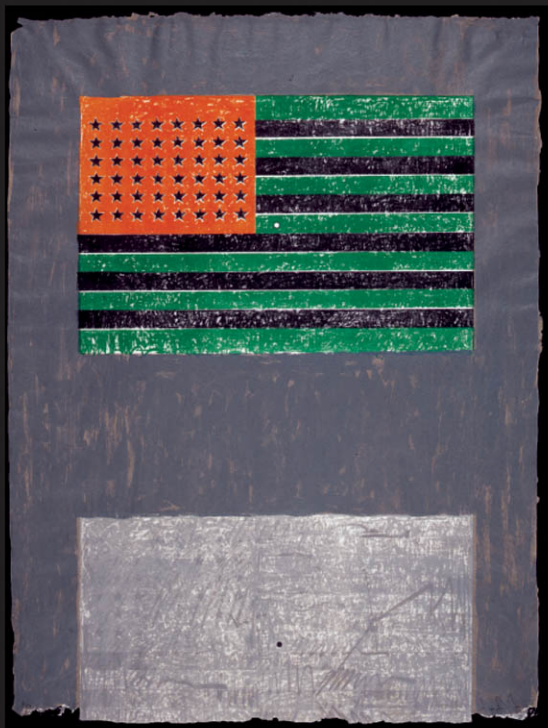


BEYOND CITIZENSHIP

American Identity After Globalization



Peter J. Spiro

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PETER J. SPIRO

OXFORD
UNIVERSITY PRESS

2008

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Oxford New York
Auckland Cape Town Dar es Salaam Hong Kong Karachi
Kuala Lumpur Madrid Melbourne Mexico City Nairobi
New Delhi Shanghai Taipei Toronto

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Published by Oxford University Press, Inc.
198 Madison Avenue, New York, New York 10016

www.oup.com

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Library of Congress Cataloging-in-Publication Data
Spiro, Peter J.

Beyond citizenship : American identity after globalization / Peter J. Spiro.
p. cm.

ISBN 978-0-19-515218-0

1. Citizenship—United States. 2. Naturalization—United States. 3. Dual nationality—United States.
4. Aliens—Legal status, laws, etc.—United States. 5. Equality before the law—United States. I. Title.
KF4700.S65 2008

342.7308'3—dc22 2007026544

9 8 7 6 5 4 3 2 1

Printed in the United States of America
on acid-free paper

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ACKNOWLEDGMENTS

THIS BOOK HAS been a long time in the making. I started research on the project as an Individual Project Fellow with the Open Society Institute in 1998–99, to which I am grateful for a generous grant.

I'm also grateful to my colleagues in the field of immigration and citizenship law and theory. The immigration law crowd is particularly congenial, and I feel fortunate to be a part of it. Among those with whom I have had useful exchanges on the subjects addressed in this book are David Abraham, Alex Aleinikoff, Rainer Bauböck, Joseph Carens, John Fonte, Kevin Johnson, Steve Legomsky, David Martin, Hiroshi Motomura, Gerry Neuman, Michael Olivas, Noah Pickus, Peter Schuck, and Rogers Smith. I have been especially fortunate to have the insight and friendship of Linda Bosniak, whose sympathetic hearing for my sometimes controversial positions has been informative and reassuring. Chapters of the book were presented at workshops at Rutgers University, Princeton University, and Florida State University Law School. The book also greatly benefited from the suggestions of Dedi Felman and David McBride, my editors at Oxford University Press.

Above all, I'm grateful to my wife, Merin, and my children, Liana and Julian, for their patience and love.

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Introduction

THE 2001 INAUGURAL address of George W. Bush was not particularly memorable or rhetorically elegant, and it will no doubt be forgotten to history. But the speech was a paragon of America's citizenship discourse. Delivered by a conservative politician, it betrayed the universalism of the American liberal tradition. At the core of this tradition is the notion, to use the Bush articulation, that "America has never been united by blood or birth or soil." On the contrary, according to Bush and consistent with the tradition, "we are bound by ideals that move us beyond our backgrounds" and "lift us above our interests." Among the "grandest" of these ideals, he intoned, "is an unfolding American promise: that everyone belongs, that everyone deserves a chance, that no insignificant person was ever born."

But of course not everyone belongs. Some people, namely, the members of the American community, are more significant than others. The speech betrayed another premise of the modern national political imagination, the premise of a bounded national community and a distinct American mission. When Bush spoke of "our work, our unity" as being the "serious work of leaders and citizens in every generation," he was not looking to all humanity. And if "Americans in need are not strangers, they are citizens," then by implication at least there is some group of people that are strangers and not citizens, differentiated from those who are American, and thus not necessarily as worthy of our attention.

This book examines the lines that mark the boundaries of the human community, the lines that divide Americans from others. The objective is

an old one: to isolate the qualities that have defined what it means to be American. The approach differs from others in the sense that it doesn't take the national community as insulated; rather, it uses those boundaries as a tool for illuminating the nature of the community. *Before one asks what it means to be an American, one must ask who is an American.* Unlike other treatments of American national character, it takes the legal status of citizenship as a mirror of the community. In this view, nothing is more constitutive of the community than its membership practices.

The Bush address skipped between universalist and particularist versions of citizenship, just as both strands of citizenship figure centrally in everyday American political vocabulary. They have been able to coexist comfortably, at least until the end of the twentieth century, in a world marked by the segmentation of national communities along economic, social, political, and cultural dimensions effectively coinciding with national territorial boundaries. In a world in which physical location situated individuals along these dimensions of life, the universalism of citizenship talk was bounded by the frontier and the differences that lay beyond. It was easy, for instance, to speak of a nation defined by constitutional values at a time when those values were themselves particular to Americans and American space. Even if being American was no more than a matter of subscribing to a set of political ideals, in a nondemocratic world those ideals distinguished Americans from others and could be effectively assimilated only on American soil. In that world, particularism was implied even in universalist conceptions of citizenship. "We are all Americans" would be taken to mean those individuals set off from the rest of humanity above all by location, and then by all the traits, above all political, that were associated with the place. American universalism, in other words, was aspiration, not description.

That is changing in the face of globalization as the importance of space and territorial boundaries declines. American universalism may be achieving its ambitions, as defining elements of American identity are now global in their reach. Constitutional democracy is no longer distinctively American; democratic governance may not be universal among states, but its range has expanded dramatically. American-generated culture is globally pervasive, and the engines of a global market economy are at least of American origin. At the same time, the rest of the world has insinuated itself into American space, with a wave of immigrants (legal and otherwise) that may sustain homeland ties in a way that assimilationist

predecessors did not. In both directions, the territory of America—in the sense of human community—no longer so clearly coincides with its physical boundaries.

These developments require a different starting point in the running debate about what defines this American community. This book attempts to situate American citizenship against a changed global backdrop. Citizenship can no longer be addressed in comfortable isolation. Citizenship is ultimately about difference; it is a relative quantity, not an absolute one. As the context absorbs and infiltrates the features of American identity, that difference will fade. It will be difficult to sustain a robust sense of national community in the face of this penetration.

I note here at the outset that although I hope this book will be useful to academics in and outside of my own field—that of law—it is written for the general reader. (For those interested in more detailed scholarly accounts of the various elements of citizenship law and theory addressed here, I suggest consulting works listed in the selected bibliography.) Citizenship law is something that should be in all of our sights as we confront the changing nature of national identity and other communal attachments in globalization's wake. It supplies a tight focal point for understanding the meanings of "we." Citizenship law dwells outside the national political consciousness, even when immigration is centered among public policy concerns, but it is not obscure.

On the contrary, citizenship law supplies a lens of singular clarity through which to consider the place of American national community going forward. Citizenship law is about membership—who gets it and what it gets you. But citizenship status cannot perpetuate communal solidarities all by itself; one cannot generate feelings of trust and support by issuing passports to some individuals and not to others. For the most part, citizenship law will track the social facts of community membership. Citizenship law, in other words, maps the boundaries of community.

These rules tell us a lot about the terms of American identity. Territorial presence is a central criterion in the acquisition of citizenship, most obviously with respect to almost all individuals born in the United States (regardless of parental status), but also in the naturalization regime. That demonstrates the importance of location and shared space to the American experience, compounded by the absence of other strong identity markers. Additional naturalization requirements highlight other key elements of the

national character. New citizens must demonstrate facility in English, powerfully testifying to the community's linguistic identity. Applicants must also pass a test on the principles of U.S. government and American history, an exercise which—in theory, if not reality—would attest to a common national data set.

The historical bearings are also instructive. Citizenship-for-life can now descend through U.S. citizen parents to children who never set foot on American soil, a sign of erosion in the territorial premise. Where dual nationality was at one time not merely disfavored but reviled as a moral abomination, today it is completely tolerated under U.S. practice, suggesting a less jealous—and less distinctive—nature of the affiliation. The rights and obligations attendant to citizenship have also attenuated over the course of American history. Citizenship both demands and privileges less than it once did. The declining legal significance of the status betrays and reinforces the waning intensity of bonds among members.

Using citizenship practices as an optic, this book tests the leading theories of American nationhood and finds them lacking. Citizenship law proves the ultimate unsustainability of a strong national community, as globalization undercuts community boundaries. That conclusion is offered primarily as a descriptive one, but it has important normative implications. If the state no longer dominates identity, it will inevitably lose ground as a location of governance. That also explains the political unpalatability of my thesis across the ideological spectrum. Conservatives transparently center the state as the keeper of social order and national security. But most American progressives are also nationalists, seeing the state as the guardian of liberty and a primary agent of redistribution. Both orientations, in other words, take the state as a given, as a natural object of faith, even reverence, and “citizenship” is something that they can agree on as a paramount institutional virtue. To suggest the decline of membership in the state—and by extension the decline of the state itself—takes the rug from underneath this consensus position. It requires remapping the contours of human community. If the state falls from its pedestal among forms of human association, we will have to rethink approaches to governance. The shift renders obsolete the very notion of “policy.” This conclusion is unlikely to make anyone very happy, invested as we are in basic structures of the status quo, especially we Americans who as a group have recently prospered in a state-oriented world. What lies beyond is conceptually challenging, perhaps even slightly scary.

This book might well have appeared with the title *The End of Citizenship*. Citizenship is a historically contingent institution, a modern phenomenon that is not inherent to social existence. Humankind existed for millennia without states and without citizenship, and there will come a day when we once again live without them. That day remains far off. The state will persist as the most important actor in international affairs and as a central location of identity. But the present circumstances and the nascent features of a transnational institutional order suggest shifting powers and associations, ones not rooted in the state. The shift may be tectonic—slow and not easily detected but also broad and irreversible.

On this front as it has been on others, the United States may be at the edge of change. American identity has always been ahead of its time. American identity has been more fragile than other national identities, which have been moored in commonalities beyond the state: in ethnicity, religion, language, and histories far more ancient. American identity has also been more adaptable to a world in which those moorings have been shaken, as territorial intermingling precludes the possibility of spatial homogeneity. That has been America's success—to marry the contours of identity to place. It may also be its decline. As America's universalist aspirations are realized on a global basis, detached from place, the identity begins to lose its defining features, and no other proxy appears to fill the gap. As that distinctiveness erodes, so, too, will the salience of citizenship in the United States. All of this we can see in the law, as now set against the backdrop of globalization.

By no means do I intend to celebrate the trajectory charted in this book. America has been a great project, among the greatest in the span of human history. Whatever follows is unlikely, at least in the short term, to match that greatness. The opening of the next era will be marked by instability, fragmentation, and conflict. With the end of citizenship we are hardly witnessing the end of history. No universal community, no world citizenship will take its place. Of course, the hegemony of states has also been characterized by instability, fragmentation, conflict, and collective wrongdoing, in which the American state has sometimes been complicit. It is thus important not to romanticize either the state as an institution or the United States as it apotheosis, for that system of organizing human affairs has also been flawed. As we think about the possible shape of things to come, perhaps the best we can hope for is that the lessons and virtues of

citizenship be carried forward to new forms of association. That project is a challenging one, to say the least. The sooner it is undertaken, the more likely that scholars and others will be able to confront the terms of the reordering and, if only marginally, work to correct its own structures of injustice.

Born American

MOST AMERICAN CITIZENS have come to their status unthinkingly. For most, it's not something that has to be studied for; there's no application process; it's nothing by way of an achievement. They acquire citizenship by accident of birthplace. If you're born in U.S. territory, you are a U.S. citizen, no other questions asked. It doesn't matter who your parents are or why they are here. They may be here illegally, or for a year or two on business, or even here only for the purpose of giving birth to you; in any case, you will enjoy birthright citizenship, yours to keep on a guaranteed-for-life basis.

Long at the core of citizenship law has been the nearly absolute rule that any individual born in the territorial United States is irrevocably a U.S. citizen. This is a matter of constitutional practice and understanding. Recent proposals to scale back birthright citizenship, which flopped even in the intensely anti-immigrant context of the mid-1990s, demonstrate that this rule is here to stay. Lamented as it may be among restrictionists and nativists, accident of birth is the cornerstone of U.S. citizenship law.

This expansive territorial conception of citizenship is rooted in controversy relating not to immigration but rather to race. One can trace the Civil War to a citizenship problem and the *Dred Scott* decision, which denied citizenship to free blacks born in the antebellum United States. Reversing *Dred Scott*, the Fourteenth Amendment enshrined a birthright citizenship principle under which all individuals born in the United States are citizens thereof. The rule was incidentally instrumental in ensuring the

full legal assimilation of massive immigrant communities arriving in the late nineteenth and early twentieth centuries. And it made sense in a world in which the fact of birth in U.S. territory was likely to coincide with actual subsequent assimilation into the American community.

In the face of globalization, however, that assimilation assumption seems less powerful. Increased global mobility and the sustainability of distant ties are rendering place of birth an attenuated marker of life trajectory. A child born in America may well leave America in childhood, or she may grow up with a primary attachment to some other community. The fact of birthplace becomes a happenstance, and persons sharing birthplace in the United States may in fact share little else. A citizenship based on birthplace neither creates nor evidences any necessary bonds among its holders.

Birth citizenship based on parentage where birth occurs outside U.S. territory further demonstrates the thinness of American citizenship and the lack of any alternative to territorial determination. Those children born to a U.S. citizen temporarily abroad are extended citizenship at birth, but citizenship only descends where a citizen parent has resided in the United States before the child's birth. Birth citizenship by parentage thus works from a territorial premise as well. On the one hand, the American approach to citizenship has been more restrictive than that of countries in which ethnic identification coincides with nationality; those states often recognize a citizenship tie on the basis of blood alone. On the other hand, global mobility may have enlarged the numbers of American citizens born and residing abroad who maintain no affective, sentimental tie to the United States, who are American by virtue of a parent's short stay in the United States.

These birthright citizenship rules govern how the American community does and does not replicate itself, how it carries itself forward by the march of generations. They will not be framed more restrictively. Their tenuousness highlights the eroding foundation of the national community, and the implausibility of its being recemented.

THE ROOTS OF A TERRITORIAL CITIZENSHIP

Through history, all nations have provided for the automatic conferral of birth citizenship to some class of persons by way of ensuring perpetuation of the community. Birth citizenship has been granted either on the basis