

# Conviviality, Cosmopolitan Citizenship, and Hospitality

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*It's not just that increasingly many people have no roots,  
It's also that they have no soil.*<sup>1</sup>

On August 29, 2005, Hurricane Katrina hit Southeastern Louisiana with devastating force. Those most affected within the city of New Orleans, the majority of whom were poor, elderly, and African-American, lost their lives, homes, and means of livelihood. As the world looked on at the televised coverage of Katrina, journalists and news reporters routinely referred to the displaced as “refugees.” Although the media images of desperation resonated with the racial logic of refugee status, the term sparked considerable controversy, particularly within the African-American community. Rev. Jesse Jackson angrily chided reporters in a televised interview, stating, “It’s racist to call American citizens refugees.” In a moment of apparent agreement with Rev. Jackson, President Bush remarked, “The people we are talking about are not refugees. They are Americans, and they need the help and compassion of our [sic] fellow citizens.”<sup>2</sup>

Subsequently, technical complaints were raised about the correct usage of the term “refugee” as opposed to “internally displaced person” or “evacuee.” The contention was that since no Katrina evacuee had crossed international borders, the assignment of refugee status was legally inapplicable. The discussion was more than semantic; it brought issues of race, class, income, and health disparities and geographical neglect squarely into the constellation of rights of American citizenship. The term evoked such strong reactions because refugees are *stateless*. Indeed, the controversy revolved around race and citizenship: the expectation that even the most vulnerable Katrina victims were entitled to the full benefits of state protection as American *citizens*.

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\* Assistant Professor, University of Oregon School of Law. Special thanks to Daniel Martinez HoSang, Ebenezer Obadare, Robert Tsai and Leti Volpp for their thoughtful comments and patient indulgence with my cosmopolitan pursuits in the South Hills of Eugene. I am also grateful to Margaret Hallock and the Wayne Morse Center for Law and Politics and to all the participants in the “Contested Citizenships” Symposium convened by the Morse Center in May 2009. Marissa Vahlsing provided tactful editorial suggestions to clarify points that were resolutely lodged in my brain but failed to make it onto paper in the initial draft sent to *Unbound*. As a scholar, teacher, and global citizen, I am indebted to my father for showing me the importance of solidarity beyond one’s birthplace. My late mother was the peerless example of hospitality and conviviality—as all who sought shelter and spirits at her table will attest. As always, I remain encouraged and emboldened by the peripatetic spirit and curiosity of my children Max, Isadora, and Gideon: the present and future cosmopolitans.

<sup>1</sup> The source of this epigraph is unknown. I found it inside a fortune cookie in a Chicago restaurant.

<sup>2</sup> Lou Dobbs, *Seeking Refuge From Political Correctness*, CNN, Sept. 8, 2005, <http://www.cnn.com/2005/US/09/08/political.correctness/index.html>.

The quintessential relationship between state and citizen relies on idealized bonds of allegiance, trust, loyalty, and protection.<sup>3</sup> The severance of these bonds then gives rise to the status of refugeehood.<sup>4</sup> This essay examines the relationship between refugeehood/statelessness and cosmopolitan citizenship. I ask what cosmopolitanism as a *normative* project contributes to refugee and asylum law that remains unfulfilled by the current Westphalian system. I use the prism of statelessness to explore the commonalities between cosmopolitanism and nationalism with an emphasis on deterritorialized modes of citizenship. I argue that while citizenship is most commonly regarded as a territorially bounded concept, post-colonial citizenships are deterritorialized: maintained through travel, pilgrimage, labor migration, forced upheaval, and complex residential patterns that traverse boundaries. Thus, this essay examines the affective ties of post-colonial, cosmopolitan citizenship and their impact on the policies and practices of international refugee and asylum law.

In embracing a neo-Kantian framework, I question the continued relevance of *territoriality* for post-colonial citizenship. According to the classical liberal notion, the fundamental requirements of citizenship are territorial boundaries and an affective *national* identity. But the contemporary experience of citizenship is poorly reflected in this calculus. The reality of global migration means that many “citizens” exercise substantive citizenship in at least two states.<sup>5</sup> People work arduously in one place dreaming of and planning their return to another. The post-colonial state is not the sole arbiter of affinity, given its general incapacity to provide for the basic needs of its citizens, the majority of whom depend on labor remittances or humanitarian aid for their economic survival. Transnationalism and statelessness, then, raise interesting questions for deterritorialized forms of maintaining the robust affinities that we associate with membership in a national polity.

Notwithstanding the repeated declarations of universal human rights, the assumption is that human rights will be exercised in the state in which one is a citizen.

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<sup>3</sup> Though beyond the scope of this essay, it is important to emphasize the functional equivalence of deportability and dispossession among those who are juridical citizens with the requisite identity documents, yet dispossessed by their state. In this vein, statelessness encompasses those disposable *citizens*: the incarcerated, bonded, homeless denizens of occupied territories—in addition to those without legal documents who are deportable. (On the coeval nature of dispossession and deportability. See, JUDITH BUTLER & GAYATRI CHAKRAVORTY SPIVAK, WHO SINGS THE NATION STATE?: LANGUAGE, POLITICS, BELONGING 42 (2007).

<sup>4</sup> Andrew Shacknove, *Who is a Refugee?* 95 ETHICS 274, 275 (1985).

<sup>5</sup> Citizenship scholarship—though voluminous—can largely be separated into two strands. The first emphasizes the formal aspects of citizenship embedded in the administrative dimensions of a passport-issuing nation-state towards its subjects. The second strand is concerned with the participatory mode of political mobilization and the exercise of “substantive” civil, political, social, and cultural rights that connote belonging to a “national” community. Clearly, both strands are profoundly complicated by global migration, forced displacement, and movement and are more productively examined in combination with each other. Both nationalist and cosmopolitan approaches to citizenship are undergoing profound self-critique and analysis as their adherents consider the impact of globalization on the formations of identities, membership, and allegiances.

As Barry Hindess points out, “the pervasive modern division between the citizen and the foreigner suggests that states can, and in many respects should, treat their citizens differently from foreigners.”<sup>6</sup> This justifies the detention of asylum seekers (a now common phenomenon that is tragically oxymoronic), the denial of welfare protections and public health benefits to non-citizens,<sup>7</sup> and limited legal representation for unauthorized migrants. Whereas different categories of non-citizens used to have a set of corresponding rights and obligations, today, differentiating among migrants, refugees, and displaced persons is becoming increasingly meaningless. Indeed, the relatively privileged status of refugees awaiting resettlement and admitted asylum seekers is highly susceptible to donor fatigue and the politicized rhetoric of illegal immigration and national security.

In the United States, for example, immigration officials presumptively view asylum applications as frivolous (or lacking credibility), and asylum is increasingly equated with “illegal” immigration.<sup>8</sup> The categorical confusion is even more apparent in the case of asylum seekers, who legally may qualify as “refugees” according to the terms of the 1951 Refugee Convention but who may be ineligible for asylum (and thus deportable) on the grounds of some casuistic determination.<sup>9</sup> Thus, the admission of

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<sup>6</sup> Barry Hindess, *Citizenship in the International Management of Populations*, in *CITIZENSHIP AND CULTURAL POLITICS* 92, 96-97 (Denise Meredyth & Jeffrey Minson eds., 2001). In other words, immigrants can exercise their human and civil rights claims in their birth or ancestral state, and those who “fail” to naturalize within the statutory period of residence within the United States are presumptively without entitlement to the full panoply of citizen’s rights. *See, e.g.,* *Harisiades v. Shaughnessy*, 342 U.S. 580 (1952) (justifying deportation of three long-term, legal permanent residents for past membership in the Communist Party):

For over thirty years, each of these aliens has enjoyed such advantages as accrue from residence here without renouncing his foreign allegiance or formally acknowledging adherence to the Constitution he now invokes. Each was admitted to the United States, upon passing formidable exclusionary hurdles, in the hope that, after what may be called a probationary period, he would desire and be found desirable for citizenship. Each has been offered naturalization, with all of the rights and privileges of citizenship, conditioned only upon open and honest assumption of undivided allegiance to our government . . . The Government's power to terminate its hospitality has been asserted and sustained by this Court since the question first arose . . . So long as the alien elects to continue the ambiguity of his allegiance, his domicile here is held by a precarious tenure.

<sup>7</sup> *See* LYNN FUJIWARA, *MOTHERS WITHOUT CITIZENSHIP: ASIAN IMMIGRANT FAMILIES AND THE CONSEQUENCES OF WELFARE REFORM* (2008).

<sup>8</sup> *See* CATHERINE DAUVERGNE, *MAKING PEOPLE ILLEGAL: WHAT GLOBALIZATION MEANS FOR MIGRATION AND LAW* CH. 4 (2008).

<sup>9</sup> The 1980 Refugee Act, for example, establishes a two-step process in which asylum seekers within the United States must prove persecution on the five enumerated grounds and then apply for withholding of deportation. The United States stands alone among virtually all Convention signatories in adopting this bifurcated process in its asylum determinations, given that most countries will not return (*refouler*) someone who is a bona fide refugee. *See* KAREN MUSALO, JENNIFER MOORE & RICHARD BOSWELL, *REFUGEE LAW AND POLICY: A COMPARATIVE AND INTERNATIONAL APPROACH* (3d. ed. 2007). *See also* *I.N.S. v. Luz Marina*

refugees and has critical implications for citizenship discussions and should be addressed frontally rather than as a humanitarian exception. It behooves our inquiries to have a more expansive membership category for analysis and reflection.<sup>10</sup>

### *In-Between Formal and Substantive Citizenship*

According to our conventional account of modern citizenship, an individual exercises civil, political, and social rights because she belongs to a political community represented as a “nation-state.” The exercise of substantive citizenship depends (somewhat circuitously) on one’s formal juridical membership in a recognized polity. Territoriality facilitates the growth of a legal and political or civic community with “a set of common understandings and aspirations, sentiments and ideas that bind the population together in their homeland.”<sup>11</sup> While scholars vary in the rank and importance they allocate to these elements, territory and shared civic identity comprise a consensual operational framework for nationalism and citizenship.<sup>12</sup> The formal and substantive aspects of citizenship are academically regarded as two separate modes of inquiry although the boundaries between the two are conceptually blurry. Nonetheless, citizenship scholars maintain an attachment to the territorially bounded state, either as a closed space in which to think about electoral politics and distributive justice or as a place to deliberate the civic demands, constitutional protections, and human rights of territorially present persons.<sup>13</sup> This we may refer to as the grist of citizenship scholarship.

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Cardoza-Fonseca, 480 U.S. 421 (1987) (offering historical overview of US refugee policy and explaining difference between § 243 (now § 241 (b) (3), and §208 relief under the Refugee Act).

<sup>10</sup> Seyla Benhabib illustrates the meaningless categorical distinctions as such:

One becomes a *refugee* if one is persecuted, expelled or driven away from one’s homeland; one becomes a *minority* if the political majority in the polity declares that certain groups do not belong to the supposedly “homogenous” people; one is a *stateless* person if the state whose protection one has hitherto enjoyed withdraws such protection, as well as nullifying the papers it has granted; one is a *displaced person* if having been once considered a refugee, a minority, or a stateless person, one cannot find another polity to recognize one as its member, and remains in a state of limbo, caught between territories, none of which desire one to be its resident.

Sylvia Benhabib, *The Rights of Others* 54 (2004).

<sup>11</sup> ANTHONY SMITH, *NATIONAL IDENTITY* 11 (1991).

<sup>12</sup> Thus “constitutional patriots” like Jürgen Habermas and Steven Macedo argue that civic identities can invoke loyalties to liberal political ideas—representative democracy, constitutionalism—which surpass narrower ethnic identifications.

<sup>13</sup> John Rawls’ classic rights-based liberal project assumes a closed society. Rawls writes: “The conditions for the law of nations may require different principles arrived at in a somewhat different way. I shall be satisfied if it is possible to formulate a reasonable conception of justice for the basic structure of society conceived for the time being as a *closed system isolated from other societies.*” *A THEORY OF JUSTICE* 8 (Belknap Press 1971) (emphasis added). The scope and direction of an international application of the Rawlsian project has been the subject of intense scholarly discussion. See, e.g., Joseph Carens, *Aliens and Citizens: The*

There are, of course, competing or at least heteroclitic variations of the citizenship narrative. Various non-Westphalian conceptions of the nation depart significantly from the territorially bounded framework of citizenship. According to Anthony Smith, the theorist closely associated with the ethnic origins of modern nations, “Whether you stayed in your community or emigrated to another, you remained ineluctably, organically, a member of the community of your birth and were forever stamped by it.”<sup>14</sup> This contrasts sharply with the reliance on territorial boundedness to define citizenship frequently employed in classic liberal or Marshallian schemas, and is (in my mind) more amenable to assessing the impact of the kinetic reality of global migration on citizenship. Building on citizenship scholarship emanating primarily from the global South, along with a considerable number of scholars in political theory, sociology, and law, I explore a possible rethinking or broadening of the citizenship narrative through the particular experience of refugees and stateless persons. My interest lies in the multivocality of citizenship—its multiple passports, forged papers, and no papers.<sup>15</sup> What is citizenship’s relevance as a category to the lives of millions of people who live outside of the locality of their birth? What do issues like representation, inclusion, and civic duty mean in the global South with so many commuting citizens and failing states?<sup>16</sup>

As mentioned earlier, this inquiry follows many of the incursions into territoriality and sovereignty that have been made by scholars of contemporary transnational human flows, especially within the area of globalization and post-colonial/post-national studies.<sup>17</sup> While many of these studies focus on the transnational labor

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*Case for Open Borders*, 49 REV. OF POL. 251 (1987); Seyla Benhabib, *The Law of Peoples, Distributive Justice and Migrations*, 72 FORDHAM L. REV. 1761 (2004); SIMON CANEY, JUSTICE BEYOND BORDERS: A GLOBAL POLITICAL THEORY (2005); Charles Beitz, *Rawls’s Law of Peoples*, 110 ETHICS 669, (2000); Thomas W. Pogge, *The Incoherence Between Rawls’s Theories of Justice*, 72 FORDHAM L. REV. 1739 (2004).

<sup>14</sup> SMITH, *supra* note 11, at 11.

<sup>15</sup> *Sans-papiers-sin papeles* often advocate passionately for local governance, civil rights, and political empowerment in the absence of electoral entitlements that are the hallmark of citizenship. See Keith Aoki, *Direct Democracy, Racial Group Agency, Local Government Law, and Residential Racial Segregation: Some Reflections on Radical and Plural Democracy*, 33 CAL W.L. REV. 185 (1997); Rick Su, *A Localist Reading of Local Immigration Regulations*, 86 N.C. L. REV. 1619 (2008).

<sup>16</sup> By state failure, I mean the inability or the incapacity of the state to provide for its citizens’ economic and social welfare. The term is unfortunately polemical and paternalistic.

<sup>17</sup> See ARJUN APPADURAI, MODERNITY AT LARGE: CULTURAL DIMENSIONS OF GLOBALIZATION (1996); LINDA BASCH ET AL., NATIONS UNBOUND: TRANSNATIONAL PROJECTS, POSTCOLONIAL PREDICAMENTS, AND DETERRITORIALIZED NATION-STATES (1994); PARTHA CHATTERJEE, THE NATION AND ITS FRAGMENTS (1993); MIKE FEATHERSTONE, GLOBAL CULTURE: NATIONALISM, GLOBALIZATION AND IDENTITY (1990); GLOBALIZATION UNDER CONSTRUCTION (Richard Perry & Bill Maurer eds., 2003); SCATTERED HEGEMONIES: POSTMODERNITY AND TRANSNATIONAL FEMINIST PRACTICES (Inderpal Grewal & Caren Kaplan eds., 1994); IDENTITIES, AFFILIATIONS AND ALLEGIANCES (Seyla Benhabib, Ian Shapiro & Danilo Petranovic eds., 2007); SOVEREIGN BODIES: CITIZENS, MIGRANTS AND STATES IN THE POSTCOLONIAL WORLD (Thomas Blom Hansen &

migrant, my study examines the refugee as a global subject.<sup>18</sup> This is a deliberate choice. The majority of the world's refugees are both produced<sup>19</sup> and accommodated outside of the Western wealthy states where academic debates about the meaning of citizenship generally take place. Nonetheless the “refugee” affirms—at least rhetorically—the cosmopolitan claim that shared identities and human solidarities are no longer coterminous with territorial delimitations. The refugee subject has long been evocative of the human condition in political theory: the potential rights bearer or the epitome of Agamben's “bare life.”<sup>20</sup> But what conceptual work does the refugee *do* for cosmopolitan citizenship? How can we use the refugee subject to critically interrogate the weaknesses shoring up liberal ideas of citizenship given the erasure of history, experience, subjectivity, and consciousness that are part of the process of being labeled a refugee? Our deliberately blind policy towards the refugee subject's political past is all the more ironic given the violent affiliations that produce his/her displacement. The tendency to distinguish genuine refugees from “mere economic migrants” is related to realist foreign policy considerations but also results from what Liisa Malkki calls the need for a “categorical purity”<sup>21</sup> within refugeehood. To analyze the presumed innocence and victimhood of the refugee, we must first situate the emergence of the refugee subject in its genealogical relationship to international law, humanitarian law, and human rights.

In the aftermath of WWII, realist international actors used the “refugee” to advocate for a particular kind of humanitarian solidarity that simultaneously retained the sacrosanct features of the Westphalian state. The experience of two World Wars indelibly stamped the drafters' ideas about statelessness, nationality, race, and religious forms of persecution. The drafting of the 1951 Refugee Convention was shaped by the fears of ethno-nationalism and the need to contain nationalist passions that threatened state boundaries. Debates about the destinies, interim solutions, and

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Finn Stepputat eds., 2005); *MIGRATIONS & MOBILITIES* (Seyla Benhabib & Judith Resnik eds., 2009).

<sup>18</sup> Patricia Tuitt, *Refugees, Nations, Laws and the Territorialization of Violence*, in *CRITICAL BEINGS: LAW, NATION AND THE GLOBAL SUBJECT* (Peter Fitzpatrick & Patricia Tuitt eds., 2004); Michael Dillon, *The Scandal of the Refugee: Some Reflections on the “Inter” of International Relations and Continental Thought*, in *MORAL SPACES: RETHINKING ETHICS AND WORLD POLITICS* (David Campbell & Michael Shapiro eds., 1999).

<sup>19</sup> Here it is worth remembering that the formal designation of refugee status reflects a liminal and artificial condition produced by political disenfranchisement—even children born in refugee camps are awaiting either resettlement or repatriation.

<sup>20</sup> See HANNAH ARENDT, *The Decline of the Nation-State and the End of the Rights of Man*, in *THE ORIGINS OF TOTALITARIANISM* 67 (2d. ed. 1973); GIORGIO AGAMBEN, *Biopolitics and the Rights of Man*, in *HOMO SACER: SOVEREIGN POWER AND BARE LIFE* 131 (1998). Indeed, the relationships among displacement, statelessness, and humanitarianism are currently the focus of much scholarly inquiry, given the inherent questions of power, biopolitics, and sovereignty raised by the refugee condition.

<sup>21</sup> Liisa Malkki, *Refugees and Exile: From “Refugee Studies” to the National Order of Things*, 24 *ANN. REV. ANTHROPOLOGY* 495 (1995); Liisa Malkki, *Citizens of Humanity: Internationalism and the Imagined Community of Nations*, in 3 *DIASPORA* 41 (1994).

immediate needs of European refugees that occurred during the drafting of the 1951 Refugee Convention were informed by larger anxieties about the ethnocultural basis of nationality and its association with endemic political instability.<sup>22</sup> According to positivist international law, nationality was the status of an individual “attached to a state by the tie of allegiance,” and those ties were ultimately determined by the state.<sup>23</sup> Indeed, during the 19<sup>th</sup> century wave of codification, the law of nationality was submerged into the law of persons, overturning the hierarchical mediators between citizen and state. That is, the erstwhile hierarchies established by the conditions of one’s birth (*i.e.* King and subject, priest and parishioner, lord and serf) were eliminated as part of the *ancien régime*, and the criteria for determining one’s relation to the state became the “law of nationality.”<sup>24</sup>

Outside of the legal realm, “nationality” encompassed the status or condition of a people, their aspirations, and their allegiances, which were often at odds with their geographical location. The ambivalent and often antagonistic relationship between refugees and their states, their uncertain loyalties, and their political futures strained the limits of nostalgic pre-war and interwar understandings of nationality. In the interwar period, nationality was seen as the barometer by which citizenship was measured. As such, nationality emerged as a concept clearly distinct from allegiance, native birth, and domicile.<sup>25</sup>

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<sup>22</sup> As Anthony Smith comments, “Even where violence is absent, ethnic and nationalist politics is thought to be characterized by endemic instability, unpredictability and acute passions.” *Culture, community and territory: the politics of ethnicity and nationalism*, 72 INTERNATIONAL AFFAIRS 445 (1996).

<sup>23</sup> Article I, “Nationality is the status of a natural person who is attached to a state by the tie of allegiance.” Art. 2, “Each state may determine by its law who are its nationals.” *The Law of Nationality*, 23 Special Number AM. J. INT’L L. Spec. Supp. 13 (1929). As the commentators to the Law of Nationality characterized their efforts, “nationality has no positive, immutable meaning. . . . Nationality always connotes, however, membership of some kind in the society of a state or a nation.” *Id.* at 21.

<sup>24</sup> Of course, this putative horizontality was immediately translated into domestic hierarchies, as the household was constituted along private patriarchal lines. Thus, the law of persons encompassed the status of guardian-child, husband-wife, and subject-citizen. On the fusion of the *sujet* into *citoyen* and the blending of royal sovereign power with state power, *see*, AGAMBEN, HOMO SACER, *supra* note 20, at 128.

<sup>25</sup> ATLE GRAHL-MADSEN, THE STATUS OF THE REFUGEE IN INTERNATIONAL LAW, VOL.1, 11 (1966). Thus, nationality in the nineteenth-century encompassed the primordialist passions that “erupted” during the First World War, producing the apatride and the aristocratic Russian émigré. But the positivist, institutionalist solution was to purge nationality of these sentiments and to make it strictly technical. Nationality was thus equated with passports and papers, not *belonging*. Nonetheless, the displaced person’s administrative travel documents continued to reflect her instability. Perhaps the most ironic statement issued with regard to the documentary angst is attributed to the South African émigré writer Bessie Head who was in possession of both a South African exit permit and a UN Refugee Travel Document. The exit permit was permanent—it would allow dissident South Africans to leave their country with no possibility of return, and the UN Refugee Travel Document signified their permanent statelessness. As Bessie Head wrote, “I am usually terrorized by various

By way of summary and transition, I mention the historical treatment of European refugees, as it is critical to the unfolding debates about statelessness and statehood. But the European experience of statelessness is not the only foundational narrative for cosmopolitan citizenship and international solidarity. The experience of “Creole” cosmopolitans, particularly during the inter-war and post-war periods was also critical in articulating a radical international humanism that challenged the Westphalian state.<sup>26</sup>

One need think no further than Fanon’s impassioned opposition to racism and imperial exploitation to recall one form of transnational solidarity that was far removed from Eurocentric notions of nationhood and citizenship.<sup>27</sup> Fanon’s scholarly legacy and his exemplary expatriated life remind us of the bonds forged out of and against Empire.

Just as the experience of WWII cast its imprimatur on the 1951 Refugee Convention, the OAU and Cartagena Refugee Conventions attributed refugee status to the experience of “external aggression, occupation, and foreign domination.”<sup>28</sup> Colonialism was denounced for its economic exploitation, cultural impoverishment, and military occupation. Liberation from colonial rule could only occur through violent revolution. Decolonization and the global (South-South) dimension of refugee law are inescapably linked because of the massive displacement that occurred after the wars of liberation in independent African and Asian nations. Decolonization is also one of the few instances in which *race* became a focus of the international community’s legal agenda and also when Eurocentric doctrines of sovereignty were challenged in the scholarship and practice of international, humanitarian, and refugee law. This was, after all, the confrontational period of opposition to the war in Vietnam and the (formal) dissolution of Empire. This was the time in which an incipient non-aligned movement tried to “delink” and forge a new international

authorities into accounting for my existence, and filling in forms, under such circumstances, acquires a fascination all of its own.” Rob Nixon, *Border Crossing: Bessie Head’s Frontline States*, 36 SOCIAL TEXT 106, 111 (1993) (quoting Bessie Head).

<sup>26</sup> The term is borrowed from Françoise Vergès, *Vertigo and Emancipation: Creole Cosmopolitanism and Cultural Politics*, 18 THEORY CULTURE & SOCIETY 169-183 (2001).

<sup>27</sup> See DAVID MACEY, FRANTZ FANON: A LIFE (2000). In addition to his scholarship on the psychic harm of colonialism, Fanon probed the cathartic effect of colonial violence, which of course has never endeared him to liberal political philosophers (who curiously enough spend a lot of time debating the legal limits of officially sanctioned torture). As Macey points out, despite Fanon’s popularity among Third World revolutionaries and his iconic status among post-colonial scholars, he remains poorly understood precisely because his affiliations were at odds with his birthplace, place of residence, and professional practices. On the resurgence of Fanonism within post-colonial theory, see, Henry Louis Gates, *Critical Fanonism* 17 CRITICAL INQUIRY 457 (1991).

<sup>28</sup> The OAU Convention has been hailed by many scholars as embracing a more expansive definition of “refugee” than the 1951 Convention. By far its most celebrated feature is its connection between state insecurity and refugee status. See, George Okoth-Obbo, *Thirty Years On: A Legal Review of the 1969 OAU Convention Governing the Specific Aspect of Refugee Problems in Africa*, 20 REF. SURVEY Q. 79 (2001).



economic order out of “actually existing socialism,” *ujamaa* villagization, or other autochthonous processes of development. Revolutionary anti-colonialists rejected the gradualist, civilizing mission of European imperialism, exposing its profound links to evolutionist/scientific race-based thought that legitimated European rule. Critical scholars from the Third World reframed a racialized-cultural paradigm to dismantle positivist or naturalist assumptions of international law. But in the process, they also essentialized “race” and “culture” as resistive or oppositional, ignoring troubling signs that race and culture could be as primordially tribalist, fascistic, and hyper-nationalist as the imperial strands they decried.<sup>29</sup> During “liberation wars,” front-line African states often incorporated refugees out of solidarity for the anti-imperial and anti-apartheid struggle. Today, this is certainly not the case in Africa. Although *apartheid* has been formally overturned, the continent still heaves with tumultuous civil wars, famine, and fear that cause people to flee their homes and seek protection elsewhere. But today’s refugees are barely tolerated, often brutally treated, and heavily policed, tragically even within South Africa itself.<sup>30</sup> Why solidarity then and not now? Was Africa’s cosmopolitan hospitality towards refugees—based on the rejection of the artificial borders and violent cartographies of the African state—merely a ColdWar artifact?

Refugees are of course, only one class of stateless persons. Today’s refugees are primarily the product of civil internecine conflict rather than international wars. Nonetheless, the legitimacy of their claims on the protection of other states is founded in loyalties that supersede territorial allegiances and rest on humanitarian solidarity. Refugees have always embodied the cosmopolitan ideal; their appeal to humanitarian principles resonates with broader calls for global citizenship. Although cosmopolitanism is typically viewed in opposition to nationalism, the two are co-implicated and fundamentally related to each other. Both discourses deploy the refugee and asylee condition to highlight their respective normative purposes.

The refugee does important conceptual work for citizenship, but the impact of the refugee condition responds to the evolving discourses of citizenship. The contemporary discourse of citizenship fluctuates between *nationality* and *humanity*, reflecting heightened attention to multiculturalism and globalization and the rhetorical strength of human rights. The refugee acts as a signifier for compelling transboundary loyalties that inspire concerted political action on someone else’s behalf. From a cosmopolitan perspective, this inspiration to intervene and act on behalf of *unknown* suffering victims reveals the power of affective loyalties to the global polity. From a nationalist (albeit a communitarian) perspective, intervention is motivated by bonds of moral causation, cultural and/or religious affinities—attachments that are more concrete than a universal commitment to humanity.

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<sup>29</sup> See, e.g., Paul Gilroy’s discussion of Frantz Fanon’s international humanism in *BETWEEN CAMPS: NATIONS, CULTURES AND THE ALLURE OF RACE* (2000).

<sup>30</sup> See, Michael Wines, *Influx from Zimbabwe to South Africa Tests Both*, N.Y. TIMES, June 23, 2007; Barry Bearak, *Desperate Children Flee Zimbabwe for Lives Just as Desolate*, N.Y. TIMES, Jan. 23, 2007. Gaim Kibreab, *Citizenship Rights and Repatriation of Refugees*, 37 INT’L MIGRATION REV. 24 (2003).

Arguably, the differences in classification and protection of refugees on a humanitarian basis are not as extreme as often assumed; neither cosmopolitans nor communitarians are seriously antagonistic to a humanitarian agenda. However, the refugee subject is strategically valuable to the normative cosmopolitan project of global citizenship because it is the cosmopolitan who insists on inclusion/membership *in addition to* protection.<sup>31</sup>

Within the *overall* scholarly corpus of work dedicated to citizenship and alienage, humanitarianism is a less contentious basis for inclusion because it does not critically imperil the foundational assumptions of citizenship. The Westphalian conception of the refugee subject reaffirms the notion of bounded communities in that protection is selectively granted to those within a comparable moral universe.<sup>32</sup> Michael Walzer famously described the “Good Samaritan exception” to a political community’s virtually unconstrained right of closure. As Walzer writes, “there is one group of needy outsiders whose claims . . . can only be met by taking people in. This is the group of refugees whose need is for membership itself.”<sup>33</sup> Walzer neatly brackets the refugee question as anomalous to the liberal discussion of citizenship, banished to the field of humanitarian law. Thus, while refugees and asylum seekers are “others,” their condition as “citizens of humanity” commands institutional mechanisms of incorporation in ways that say un/documented labor migrants or nomadic/pastoralist communities do not. As Shakenove points out, our hierarchies of protection seemingly privilege “persecution over death by starvation. *Ironically, for many persons on the brink of disaster, refugee status is a privileged position.* In contrast to many other destitute people, the refugee is eligible for many forms of international assistance, including material relief, asylum, and permanent resettlement.”<sup>34</sup>

The larger (and seemingly more important) question for citizenship scholars is the incorporation of other “others” as full-fledged citizens who possess less impeccable qualifications on humanitarian grounds. As Judith Shklar once wrote, “The history of immigration and naturalization studies is not my subject. It is not the same as that of

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<sup>31</sup> Of course, the law of humanitarian intervention is also perfectly suited to a Westphalian paradigm, but my point here is to analyze the refugee subject as a catalyst for global citizenship.

<sup>32</sup> This is putting aside the important realist observation of refugee protection as a tool of foreign policy.

<sup>33</sup> MICHAEL WALZER, SPHERES OF JUSTICE 48-49 (1983). Walzer identifies an even greater moral imperative to admit those whose refugee condition is brought about by the actions of the resettling nation; in fact he regards this class of refugees as tantamount to fellow nationals. He cites as a prime example the Vietnamese refugees of 1975 (who to date comprise the largest single group of refugees resettled in the United States), “whose injury created an affinity” between combatants and Americans. *Id.* at 49.

<sup>34</sup> Shakenove, *supra* note 4, at 276. In saying this, I also recognize that *certain* refugees are regarded more favorably in their role as ambassadors from the “citizens of humanity.” When we think of the expelled Haitian and Central American refugees from the United States as *merely economic migrants*, we are reminded that the refugee category is malleable, racialized, and infused with *a priori* notions of alterity and protectability.

the exclusion of native-born Americans from citizenship.”<sup>35</sup> The nation’s “others” are, and historically have been, marginalized on gendered, sexualized, and ethno-cultural grounds, and the meaningful inclusion/integration of these groups is paramount to the liberal democratic project. Thus, African Americans may enjoy the birthright status of citizenship according to the principles of *jus soli*, but a history of segregation has conditioned their inclusion, privileges, and membership in the polity. As Danielle Allen writes, “segregation produced citizens who, despite their citizenship, were excluded from assorted public places including the fronts of buses and polling booths.”<sup>36</sup> Indeed, American citizenship has historically been contingent on birthplace, freedom, property, literacy, and masculinity—producing what Devon Carbado has aptly labeled “inclusive exclusion.”<sup>37</sup> Yet those “second class citizens” excluded from the benefits of membership have often been the most passionate proponents of citizenship’s ideals and its emancipatory potential. It bears repeating that the core liberal ideals of justice, tolerance, and freedom are frequently invoked in conditions of gross inequality, colonial conquest, and disenfranchisement—perhaps because liberalism’s promises are propelled by profound disenchantment.<sup>38</sup>

In short, all “otherness” strains the stability of the nation state as an analytical construct as people simultaneously work in, flee from, and belong to multiple places. Although there is vigorous scholarly attention to the “rights of others” within citizenship debates in Europe, the central questions of inclusion, affinities, and democratic deficits are under-analyzed in ideal theory with respect to refugees, unauthorized migrants, and asylum seekers.<sup>39</sup> Given the limited attention to refugees within the academic discourse on citizenship, my attempt here is to insert the refugee

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<sup>35</sup> JUDITH SHKLAR, *AMERICAN CITIZENSHIP: THE QUEST FOR INCLUSION* 4 (1991).

<sup>36</sup> Danielle Allen, *Invisible Citizens: Political Exclusion and Domination in Arendt and Ellison*, in *NOMOS XLVI POLITICAL EXCLUSION AND DOMINATION* 31 (Stephen Macedo & Melissa Williams eds., 2005).

<sup>37</sup> Devon Carbado, *Racial Naturalization* 57 *AMERICAN Q.* 633 (2005).

<sup>38</sup> Judith Shklar described the dialectic between racial exclusion and citizenship as, “the tension between an acknowledged ideology of equal political rights and a deep and common desire to exclude and reject large groups of human beings from citizenship [that] has marked every stage of American democracy.” SHKLAR, *supra* note 35, at 28-29.

<sup>39</sup> Kymlicka and Norman do not address immigration and naturalization policy in their survey. I doubt whether this would be possible given the proliferation of citizenship scholarship published subsequently to their survey that addresses immigration. Nonetheless, refugee and asylum studies occupy comparatively less room at the citizenship table. This is not to discount the excellent work done by those who analyze citizenship more broadly. See, e.g., LINDA BOSNIAK, *THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP* (2006); Ayelet Shachar, *The Worth of Citizenship in an Unequal World* 8 *THEORETICAL INQ.* L. 367 (2007); Audrey Macklin, *Who is the Citizen’s Other—Considering the Heft of Citizenship* 8 *THEORETICAL INQ.* 333 (2007); Joseph Carens, *Refugees and the Limits of Obligation*, 6 *PUBLIC AFFAIRS QUARTERLY* 31-44 (1992).

into the cosmopolitan conversation, drawing particularly on the prodigious scholarship on transnational and multicultural citizenship.<sup>40</sup>

One may reasonably ask why I believe cosmopolitanism is more favorable to recognizing and securing the rights of others over, say, an enlightened liberalism. In other words, would the rights of a desperate stateless person be better secured in Walzer's world or as a cosmopolitan citizen of humanity?<sup>41</sup> It seems to me that liberalism's commitment to ethical closure, no matter how humanely and consensually those lines are drawn, ultimately ends up smuggling in the internal borders that exclude those coded as "others" from the privileges of membership. The question as to which "world" is better becomes tautological, since arguably the expulsion/containment of "others" is tied to their pre-determined, always already extant expulsability/containability.<sup>42</sup> The Rawlsian insistence on closed borders to "do" distributive justice, with legally authorized persons as legitimate rights bearers, is out of sync with justice in a world in which people deal with the grim realities of forced migration and the inter-relatedness that nourishes fantasies of wanting to

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<sup>40</sup> The earlier wave of citizenship scholarship focused almost exclusively on structures and institutions and was influenced largely by T.H. Marshall's insistence upon the institutional machinery of a democratic welfare state to protect and promote the rights of citizens. *See*, T.H. MARSHALL, *CLASS, CITIZEN AND SOCIAL DEVELOPMENT*, (1964). Subsequently, citizenship scholars—particularly from the communitarian position—argued that citizenship was an active process of democratic participation, rather than a passive protectorate of rights and statuses. Thus, the debate gravitated over to the side of participation, civic virtue, and civic identity rather than an exclusive focus on citizenship as status, which has generally been the focus of legal scholars. The cross-fertilization of disciplinary trends is not difficult to track: the interest in civic participation also coincided with the growth in civil society scholarship in the social sciences. Kymlicka and Norman summarize the shift in citizenship scholarship as "a conflation of two discussions: citizenship-as-legal-status, that is full membership in a particular political community; and citizenship-as-desirable-activity, where the extent and quality of one's citizenship is a function of one's participation in that community." Will Kymlicka & Wayne Norman, *Return of the Citizen: A Survey of Recent Work on Citizenship Theory* 104 *ETHICS* 352, 353 (1994). In contemporary citizenship scholarship, a multicultural shift also accompanies a renewed focus on political participation and civic identity through the protection of minority rights. Liberalism, according to Kymlicka, needs to protect minorities as both a matter of justice and self-interest, a position implicitly linked to the fears of ethno-nationalist secession. *See*, WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS* (1995).

<sup>41</sup> I thank Mary Berg for pushing me to answer this question.

<sup>42</sup> *See* JUDITH BUTLER & GAYATRI SPIVAK, *WHO SINGS THE NATION-STATE?* (2007). I am also drawing on Chantal Mouffe's critique of liberalism's quest to achieve consensus through exclusion. The question of "who" belongs invariably arises in conjunction with who is excluded from the demos or what Mouffe has called "the democratic logic of inclusion-exclusion." Mouffe, *Carl Schmitt and the Paradox of Liberal Democracy*, 10 *CAN. J. L. & JURISPRUDENCE* 21, 25 (1997). Within Europe, the xenophobic right focuses on immigrants as the internal enemy—as the source either of all evil or of fragmentation. (See also, Chantal Mouffe, *For A Politics of Nomadic Identity*, in *TRAVELLERS' TALES* 105,108. We have no shortage of right-wing contenders in this country making similar arguments about "illegals," terrorists, or the domestic (mostly inner-city) poor.

move.<sup>43</sup> While maintaining a deep appreciation for the imaginative potential of building national communities, my preference for unqualified openness as a default position is incongruent with Anderson's otherwise evocative project of imagining community. If the early debates about cosmopolitanism were hampered by borders, cold wars, and dividing walls, contemporary global movement makes it more feasible—indeed critical—to think beyond the nation.<sup>44</sup>

My cosmopolitan framework seeks to advance transboundary solidarities that at the same time account for the compelling nature of locally produced and negotiated identities. All cosmopolitans have their personal histories that seem to justify their self-identified positions as global citizens. Kwame Appiah, a self-described cosmopolitan patriot, writes of his father's testamentary bidding to his children to remember their status as citizens of the world.<sup>45</sup> Aiwha Ong describes in wonderful detail the strategic multiple-passport holding *taipans*, for whom the passport is less an icon of belonging or an "attestation of citizenship"<sup>46</sup> than a flexible adaptation to conditions of global finance and investment. Jeremy Waldron also reflects on the cosmopolitan subject as "someone who did not associate his identity with any secure sense of place....as a creature of modernity, conscious even proud of living in a mixed up world and having a mixed up self."<sup>47</sup> And Dennis Altman draws upon global diasporic selves to portray postcolonial cosmopolitans, notably South Asian expatriate academics and writers whose experiences of multiple identities and discomfitures both at "home" and abroad has produced innovative scholarship in globalization theory and subaltern studies.<sup>48</sup> Altman compares contemporary South Asian expatriate writers to the inter-war Jewish émigré from East and Central Europe who was "torn between a homeland which rejected him and a diaspora where she remained uncertain of her place,"<sup>49</sup> attributing that sense of liminality with an enhanced appreciation of the complex, multiple, and overlapping nature of identities and allegiances.

I also have my cosmopolitan story, replete with multiple passports and resident permits that correspond in fairly sketchy ways to any personally held allegiances to the country of my birth and youth, legal permanent residence, place of employment, and affective life. I was born in an emigrant, transitory place—Kingston, Jamaica—and lived there until leaving the island for university. My mother's "people" were products of the South Asian diaspora who came to the West Indies in the aftermath of

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<sup>43</sup> Arjun Appadurai, *Global Ethnoscapes: Notes and Queries for a Transnational Anthropology*, in *RECAPTURING ANTHROPOLOGY: WORKING IN THE PRESENT* (Richard Fox ed., 1991).

<sup>44</sup> See, Zlatko Skrbis, Gavin Kendall & Ian Woodward, *Locating Cosmopolitanism: Between Humanist Ideal and Grounded Social Category* 21 *THEORY, CULTURE & SOCIETY* 115, 116 (2004).

<sup>45</sup> KWAME ANTHONY APPIAH, *COSMOPOLITANISM: ETHICS IN A WORLD OF STRANGERS* (2006). See also, Appiah, *Cosmopolitan Patriots*, in *FOR LOVE OF COUNTRY?* (Joshua Cohen ed. 2002).

<sup>46</sup> Benedict Anderson, *Exodus*, 20 *CRITICAL INQUIRY* 314, 323 (1994).

<sup>47</sup> Jeremy Waldron, *What is Cosmopolitan?*, 8 *J. POL. PHILOSOPHY* 227 (2000).

<sup>48</sup> DENNIS ALTMAN, *GLOBAL SEX* (2001).

<sup>49</sup> *Id.* at 19.

Emancipation as agricultural “coolie” labor. My family was a large one, with numerous aunts, uncles, cousins scattered throughout the path of the West Indian “colonization in reverse,” who would visit and sponsor my own visits to New York, Miami, London, Toronto, and other small Antillean islands. As an engaged socialist politician in the Manley government, my father taught me to see the commonalities of the “Third World”—a consciousness-raising task assiduously aided by the revolutionary reggae lyrics and the messianic message of Rastafari. It was not difficult to essentialize the “Third World” during dinner table discussions about decolonization, or to view the war in Angola or the “liberation” of Zimbabwe from a Third World perspective, because the island had insinuated itself in a global anti-imperialist struggle through its embattled democratic socialist experiment. Later, I went “abroad” to university, married a “foreigner,” worked as an anthropologist and a human rights lawyer in Peru for a decade, and have currently landed as a law professor in the misty Pacific Northwest. Yet it is my Peruvian family to whom I send monthly remittances. While my children have never visited the Caribbean, they have spent years in Peru, and I suspect they feel closer to that country than the one of their birth. No official residency document reflects the strength of these artificially forged allegiances.

I draw upon my migratory experience to think reflexively about diaspora as a politically transformative space where legal boundaries matter less than transcendent solidarities and where movement is a “complex fate” enriched by experiences that would have been inconceivable had one remained (circumstances permitting) in the country or community of one’s birth.<sup>50</sup> Nonetheless, it would be irresponsible, if not cavalier, to proclaim the effacement of borders. Borders do matter to those in situations of economic desperation and personal persecution.<sup>51</sup> Calls for cosmopolitan citizenship may address the moral indefensibility of admission criteria, appeal to global solidarities, or point to the porosity of post-Westphalian borders, but the administrative state still operates within a legally reified territorial paradigm in

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<sup>50</sup> This depiction of exile as a complex fate is taken from Lewis Nkosi’s collection *HOME AND EXILE* (1983). See also, Rob Nixon, *Refugees and Homecomings: Bessie Head and the End of Exile*, in *TRAVELLERS’ TALES: NARRATIVES OF HOME AND DISPLACEMENT* 114-30 (George Robertson et al. eds., 1994).

<sup>51</sup> Sverker Finnström, an anthropologist working in war-torn Acholiland, frankly acknowledges the inequities posed by borders for refugees vs. privileged travelers. Though not necessarily from a cosmopolitan standpoint, his observations are critical for the project of global citizenship. He writes:

I refute any methodological claim to have *suffered* with my informants. As an anthropologist from Sweden, I remained at all times in a very privileged position, with my return ticket in my back pocket, so to speak. For me, social security was a journey away, in reach in a matter of less than twenty-four hours. For my Ugandan interlocutors, this was never the case. To claim anything else, I strongly feel, would decontextualize and belittle, perhaps even caricature the sufferings, pains, and sorrows of my informants.

SVERKER FINNSTRÖM, *LIVING WITH BAD SURROUNDINGS: WAR, HISTORY, AND EVERYDAY MOMENTS IN NORTHERN UGANDA* 17 (2008).

which immigration laws perform the exclusionary “dirty work” of citizenship.<sup>52</sup> As numerous commentators have reflected, the irony of globalization is precisely its facilitating the movement of privileged highly skilled workers, capital, and goods through flexible immigration and investment regimes, while simultaneously hardening the borders to make unprivileged human movement more costly and dangerous.

In light of the analysis presented here, I suggest that refugee policies and practices can be improved using cosmopolitanism as a normative framework. There may be politically expedient reasons to pursue exclusionary resettlement and admission policies, but these are inherently problematic from a moral perspective. Moreover, what happens to the refugee or asylee once a determination is made within a resettlement country is largely absent from the citizenship debate. There is a vast disparity in the treatment of refugees *once admitted* that completely belies any sentiment of humanitarian generosity.

Refugees, as “at-risk” newcomers, become incorporated into the American polity with a paltry sum of public assistance dispensed over a mere eight months, regulated with bootstrap expectations of survival in employment, linguistic immersion, and cultural negotiation.<sup>53</sup> In this sense, the citizenship debates are removed from the administrative realm of refugee and asylum policies where alienage is managed through bureaucratic procedures that seem far removed from any semblance of humanitarian generosity.

Two caveats before moving on: although I am questioning territoriality as a necessary condition of citizenship, territoriality itself is undergoing substantial revisions in refugee law. Given the burgeoning literature on internally displaced peoples (IDPs), and the institutional recognition that individuals who have not crossed state borders are nonetheless worthy of protection (or at least modified assistance),<sup>54</sup> it should be clear that territoriality is a dubious condition of citizenship.<sup>55</sup> While

<sup>52</sup> Catherine Dauvergne, *Citizenship with a Vengeance*, 8 THEORETICAL INQ. L. 489, 498 (2007).

<sup>53</sup> Cecilia Barecivic & Erin Carkner, Refugee Resettlement Coordinators, Catholic Charities Portland, OR. Feb. 28, 2008 (personal communication); See also AIWHA ONG, BUDDHA IS HIDING: REFUGEES, CITIZENSHIP, THE NEW AMERICA (2003).

<sup>54</sup> The institutional recognition of IDPs also signals a move on the part of humanitarian and relief agencies to relinquish their “non-interventionist” and non-aligned stance vis-à-vis the internal affairs of refugee-producing states. Building on both a human rights platform and a [postcolonial] “rule of law” agenda in the implementation of transitional justice systems, humanitarianism is increasingly consistent with pre-emptive interventions in sovereign states. As Michael Barnett writes, “Whereas once humanitarianism meant helping individuals after they had managed to crawl across an international border, now UN agencies can parade their humanitarian credentials in order to bring relief and protection to people regardless of their geographic circumstances.” Michael Barnett, *Humanitarianism with a Sovereign Face*, 35 INTERNAL MIGRATION REV. 244, 245 (2001).

<sup>55</sup> Patricia Tuitt, *Refugees, Nations, Laws and the Territorialization of Violence*, in CRITICAL BEINGS: LAW, NATION AND THE GLOBAL SUBJECT 37 (Peter Fitzpatrick & Patricia Tuitt eds., 2004). My inattention to territoriality does not ignore the persuasive arguments that Linda Bosniak makes about ethical territoriality to stem the exclusionary bias of status-based

recognizing the politically volatile nature of these discussions for reluctant refugee-receiving states, the *implication* of the classification of IDPs as refugees raises questions about the foundational stability of the people-state-territory trinity in citizenship studies.

And second: Although I use the terms refugee and asylum seekers interchangeably, the classifications are distinct and involve separate remedies within the U.S. legal framework. Asylum seekers are individuals who are physically present within the terrestrial borders<sup>56</sup> of the United States and who can apply affirmatively for INA §208 relief. Non-citizens facing deportation can also file a defensive claim for political asylum to stay their deportation under §241(b)(3).<sup>57</sup> No one outside the United States is eligible for asylum; this determination is done strictly in country. Refugees are admitted to the United States through the Overseas Resettlement Program (ORP) based on an annual allocation of approximately 40,000 from countries of “special humanitarian concern to the U.S. government.”<sup>58</sup> Worldwide, resettlement figures have continually decreased due to heightened institutional preferences for voluntary repatriation on the part of relief agencies.<sup>59</sup>

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citizenship. Extending the liberal constitutional tradition enumerated in *Yick Wo v. Hopkins*, Bosniak makes a strong case for extending rights and recognition to territorially present individuals residing within the nation-state that would significantly reduce the burdens of undocumented workers and immigrants and plausibly eliminate the caste system that impoverishes the democratic potential of wealthy labor-importing nations. Bosniak, *Being Here: Ethical Territoriality and the Rights of Immigrants* 8 THEORETICAL INQ. L. 389 (2007).

<sup>56</sup> *Sale v. Haitian Centers Council* 509 U.S. 155 (1993) (upholding President Bush’s executive order to interdict vessels carrying Haitian refugees on the high seas as compliant with Convention obligations after Coast Guard determinations of refugee, rather than economic migrant, status).

<sup>57</sup> The relevant passage from the INA reads, “Restriction on removal to a country where alien’s life or freedom would be threatened. (A) . . . the Attorney General may not remove an alien to a country if the Attorney General decides that the alien’s life or freedom would be threatened in that country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion.” For § 208 (a)(1), “Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) irrespective of such alien’s status, may apply for asylum in accordance with this section....”

<sup>58</sup> INA § 207 (a)(3). In 2002 and 2003, only 29,000 people were resettled under the ORP. After September 11, the government imposed stringent security regulations on refugee resettlement screening, which slows down the placement processing time considerably. See, David Martin, *The United States Refugee Admissions Program: Reforms for a New Era of Refugee Resettlement*. Paper published by the Migration Policy Institute, 2005. Martin’s report documents the low numbers of refugees actually resettled in the United States despite the Presidential allocation of 40,000. Martin reasonably recommends that if the ORP is a basic instrument of US foreign policy, it should become more open to new refugee categories and expedited resettlement opportunities in keeping with a post cold war world.

<sup>59</sup> Barnett, *supra* note 54.



### *A Means of Assuring Perpetual Peace? Jus Cosmopolitanum*

As set out briefly in *Perpetual Peace*, Kant refers to cosmopolitan right and universal hospitality as fundamental rights of visitation. “Hospitality means the right of an alien not to be treated as an enemy upon his arrival in another’s country.”<sup>60</sup> Kant’s vision of cosmopolitanism then, represented a peaceful, even if not friendly, thoroughgoing community of all nations on the earth ruled by principles of justice. Jeremy Waldron has described Kant’s vision of cosmopolitan right as an incipient international law, “the department of jurisprudence concerned with . . . peoples’ sharing of the world with others, given the circumstance that this sharing is more or less inevitable, and likely to go drastically wrong, if not governed by juridical principles.”<sup>61</sup> Since its [re]articulation by Enlightenment thinkers, the cosmopolitan project has included liberal internationalism and world federalism,<sup>62</sup> reflecting a broad commitment to world citizenship. Cosmopolitan obligations are based on Kantian hospitality: the basic moral respect owed to all persons given our common humanity.<sup>63</sup>

Expanding on Kant’s view of hospitality as conferring the right of visitation, the cosmopolitan-utilitarian position views state membership (or nationality) as only one factor in determining the extent and scope of our moral obligations. Iris Marion Young summarizes the cosmopolitan-utilitarian model as “a moral imperative to minimize suffering wherever it occurs. Every agent is obliged to do what he or she can to minimize suffering everywhere, right up to the point where he or she begins to suffer.”<sup>64</sup> Perhaps because of these lofty aspirations, the implementation of neo-Kantian internationalism has been an unrealized—though much debated—project within political philosophy and international relations. Nevertheless, strands of cosmopolitanism remain prominent in humanitarian, refugee, and human rights law, given the insistence on the normative importance of the individual over that of the state. Within political philosophy, cosmopolitanism plays an important theoretical role in the elaboration of civic institutionalist projects.

I mentioned earlier that cosmopolitanism and nationalism were intricately related although discursively thrust into antagonistic relationships with one another. Positioning the refugee as a “global subject” illustrates similarities rather than differences between “rooted cosmopolitans” and nationalists—particularly

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<sup>60</sup> IMMANUEL KANT, *PERPETUAL PEACE AND OTHER ESSAYS* 118 (trans. Ted Humphrey 1983).

<sup>61</sup> Jeremy Waldron, *What is Cosmopolitan?* 8 J. POL. PHILOSOPHY 227, 229-30 (2000).

<sup>62</sup> Despite Kant’s warning against world governance as a soulless despotism that would arise from rule by one mighty sovereign.

<sup>63</sup> Brian Barry, *Statism and Nationalism: A Cosmopolitan Critique*, in *GLOBAL JUSTICE NOMOS* XLI 12-66 (Ian Shapiro & Lea Brilmayer eds. 1999).

<sup>64</sup> Iris Marion Young, *Responsibility and Global Justice: A Social Connection Model* 23 SOCIAL PHILOSOPHY AND POLICY 102, 104 (2006).

communitarians.<sup>65</sup> Even a reflexive (though self-avowed) nationalist like Benedict Anderson claims definitively that, “nation-ness is the most universally legitimate value in the political life of our time.”<sup>66</sup> Any ethno-cultural nationalist recognizes, along with her cosmopolitan counterpart, that people belong to other social groups beyond the state and often view membership in those groups as more important.<sup>67</sup> Cultural nationalism becomes a viable political project by drawing on those enduring ties between and among members—elites and non-elites—to create a community capable of distributive justice and democratic representation.<sup>68</sup> Essentially, the roadmap of nation-building or state consolidation relies heavily on cultural nationalism.

Although I rely on contemporary theorists to trace the similarities between nationalist and cosmopolitan projects, a retrospective look at 18<sup>th</sup> century cosmopolitanism contextualizes its perennially competing and complementary role with Westphalian sovereignty formalized in 1648. First, it may be helpful to outline modern nationalist sentiments, drawing on Brian Barry’s distinction between academic nationalists and popular nationalists. Barry’s schema reveals “the tensions between what popular nationalists do and what academic nationalists defend.”<sup>69</sup> Barry uses the visceral metaphors of blood and soil to characterize *popular* conceptions of nationalism, while academic nationalists use more prosaic language to describe a process of cultural identification with a nation. It would seem that this invocation of

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<sup>65</sup> On the possible communitarian rapprochement with cosmopolitanism see Craig Calhoun, *The Class Consciousness of Frequent Travelers: Towards a Critique of Actually Existing Cosmopolitanism*, in *DEBATING COSMOPOLITICS* (Daniele Archibugi, ed. 2003).

<sup>66</sup> BENEDICT ANDERSON, *IMAGINED COMMUNITIES* 3 (1983).

<sup>67</sup> On the distinction between ethnic nationalism and ethnocultural nationalism, see Rogers Brubaker, *Myths and Misconceptions in the Study of Nationalism*, in *THE STATE OF THE NATION: ERNEST GELLNER AND THE THEORY OF NATIONALISM* 272-306, 299 (ed. John Hall 1998). I am using ethno-cultural nationalism in the sense Brubaker adopts to dispute the “bad” ethnic kind of nationalism and the “good civic kind—which as he points out, either purges or places “culture” in an ambiguous position.

<sup>68</sup> Arash Abizadeh, *Does Democracy Presuppose a Cultural Nation? Four Arguments* 96 *AMERICAN POLITICAL SCIENCE REV* 495, 495-509 (2002). An important feature of cultural nationalism is the role of political elites in the manipulation and invention of cultural practices. See PARTHA CHATTERJEE, *THE NATION AND ITS FRAGMENTS: COLONIAL AND POST COLONIAL HISTORIES* (1993); *THE INVENTION OF TRADITION* (Eric Hobsbawm & Terence Ranger eds. 1992).

<sup>69</sup> Barry, *supra* note 63, at 14. Barry writes, “nationality is conceived of as a matter of identification rather than birth . . . . The fundamental idea here is that human beings require immersion in a language and culture in order to survive . . . . [A] political authority must have sufficient autonomy to embody . . . and to protect the distinctive language and culture of its people.” (*Id.* at 20-21). The question of *which* people, language, and culture merits state protection inevitably raises concerns of inclusion in this particular strand of nationalism, and is a foundational critique of multiculturalism. Multicultural interventions decry the singularity of culture and language, at the expense of pluralist forms of identity that animate this particular brand of state citizenship and belonging. Multicultural liberals insist upon the full inclusion of difference—particularly cultural and linguistic difference in the notion of citizenship. See KYMLICKA, *MULTICULTURAL CITIZENSHIP* *supra* note 40.

blood and soil in tandem with citizenship demarcates the dividing line between nationalists (whether academic or popular) and cosmopolitans. Indeed, for the cosmopolitan, the combination of blood, soil, and citizenship seems to converge somewhere between the parochial and the eerily totalitarian.<sup>70</sup>

Barry's framework of popular/academic nationalism prompts us to think about the earlier roots of cosmopolitan politics and other "nation-like" formations that competed with the Westphalian state. Kant's eloquent vision of a cosmopolitan civil society was articulated in tandem with the consolidation of the Westphalian state. Indeed, Napoleon advanced even as Kant wrote his influential essay in 1795.<sup>71</sup> According to continental historian Sophia Rosenfeld, the political allure of the "sovereign nation" emerged alongside a tradition of European internationalism in which citizenship was de-situated and unmoored. Rosenfeld examines a body of 18<sup>th</sup> century French literature analogous to diplomatic letters and peace treaties that were written by anonymous "citizens of the world." The cosmopolitan's attempt to speak as an anonymous "friend of humanity" was aimed at relegating the roles of nobility, class, and lineage as the legitimate markers of citizenship. These documents herald civic participatory engagement within the realm of foreign policy, which was at that time the exclusive domain of princes and royal advisers, papal nuncios and Archbishopric representatives. Prior, then, to the Francophone "nation" there was the *international*, in the cosmopolitan sense, although these were principalities and kingdoms rather than nations.

Writing from a place that could be called the cosmopolitical, these treaties set out rules for a world in which "nobility based on birth or rank ceases to exist in favor of an egalitarian and enlightened fraternity among all men, where enlightened legislation makes possible considerable new freedoms for ordinary people." Clearly the clamor of revolutionary nationalism (*égalité, fraternité, liberté*) depended heavily on the spirit of these de-situated citizens of the world. Indeed, it is difficult to distinguish between cosmopolitan and revolutionary texts in terms of civic egalitarianism. Where they differed was with respect to the role of the nation as the sole arbiter of affect: the cosmopolitan treaties called for "a universal pact of friendship and esteem among all kings and peoples of the world, combined with an international legal system that governs like a tender, enlightened mother, and produces a global family."<sup>72</sup> This was unacceptably promiscuous to a consolidating nation-state that demanded commitment to a unitary state.

This tender enlightened mother is perhaps recognizable in her subsequent masculinist manifestations: the League of Nations and the United Nations. Thus, despite the dominance of the statist model in doctrinal international law and realist

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<sup>70</sup> I openly acknowledge this is an instinct remotely substantiated by empirical data.

<sup>71</sup> Jeffrey Alexander, "Globalization" as *Collective Representation: The New Dream of a Cosmopolitan Civil Sphere* 19 INT'L. J. POL, CULT, & SOC 85, 81-90 (2005). Kant's essay, written in 1795 coincided with the signing of the Treaty of Basel between the revolutionary French government and Prussia.

<sup>72</sup> Sophia Rosenfeld, *Citizens of Nowhere in Particular: Cosmopolitanism, Writing, and Political Engagement in Eighteenth Century Europe* 4 NATIONAL IDENTITIES 25, 31 (2002).

politics, cosmopolitanism has proven surprisingly resilient throughout the centuries. A close historical reading of cosmopolitanism shows a deep engagement with and commitment to global civil society, human rights, cultural pluralism, and world federalism.<sup>73</sup> It would detain my inquiry unduly to focus in depth on either the Stoic<sup>74</sup> or Enlightenment philosophical debates of cosmopolitanism. My story starts in the 20<sup>th</sup> century, when the cosmopolitan normative project—always in tension with nationalism—was seriously imperiled during the interwar and postwar periods. More importantly for my story, the precipitous decline of the cosmopolitan project coincided with the rise of the “refugee” as an embodied social category—the *subject* of protective institutional arrangements—that emerged during the reconstruction of post-war Europe. As Liisa Malkki observes,

the principal elements of international refugee law and related legal instruments grew largely out of the aftermath of the war in Europe, and from what must have been a powerful sense of postwar shame and responsibility for the predicaments of the people who were fleeing the Holocaust and yet were so often refused entry when they were in the most desperate need of asylum.<sup>75</sup>

Given their foundational commitments, cosmopolitan solutions to the post-war refugee crisis (based on Kant’s formulation of hospitality as a *right*) would have been preferable to the asylum granting system of sovereign states. Indeed, the right of refugees to seek asylum was not guaranteed by any correlative duty of states to *grant* asylum in the 1951 Convention. This heritage of asylum as a sovereign act of grace rather than as an obligation of international law has consistently strained our institutional responses and moral responsibilities towards refugees and asylum seekers.<sup>76</sup>

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<sup>73</sup> Mortimer Sellers, *The Kantian Theory of International Law* 5 INT. LEGAL THEORY 43 (1999); Mouffe, *Carl Schmitt and the Paradox of Liberal Democracy*, *supra* note 42; Fernando Tesón, *The Kantian Theory of International Law* 92 COLUM. L. REV 53 (1992).

<sup>74</sup> For a discussion of the Stoics’ view of cosmopolitanism, see Martha Nussbaum, *Patriotism and Cosmopolitanism*, in FOR LOVE OF COUNTRY: DEBATING THE LIMITS OF PATRIOTISM 6-17 (Martha Nussbaum & Joshua Cohen eds. 1996).

<sup>75</sup> Malkki, *Refugees and Exile*, *supra* 21.

<sup>76</sup> Although there is a normative claim to admit refugees whose statelessness is a result of a close if not causal connection between the actions of the resettlement and persecutory governments, the United States has been able to avoid its refugee obligations under its preferential screening ORP process. The United States has admitted large numbers of refugees on two occasions: the Displaced Persons Act of 1948 in the wake of WWII and the Vietnamese, Laotians and Cambodians in 1975. Yet the United States systematically denied asylum relief to Central Americans (notably Guatemalans and Salvadorans) who sought refuge during the 1980s in flagrant violation of its Convention obligations. Denial of Central American asylum claims was remedied through legal means in a class action suit, *not* through an open acknowledgement of the government’s violation of the 1951 Convention. See *American Baptist Churches v. Richard Thornburgh* 760 F.Supp. 796 (N.D.Ca. 1991) (stipulated order approving class action settlement agreement, stating that:

David Kennedy has retrospectively analyzed why international actors charged with refugee protection opted for an apolitical technocratic model that simultaneously upheld sovereign authority.<sup>77</sup> As Kennedy shows, although European states had developed customary laws for the treatment of foreign nationals and minority populations, the legal ambivalence of millions of displaced persons could not be settled by extant sources of international law. Neither customary nor treaty laws were equipped to manage the unprecedented numbers of stateless peoples in postwar Europe, who were neither aristocratic Russian émigrés nor intellectual *apatrides*.

The *travaux préparatoires* of the 1951 Refugee Convention reveal genuine concern for the plight of the displaced, but the drafters were constrained by the lack of feasible institutional options for resettlement or protection in a realist diplomatic environment. Voluntary repatriation was virtually impossible, resettlement within Europe imperiled the precarious East-West geo-political balance; and assimilation was precisely that which contravened the principles of cultural and linguistic rights enshrined in the Convention that were inherited from the interwar Minority Treaties. In light of these insuperable structural hurdles, the UNHCR dedicated its initial efforts to assiduous legal and technical determinations of refugee status. For a young organization, this technical sense of purpose would have been understandable, but many critics argue that the UNHCR's narrow focus on determination detracted from its ability to advocate more broadly for those who were not strictly political refugees but people in genuine conditions of distress and in need of protection nonetheless.<sup>78</sup> Kennedy characterizes the early UNHCR efforts as a compromise between benevolent charity and war-effort relief.<sup>79</sup>

Only upon an individual determination of refugee status could the High Commissioner and his protection officers advocate for the accommodation of non-nationals, issue identity and travel documents within a broader consular mandate, and compel the full extension of civil rights within the host states. These tasks occupied most of the early UNHCR's energies—and continue to shape its

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WHEREAS, under the new asylum regulations as well as the old: foreign policy and border enforcement considerations are not relevant to the determination of whether an applicant for asylum has a well-founded fear of persecution; the fact that an individual is from a country whose government the United States supports or with which it has favorable relations is not relevant to the determination of whether an applicant for asylum has a well-founded fear of persecution; whether or not the United States agrees with the political or ideological beliefs of the individual is not relevant to the determination of whether an applicant for asylum has a well founded fear of persecution....).

<sup>77</sup> See DAVID KENNEDY, *THE DARK SIDES OF VIRTUE: REASSESSING INTERNATIONAL HUMANITARIANISM* Ch. 7 (2004).

<sup>78</sup> Though directing their remarks to the more recent period, Goodwin-Gill & McAdam also observe, "Since the early 1990s, UNHCR has often given the impression of an agency in search of a purpose, anxious to be seen to be active and to claim turf in the humanitarian space, particularly in relation to other international organizations." *BASIC DOCUMENTS ON HUMAN RIGHTS* 4 (Goodwin-Gill & McAdam eds. 2006).

<sup>79</sup> Kennedy, *supra* note 77, at 204.

resettlement mandate. Little effort went into promoting rights of asylum—the sacrosanct Arendtian right to have rights was left to sovereign discretion and national law. As such, asylum—which would have created a larger space for a cosmopolitan agenda of hospitality over the statist one—was conspicuously absent from the drafting of the Convention and the mandate given to its implementing agency. Cosmopolitan aspiration was relegated as a remnant of a naturalist, even nostalgic past in favor of a positivist (or realist) technical solution to manage displacement.<sup>80</sup>

### *Contemporary Cosmopolitan Citizenship*

Nearly 60 years after the promulgation of the 1951 Refugee Convention, the international community continues to rely on sovereignty and national security as a procedural framework to address refugee protection. This reliance on sovereignty rings hollow given the opportunistic pursuit of financial inter-dependence, the increasing validity of global governance, and the rhetorical strength of the human rights movement. The resurgence of interest in cosmopolitan citizenship offers a normative foundation for an alternative refugee regime that ensures an expanded menu of rights currently truncated by the Westphalian model. Cosmopolitan citizenship is critical to what Seyla Benhabib calls the “rights of others” whose continued dispossession reveals an impoverished democratic promise. Indeed, as Benhabib argues:

We are like travelers navigating an unknown terrain with the help of old maps, drawn at a different time and in response to different needs. While the terrain we are traveling on, the world society of states has changed, our normative map has not . . . . The growing normative incongruities between international human rights norms, particularly as they pertain to the “rights of others,” immigrants, refugees, and asylum seekers—and assertions of territorial sovereignty are the novel features of this new landscape.<sup>81</sup>

Is cosmopolitanism a philosophy of world governance and society that is more congruent with globalized political and social realities than the archaic Westphalian state?<sup>82</sup> Indeed, the word itself is a composite of *kosmo-polites*—combining the Greek

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<sup>80</sup> Seyla Benhabib directly attributes Kant’s notion of hospitality to the single right of *non-refoulement* enshrined in the 1951 Convention, and Art. 33 is indeed the sole basis for appeals for political asylum. “Kant’s claim that first entry cannot be denied to those who seek it if this would result in their ‘destruction’ has become incorporated into the Geneva Convention . . . as the principle of ‘non-refoulement . . . .’” Benhabib qualifies the slipperiness of this right by its constant un[der] enforcement through state manipulation of the meaning of “life and freedom” and the option for third-country resettlement. Benhabib, *The Law of Peoples*, *supra* note 13, at 1784. Despite the direct attribution to Kant’s notion of hospitality, the concept was truncated by a concomitant refusal to obligate states to grant asylum.

<sup>81</sup> BENHABIB, *THE RIGHTS OF OTHERS*, *supra* note 10, at 6-7.

<sup>82</sup> The recent scholarly attention to cosmopolitanism is impressive, enriched in part by a renewed interest in neo-Kantian intellectual history and the innovative scholarship in globalization, “new” and trans/nationalisms, and multiculturalism. *See e.g.*, Jacques Derrida,

terms for “world/cosmos” and “citizen.”<sup>83</sup> Historically, the cosmopolitan was portrayed as “a person whose allegiance is to the worldwide community of human beings.”<sup>84</sup> Beyond its etymological origins, the term cosmopolitan connotes expatriate privilege: a rootlessness that comes from a voluntary peripatetic menu of choices of identity, not the involuntary (and often) desperate flight that characterizes statelessness.

In contrast, the globalized terrain of destitute economic migrants, refugees, and asylum seekers is not what we conventionally ascribe to cosmopolitanism in the context of frequent flying, privileged mobility.<sup>85</sup> Yet both the exile and the refugee raise questions—albeit with different scales of intensity—about rights, privileges, and duties extended to non-citizens. The refugee is a quintessential global subject: her protection is best guaranteed by the neo-Kantian right to hospitality than by discretionary grants of asylum. Yet, despite its obvious appeal for refugee rights, the cosmopolitan position has not always been favorably received. Many who advocate for refugees, immigrants and asylum seekers reject cosmopolitanism. A core commitment to territorial boundaries—perhaps even to statehood—and to territorial citizenship defines many liberal theorists who advocate passionately for greater inclusion, dignity and respect for outsiders. Their criticism against the impracticality of cosmopolitan institutions of governance and redistribution ridicules the enterprise altogether. A classic example of the dyspepsia surrounding cosmopolitanism is Michael Walzer’s response to Martha Nussbaum’s appeal for cosmopolitan civic education. Walzer writes:

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*On Cosmopolitanism*, in COSMOPOLITANISM AND FORGIVENESS (English Translation 2001), K. ANTHONY APPIAH, COSMOPOLITANISM: ETHICS IN A WORLD OF STRANGERS (2006); SEYLA BENHABIB, ANOTHER COSMOPOLITANISM (2006), THE RIGHTS OF STRANGERS: ALIENS, RESIDENTS, AND CITIZENS (2004); BONNIE HONIG, DEMOCRACY AND THE FOREIGNER (2001); COSTAS DOUZINAS, HUMAN RIGHTS AND EMPIRE: THE POLITICAL PHILOSOPHY OF COSMOPOLITANISM (2007); AIHWA ONG, FLEXIBLE CITIZENSHIP: THE CULTURAL LOGICS OF TRANSNATIONALITY (1999); PHENG CHEAH & BRUCE ROBBINS, COSMOPOLITICS: THINKING AND FEELING BEYOND THE NATION (1998); Ulrich Beck, *The Cosmopolitan State: Redefining Power in the Global Age* 18 INT’L J. POL. CULTURE & SOC. (2005) 143; David Held, *Law of State, Law of Peoples: Three Models of Sovereignty* 8 LEGAL THEORY 1 (2002).

<sup>83</sup> Pheng Cheah, *The Cosmopolitical—Today*, in COSMOPOLITICS: THINKING AND FEELING BEYOND THE NATION 22 (Pheng Cheah & Bruce Robbins eds. 1998).

<sup>84</sup> Nussbaum, *Patriotism and Cosmopolitanism*, *supra* note 74, at 4.

<sup>85</sup> James Clifford refers to “discrepant cosmopolitans.” Historically, the expatriate was not an exclusively privileged subject as Clifford reminds us. “The host of servants, helpers, companions, bearers, guides etc. who made Victorian travel possible also had their own cosmopolitan viewpoints.” *Traveling Cultures*, in LAWRENCE GROSSBERG, CULTURAL STUDIES 106-7 (Cary Nelson & Paula Treichler eds. 1992). As Jeremy Waldron has written self-referentially, “As long as a person can live [as a cosmopolitan subject], it is evident that people do not need what the proponents of cultural identity politics claim they are entitled to as a matter of right, namely immersion in the secure framework of a single culture to which they belong.” Waldron, *supra* note 45, at 228.

Perhaps because I am not a citizen of the world . . . I am not even aware that there is a world such that one could be a citizen of it. No one has ever offered me citizenship, or described the naturalization process, or enlisted me in the world's institutional structures, or given me an account of its decision procedures (I hope they are democratic), or provided me with a list of the benefits and obligations of citizenship, or shown me the world's calendar and the common celebrations and commemorations of its citizens.<sup>86</sup>

Walzer ironically summons these commemorative icons of national citizenship to critique the unfeasibility of the cosmopolitan project. Yet these very icons are also signifiers of *disjuncture* and *alienation* rather than belonging and affiliation as “nation” “citizen” and “identity” demonstrate a contentious relationship. These patriotic symbols invoke the image of the loyal citizen in his ancestral state, but their stability (and even relevance) is suspect in the face of multiple “citizen” identities, divided ties to a single nation-state or even to a single imagined community.<sup>87</sup> National symbols are supposed to motivate patriotic sentiment: “through a common identification with flags, coinage, anthems, uniforms, monuments, and ceremonies, members are reminded of their common heritage and cultural kinship and feel strengthened and exalted by their sense of common identity.” But as Smith goes on to reflect, “the quest for the national self, *and the individual's relationship to it* remain the most baffling element in the nationalist project.”<sup>88</sup>

Nationalism undeniably encourages more careful attention to the question of passion and affinity to a politically constructed, rather than an organically given, entity. Cosmopolitan citizenship invites similar critical scrutiny. Diogenes claimed to be a citizen of the world, but what does that mean in the present? Concededly, cosmopolitans' appropriation of Diogenes' claim runs the risk of disengagement from particular local contexts, producing subjects without rooted loyalties and attachments necessary for a deep engagement in political life. Rather than world citizens, cosmopolitans can be seen pejoratively as “citizens of nowhere in particular.”<sup>89</sup> The professed allegiance to universal humanism is indicted for vague or effete affinities that are inadequate substitutes for collective, particular, localized attachments that constitute patriotic citizenship or meaningful democratic practice. Benjamin Barber querulously dismisses the cosmopolitan project, proposing instead that what we need are “healthy, democratic forms of local community and civic patriotism rather than abstract universalism and the thin gruel of contract relations.”<sup>90</sup>

Of course, the criticisms against the weak gravitational pull of cosmopolitanism's affective ties mirror precisely those that are leveled against nationalism for its potential extremism, xenophobia, and exclusion. Today's cosmopolitanism, then, is in a

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<sup>86</sup> Walzer, *Spheres of Affection*, in FOR LOVE OF COUNTRY, *supra* note 74, at 125.

<sup>87</sup> Michael Kearney, *The Local and the Global: the Anthropology of Globalization and Transnationalism* 24 ANNUAL REV. ANTHROP. Vol. 547, 560 (1995).

<sup>88</sup> Smith, NATIONAL IDENTITY *supra* note 9, at 17 (emphasis added).

<sup>89</sup> Rosenfeld, *supra* note 72.

<sup>90</sup> Benjamin Barber, *Constitutional Faith*, in FOR LOVE OF COUNTRY *supra* note 74, at 31.



delicate position of proving not only the *practicality* of world citizenship, but its capacity as an *affective* political project. But I insist that nationalism is precisely in the same predicament. With regard to the affective weight of either discourse, both cosmopolitans and post/nationalists can draw upon the critical insights that challenge their respective constructions. As Bruce Robbins points out, “Like nations, cosmopolitanisms are now plural and particular . . . . Like nations, worlds too are imagined . . . . For better or for worse, there is a growing consensus that cosmopolitanism sometimes works together with nationalism rather than in opposition to it.”<sup>91</sup> In conjunction with other observations of the particularities of belonging—today’s cosmopolitans are depicted as having “roots and wings.”<sup>92</sup> As such, if nations are imagined, pluralistic, and constructed, the cosmopolitan is similarly capable of positing global civil society as a vibrant space worthy of engaged political action and deliberation. This global public sphere is constituted by local identities and transnational loyalties, yet free from the constraints of the Westphalian political state that unduly restrict the bonds of citizenship and community.

### *Creole Cosmopolitanism*

*I can still vividly remember the consternation on the faces of the British immigration officials when I presented my piece of paper on which I was traveling in lieu of a passport . . . . Mute and coy as such official documents usually are on vital questions, it gave no reason why I should be permanently exiled from my country.*<sup>93</sup>

The co-implication of nationalism and cosmopolitanism proposed here is rendered all the more transparent through the nuanced, ethnographic study of transnationalism which assists the conceptual aims of both discourses.<sup>94</sup> Here, I want to think briefly about the roots of post-colonial cosmopolitanism—following its trajectory outside of Enlightenment Europe. This is a somewhat neglected side path, but it broadens our appreciation of cosmopolitanism’s colonial legacies.<sup>95</sup> Admittedly, the relevance of

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<sup>91</sup> Bruce Robbins, *Actually Existing Cosmopolitanism*, in *COSMOPOLITICS*, *supra* note 83, at 2-5.

<sup>92</sup> Waldron, *What is Cosmopolitan?*, *supra* note 47, at 229-30.

<sup>93</sup> LEWIS NKOSI, *HOME AND EXILE AND OTHER SELECTIONS* vii (1965).

<sup>94</sup> NINA GLICK SCHILLER & GEORGES EUGENE FOURON, *GEORGES WOKE UP LAUGHING: LONG-DISTANCE NATIONALISM AND THE SEARCH FOR HOME* (2001); “*Everywhere we Go, We are in Danger*”: *Ti Manno and the Emergence of a Haitian Transnational Identity* 17 *American Ethnologist* 329-347 (1990).

<sup>95</sup> It is by now commonplace to assert that colonialism shaped metropolitan ideas of governance, nation, race, civilization, as well as appropriateness/deviance of gendered norms and sexuality. On the mutually constitutive effects of colonialism on discourses of history, race, sexuality, biology, gender, capitalism, law, and governance in both center and periphery *see* *TENSIONS OF EMPIRE: COLONIAL CULTURES IN A BOURGEOIS WORLD* (Frederick Cooper and Ann Stoler eds 1997); EDWARD SAID, *CULTURE AND IMPERIALISM* (1994); BERNARD S. COHN, *COLONIALISM AND ITS FORMS OF KNOWLEDGE* (1996); *COLONIALISM AND CULTURE* (Nicholas Dirks ed. 1992).

colonialism to refugee law and policy is typically raised in connection with humanitarianism (or in a more critical genre, its legacies of rescue, tutelage, and civilization). Nonetheless, colonialism created a strand of cosmopolitanism, ironically, through its civilizing mission. The civilizing mission and its profound rejection during the struggle for de-colonization spawned alternative visions of civic identity, representation, and political participation, in the absence of formal juridical citizenship or elected government.<sup>96</sup>

Edward Said called our attention to the early project of transporting European modernity globally, in the foundation of “global cities” and civic spaces for new cosmopolitical formations and cultural expressions of diasporic blackness. Within the Francophone and Anglo-Atlantic worlds, pan-Africanists and intellectuals associated with Négritude and the Harlem Renaissance articulated goals for a political movement that demanded “autonomy and independence for Black Africa.” The key intellectual questions that preoccupied pan-Africanists were precisely those that would shape or inform civic ideas in a future independent continent. Thus, the movement’s interlocutors debated the possibility of an African socialism, a non-aligned movement, political partisanship and multi-party states, European modernism vis-à-vis traditionalist communalism—all of which unfolded in leading cultural and literary journals, international congresses, and non-aligned meetings of the period.<sup>97</sup> As filmmaker Manthia Diawara reflects:

The idea that négritude was bigger than Africa, that we were part of an international moment which held the promise of universal emancipation, that our destiny coincided with the universal freedom of workers and colonized people worldwide—all this gave us a bigger and more important identity than the ones previously available to us through kinship, ethnicity, and race.<sup>98</sup>

In other words, anti-colonialism was critical to discourses of citizenship, representation, and civic identity embodied in voices that emanated from the global South—but in large part, living in Europe and North America. If creole cosmopolitanism is born of movement, then it is clear that for many cosmopolitans,

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<sup>96</sup> See Couze Venn, *Altered States: Post-Enlightenment Cosmopolitanism and Transmodern Socialities* 19 THEORY, CULTURE & SOCIETY 65 (2002).

<sup>97</sup> We might refer to a “required reading list” of black internationalism or revolutionary Third Worldism of the post-war period. This would include seminal works: W.E.B. DUBOIS, *COLOR AND DEMOCRACY* (1945); FRANTZ FANON, *BLACK SKINS, WHITE MASKS* (1952), ALBERT MEMMI, *THE COLONIZER AND THE COLONIZED* (1957); RICHARD WRIGHT, *WHITE MAN LISTEN!* (1957); GEORGE PADMORE, *PAN AFRICANISM OR COMMUNISM* (1956); AIMÉ CÉSAIRE, *DISCOURSE ON COLONIALISM* (1950). This is merely a list of the most cited works, I have neglected other writers more closely associated with the Harlem Renaissance like Claude MacKay and Langston Hughes, and other sources from Lusophone and the Iberian colonies in the interest of space.

<sup>98</sup> MANTHIA DIAWARA, *IN SEARCH OF AFRICA* 6-7 (1998). See also DIAWARA, *WE WON’T BUDGE* (2003) for an extended discussion of African immigration, exile, and diaspora, that draws together some of the tensions of self-imposed and racialized exclusion that I have outlined here.

[our/their] sense of solidarity and identity has been nourished in the milieu of the immigrant, the refugee and the exile.<sup>99</sup>

Thus, far from being the exclusive terrain of privileged travelers, arguably, post/colonial migration has generated *postcolonial cosmopolitanisms*. Within migration studies, however, cosmopolitanism is generally not the preferred analytical lens. Rather, transnationalism is what ethnographers and sociologists refer to when studying contemporary migratory flows.<sup>100</sup> Transnationalism employs the imaginative capacity of nationalism enunciated by Anderson and situates nationalism as a cultural project, but the imagination has a longer trajectory as it meanders across borders and continents. Transmigrants—a neologism coined by Nina Glick Schiller to highlight the triadic realities of contemporary migration—live divided lives. Like Appadurai’s techno-coolies, transmigrants are embedded in social networks that span (at least) two states, giving rise to a new status of “commuting citizens.” Through labor remittances, they continue to influence the present and the future wellbeing of their families and communities, and indeed they determine the viability of politico-economic conditions in their “home” countries.

Labor remittances are the second largest source of financial support in the global economy; in 2008, \$300 billion reportedly flowed into southern economies from migrant labor.<sup>101</sup> Through hard-earned vacations, pilgrimages, marital arrangements, mortuary obligations, *fiesta* sponsorship, and other engagements with communities outside of their actual residence, transmigrants clearly destabilize the cozy picture of the people-state-territory trilogy. But only so much. Transnationalism still depends on an extended nationalist imaginative project, stopping short of civic cosmopolitanism. The transmigrant engages in nationalism, albeit long distance nationalism. Long distance or satellite nationalism illustrates that people can exercise substantive citizenship in more than one state (or that they can be excluded and exploited by more than one state depending on the administrative regimes under which they live and their ethnic/gender/sexualized positions).

Diaspora, another process of imaginary nation-building born of displacement, shares many characteristics of deterritorialized or long-distance nationalism, and its construction has important implications for refugees.

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<sup>99</sup> Trinh T. Minh-ha, *Other than myself/my other self*, in TRAVELLERS’ TALES, *supra* note 42, at 14.

<sup>100</sup> Another term is “denizenship”—meant to convey the access to social membership of those who remain—with or without authorization—within a community without formal citizenship rights.

<sup>101</sup> The exact figures I quote are taken from Jason DeParle’s feature article, *A Good Provider is One Who Leaves*, N.Y. TIMES, Apr. 22, 2007; but I have seen similar figures reported in journalistic and internet sources. Ebenezer Babatunde Obadare, *Between the State and Western Union: Transnational Resource Flows, Citizenship and the Crisis of the African State*. (Manuscript on file with author.) For reliable internet sources of remittance income, see <http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTDECPROSPECTS/0,contentMDK:21121930~menuPK:3145470~pagePK:64165401~piPK:64165026~theSitePK:476883,00.html> (last visited Mar. 21, 2008).

Like refugees, diasporic peoples “retain a myth of their uniqueness and an interest in their homeland” wherever that may be constituted.<sup>102</sup> For many diasporic communities, the construction of imaginary utopian homelands is built with romanticized memories purged of ethnic conflict, class and gendered inequality; whereas for refugees, this imaginary is virtually impossible. This is not to say that refugees do not engage in extensive re-imaginative projects that erect fences around the root causes of their displacement.<sup>103</sup> I merely want to point out that the deferred dream of return for diasporic communities often overlooks the displacement that would occur for those who remained behind.

This is certainly not the case in refugee dreams of return where displacement *is* the objective. Liisa Malkki notes that long-term Hutu refugees in western Tanzania regarded themselves as “a nation in exile,” with hopes of reclaiming their rightful place as citizens and rulers of Burundi once the Tutsi government was overthrown.<sup>104</sup> In this light, the Hutu exiles/refugees potentially share in aspects of diaspora and transnationalism since they dreamt of a return and expressed no desire to assume citizenship or governmental obligations within any other nation. But while we should not make too much of the implications of the structural similarities between diasporic subjects and refugees for analytic purposes, it is important to note that both refugees and diasporic communities generally “opt out” of political engagement with the nation-state in which they are situated. This “escapist mentality” of immigrants and refugees is one of the features of the democratic deficit bemoaned by constitutional patriots.<sup>105</sup> (It also promotes proposals to revoke birthright citizenship<sup>106</sup> or others that debate compulsory naturalization for legal permanent residents.)<sup>107</sup> New research suggests that the diasporic disengagement may be changing, however, as

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<sup>102</sup> Kearney, *supra* note 87.

<sup>103</sup> See John Janzen, *Illusions of Home in the Story of a Rwandan Refugee's Return*, in *COMING HOME: TOWARD AN ETHNOGRAPHY OF RETURN* (Ellen Oxfeld & Lynellyn Long eds. 2003). John Janzen observes a common narrative structure to refugees' stories, also noted by other authors working with exiled and refugee communities. This structure begins with an account of the personal encounter of the war, what they were doing, how many family or lineage members were killed and by whom, and when the war reached their village. The narrative moves onto flight, the search for refuge, followed by uncertainty and continuing fear.

<sup>104</sup> Malkki, *supra* note 21, at 46.

<sup>105</sup> Thus, constitutional patriots may worry more about the disengaged second-class citizen than the inclusion of the immigrant or first generation child who dreams of a return home. An illustrative—though extreme case—is that of Shirwa Ahmed, the first “US citizen suicide-bomber” who came to the US as a refugee from Somalia in the mid 1990s. See Richard Meryhew, Allie Shah, & James Walsh, *The Making of A Minnesota Suicide Bomber*, *STAR TRIBUNE*, May 6, 2009, available at <http://www.somalilandtimes.net/sl/2009/380/30.shtml> (last visited Oct. 29, 2009).

<sup>106</sup> PETER SCHUCK & ROGERS SMITH, *CITIZENSHIP WITHOUT CONSENT: ILLEGAL ALIENS IN THE AMERICAN POLITY* (1985).

<sup>107</sup> See HIROHI MOTOMURA, *AMERICANS IN WAITING* Ch. 14 (2006).

disenfranchised communities use the metaphors of diaspora to protest the injustices they face in the societies in which they live.<sup>108</sup>

To summarize, neither diasporic nor transmigrant communities relinquish substantive citizenship in their birth countries, although their dispersed residence and loyalties disrupt the neat correlation between citizenship and residence. The refugee or asylum seeker occupies an ambivalent space within diaspora and transnationalism, given the ruptured ties between the refugee and the nation to which she or he formerly belonged. The possibility or desirability of return is suspect for asylum seekers and depends logically on the source of their persecution. But the search for a “home” (either because of expulsion, flight, or dispossession) raises questions about the very nature of “home” and its place in political theory. As Michael Dillon puts it, “[t]he refugee is a suppliant in search of a home, with an abiding seducing nostalgia for a home that never was.”<sup>109</sup>

Clearly, the relationship among people, place/territory and identity is one that is critical for contemporary cosmopolitan citizenship. Examining deterritorialized forms of nation-making: transnationalism, diaspora, exile, expatriation, and transmigration offers invaluable insights into the processes of identity formation, political allegiance and their impact on citizenship. Deterritoriality reminds us of the multiple sources of cultural membership, and attests to the durability and power of ethnic identification with a *nation* though detached from a territorial, regional or even local base when it was thought that globalization signaled the *fin de siècle* of the nation. Perhaps the most interesting insight is the way that communities advancing the identity of a nation—i.e. aboriginal, indigenous, or first peoples—have been able to build global alliances to argue precisely for their rights as citizens to posit their right to self-determination. This is an example of the mobilization of identity within global civil society, although its success rests largely on the claim to self-determination, place, and citizenship in situ. In other words, if this were a global movement framed in support of nomads and open borders, I suspect it would have had limited success.

### *Where and What Is Cosmopolis?*

Up until this point, I have tried to show commonalities in the nationalist and cosmopolitan project with regard to their respective affective capacities and their historical trajectories. While a conflation of the two would be analytically incorrect, I conclude that their differences are undermined by their similarities. With regard to the *feasibility* of the cosmopolitan project, we are on shakier ground. Indeed, the feasibility and existence of cosmopolis is the subject of an intense scholarly cottage industry within certain citizenship circles. Concededly, nationalists do not face this dilemma. States exist, if only in the atlases of schoolchildren, even though nations may pose existential challenges.

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<sup>108</sup> Marc Perry, *¿Qué bolá asere? Rap, Race, and the Politics of Black Subject-Making in Cuba*, in *THE BLACK INTERNATIONAL: FROM TOUSSAINT TO TUPAC* (Michael West, William Martin & Fanon Wilkins eds.) (forthcoming).

<sup>109</sup> Dillon, *The Scandal of the Refugee*, *supra* note 21, at 101.

A citizen of country X may reasonably ask: Why should I care about the welfare of someone I don't know, and even if I did, how would I elect a body that would allocate tax income or distribute resources that would ensure the satisfaction of my personal needs and the global citizenry? The second part of the citizen's question poses a more difficult proposition: namely, that of global governance and distributive justice.

In dispensing with the citizen's "why should I care" question, I do recognize the power of higher order duties and responsibilities to family, friends, and community. These are such foundational frameworks by which we organize our lives that they pose seemingly insuperable barriers to the cosmopolitan ideal of openness, equality, and global redistributive justice. Goodwin's classic ethical dilemma surfaces here: if two people are drowning and one is your relative, should kinship relations prevail in your decision to save one person and not the other? Variations of these two questions surface routinely in disqualifications of the cosmopolitan project both in terms of its feasibility and its weak affective capacities. The default suggestion then becomes one like Barber's: a preference for strengthening local communities and "improving" democratic practices in a closed Rawlsian society with heavily qualified acknowledgments about that society's global connectedness and strong humanitarian concerns. We thus get a modified Rawlsian project over abstract neo-Kantian internationalism. We do not obtain a significantly different refugee regime from the extant one nor do we activate a more expansive citizenship discourse. At most, we move beyond the loyal citizen-sovereign state fiction.

As Sisela Bok points out, "When the needs of outsiders, *however defined*, are of vast extent and prolonged duration and would require a considerable reallocation of scarce resources, holders of the bounded view are especially likely to refuse to grant priority to such needs over those of family members or compatriots." Bok raises a similar question to Goodwin: what are our obligations to save drowning strangers vis-à-vis our relatives, neighbors, and compatriots?<sup>110</sup> It seems fairly uncontroversial from both a cosmopolitan-utilitarian *and* a communitarian perspective that we should be bound by the principle of mutual aid. But the circularity of the argument returns. Which outsiders? Which compatriots? Which Americans did President Bush mean when he remarked "they" needed the help and compassion of "our" fellow citizens? We could refrain from reading too much into the inconsistent use of pronouns in the President's comments. They could have been a grammatical error characteristic of his homesy oratorical style. Still, given the overall bungling of Katrina by the Bush administration, linguistic inaccuracy is maybe an unduly generous interpretation.

Having said that, what is it about the *framing* of these questions that frustrates the discussion of cosmopolitan feasibility—the oppositional framing of the question of our obligations to needy compatriots over needy foreigners? Why is it more palatable to accept the validity of international trade arguments that postulate increases in general wealth (through the availability of cheap labor adding to employment prospects in developing countries and foreign direct investment adding jobs) but unacceptable to

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<sup>110</sup> Sisela Bok, *From Part to Whole*, in Nussbaum & Cohen, FOR LOVE OF COUNTRY, *supra* note 74, at 41 (emphasis added).

talk about contributing to the pension plans of other nations?<sup>111</sup> In other words, it seems acceptable to talk about employment and improved general welfare through investment (a market solution), but not through redistribution (a political proposition). One troubling aspect of the mutual aid debate that occurs in both academia and policy arenas is that it conveniently overlooks the fact that global migration is not simply a movement from poor nations to affluent ones. The South-South dimension of displacement and migrant labor needs to be factored into these arguments of equity, resource distribution, and substantive citizenship, especially with regard to refugee flows. This was a feature of the debate critiquing the Eurocentric (and androcentric) refugee subject, but it is less prominent in the donor-fatigued environment and the entrenched nature of refugee flows.

Although the neo-Kantian cosmopolitan is rarely found occupying a government post for obvious reasons, she is alive and well in global civil society: one possible site of cosmopolis. Akin to Rosenfeld's concerned citizens of nowhere in particular, today's cosmopolitan is considerably out of sync with her government. Public opinion on Darfur, for instance, is much more impatient with statist invocations of sovereignty. Even if we don't understand the dizzying complexity of Southern Sudanese politics or our implication in the situation preceding that which we now see in Darfur, the cosmopolitan's default position is support for humanitarian aid workers and troops on the ground to protect Darfurians.<sup>112</sup>

If cosmopolitanism is to have a future beyond a proto-naturalist basis for spreading goodwill, it needs to ground itself in the kinds of attachments and connections that engender global solidarity. This integrative move mirrors the production of "rooted cosmopolitans" in that it recognizes our special responsibility to those with whom we have significant inter-personal ties but at the same time argues from the point of equity and cosmopolitan fairness that justice requires global redistributive measures.<sup>113</sup> Those kinds of attachments are strong and vibrant in global civil society—and as Keck and Sikkink remind us, the transnational sphere of agitational political action has deep historical roots.<sup>114</sup> This is the space of oppositional social movements that encompasses suffragettes, abolitionists, peace and justice groups,

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<sup>111</sup> Joel Trachtman, *Welcome to Cosmopolis, World of Boundless Opportunity* 39 CORNELL INT'L L.J. 477 (2006) (setting out an argument for trade, immigration, redistribution, and our ethical duties to one another in these fields). To be clear, I am merely echoing the political marketing of global trade and development, not advocating for it.

<sup>112</sup> As the battles become more entrenched, we cannot call troops "peacekeepers" because there is no peace to keep. But as former UN Secretary-General Kofi Annan said recently, troops are a huge commitment for states. As he explained, "I can understand why some countries will not put troops on the ground for reasons I think we can accept. But I cannot understand why they cannot spare a couple of helicopters." The U.N Secretary General Ban Ki-Moon has requested 24 helicopters that will enable the force to patrol the vast Darfur area, but thus far no country has responded to repeated requests for them. (reported by Warren Hoge, *Annan says U.N. is 'overstretched' by Global Conflicts*, N.Y. TIMES, Mar. 21, 2008).

<sup>113</sup> Samuel Scheffler, *The Conflict Between Justice and Responsibility*, in GLOBAL JUSTICE NOMOS XLI, *supra* note 36, at 86-106.

<sup>114</sup> MARGARET KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS* Ch. 2 (1998).

environmentalists and anti-sweat shop/WTO activists, as well as the identity-based and indigenous groups mentioned above. Paul Gilroy has applied the concept of “conviviality” to discuss local solidarities and conflicts born of habitual interaction in metropolitan, working class neighborhoods that produce anti-racist cosmopolitan spaces.<sup>115</sup> Within Europe, Yasemin Soysal proposes that universal human rights supplant national rights—inverting the citizen-migrant hierarchy to advocate a “post-national membership” regime.<sup>116</sup> It is here, in this space of de-institutionalized conviviality that we find citizens engaged in acts of solidarity and understated resistance—Border-Angels leaving water tanks, sanctuary cities refusing to cede residents to immigration authorities, doctors treating undocumented patients, fishermen looking the other way on the Costa del Sol.

Besides the efflorescence of global civil society and its measured effectiveness, the neo-Kantian internationalist project is making headway in theoretical projects. Melissa Williams proffers a vision of a “shared fate” that may be strong enough to overcome the automatic rejection of responsibility for the global welfare. Williams’ proposal changes the terms from shared identity as the hallmark of citizenship to “shared fate—the idea that we are enmeshed in relationships of interdependence with other human beings that emerge from the past and extend into the future.”<sup>117</sup> Martha Nussbaum inverts the inquiry of self-other in her proposal for cosmopolitan civic education. Nussbaum’s short but controversial essay draws heavily from a globalized consciousness of environmental equity, now all the more urgent in light of climate change concerns.

Iris Marion Young uses an agentic model that gives rise to obligations of justice between and among persons by virtue of the social processes that connect them. While Young’s particular focus is on sweatshops and the legal theories of liability that bind consumers, brokers, and producers in a seamless web of exploitation, graft, and consumption, her model of social change and redistributive justice is easily applicable in other contexts of vastly unequal exchange. As Pogge points out with admirable candor, “[b]oth sides easily take for granted that it is as potential helpers that we are morally related to the starving abroad . . . . But the debate ignores that we are also, and much more significantly, related to them as supporters of, and beneficiaries from, a global institutional order that substantially contributes to their destitution.”<sup>118</sup> In terms of citizenship’s *futures*, my sense is that we will be writing with these kinds of proposals in mind as a foundational position for the coming decade or two. It bears repeating that many scholars agree upon the possibility of a more open future and use

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<sup>115</sup> Paul Gilroy, *Multiculture in Europe: Melancholia or Conviviality Public Lecture* Public Lecture, (available at <http://www.lse.ac.uk/collections/LSEPublicLecturesAndEvents/pdf/20060510-PaulGilroy.pdf>).

<sup>116</sup> YASEMIN SOYSAL, *LIMITS OF CITIZENSHIP: MIGRANTS AND POST-NATIONAL MEMBERSHIP IN EUROPE* (1994).

<sup>117</sup> Melissa Williams, *Nonterritorial Boundaries of Citizenship*, in *IDENTITIES, AFFILIATIONS, AND ALLEGIANCES*, *supra* note 17, at 226-256, 228.

<sup>118</sup> Thomas Pogge, *Moral Universalism and Global Economic Justice* 1 *POL. PHIL. & ECON.* 29, 50 (2002).



the *cosmopolitical* as a space for action and debate. Considering the glacial speed of paradigm shifts, perhaps that is what progress looks like from 1795-2010.