware that in that place America had stood for misery and violence.

And then, toward the end of my visit, I found myself in an English-language college classroom. As we planned, the teacher offered only an open-ended introduction: Here is Professor Kerber from America; practice your English, ask her questions, anything you like.

And there was a silence—as there always is a silence, teachers know that all too well—and then a young man rose and said, "Would you tell us, please, about freedom of the press?"

Well, what did they want to know? And it turned out that—in a country in which the state controls all television and radio stations (CNN, the Cable News Network, and other international channels are fed only into hotels catering to international travelers, the homes of foreign diplomats and residents, and senior party and government officials), virtually all publications are censored, and tourists buy the *International Herald Tribune* for a worker's daily wages—what the students wanted to know about were the practices. They wanted the details of how freedom of the press worked. Yes, in the United States people with enormous amounts of money might buy a newspaper or a television station to disseminate their views. But I could go to the Xerox shop (plenty of them in Hanoi and Ho Chi Minh City) and copy my statement and sell it on the street corner for a nickel, or I could give it away free. No censor would read it in advance. No one would say it was safe or not safe to distribute. And then I found myself saying that these principles did not just happen, that freedom of the press had to be enacted out of engaged civic work, that there was a history to these principles. Without planning I launched into the Zenger case of 1735, when a New York editor successfully insisted that truth was a defense against a charge of seditious libel, and wound my way through the *Schenck* and *Abrams* free speech cases of the World War I era into the Pentagon Papers until I stopped midsentence, startled at the multiple ironies of lecturing on the Pentagon Papers to a transfixed audience in what had been Saigon.[48]

So citizenship means what we make it mean. This meeting has been a grand demonstration, if any were needed, that the meanings of citizenship are expansive, and that the need to understand citizenship in its historical context is as great now as at any time in American history. It is in citizenship that the personal and political come together, because citizenship is about how individuals make and remake the state, and it is through this making and remaking that we will sustain the great ideals of the democratic revolutions, the rights that Bushrod Washington thought were the common sense of the matter nearly two centuries ago: the right to life and liberty, the right to pursue and obtain happiness and safety, the right to travel freely, and the right confidently to expect that justice will be done.

[48] "The Trial of John Peter Zenger, for Libel, New York City, 1735," in *American State Trials* (St. Louis, 1928), XVI, 1–39; *Schenck v. U.S.*, 249 U.S. 47 (1919); *Abrams v. U.S.*, 250 U.S. 616 (1919); *New York Times Co. v. U.S.*, 403 U.S. 713 (1971).