

THE END OF CITIZENSHIP?

*Jonathan Weinberg**

BEYOND CITIZENSHIP: AMERICAN IDENTITY AFTER GLOBALIZATION. By Peter J. Spiro. New York: Oxford University Press. 2008. Pp. 194. \$29.95.

INTRODUCTION

In *Beyond Citizenship: American Identity After Globalization*, Peter J. Spiro¹ surveys “the lines that mark the boundaries of the human community, the lines that divide Americans from others” (p. 3). Spiro conducts this inquiry through the lens of citizenship law: Who is born an American citizen? Who can become one? To what extent can one be a citizen both of the United States and of another country? What legal benefits does American citizenship actually confer, and what obligations does it impose? The answers to these questions, he urges, will tell us who is an American, and armed with that understanding, we can better answer the question of “what it *means* to be an American” (p. 4; emphasis added).

Spiro’s answers are sobering. Because of the pressures of globalization, he concludes, the rules governing who is an American citizen have become hopelessly disconnected from any reasonable conception of who ought to be one. What’s more, they are necessarily disconnected: there is no way to recast American citizenship law so that it corresponds to any meaningful understanding of the bounds of American community.

The costs of this disjunction, Spiro continues, are high. The absence of any sensible borders to the American community means that we are less likely to feel bonds of loyalty to other citizens simply by virtue of their being citizens. This undercuts our sense that we are all organically connected, part of a shared community. The result is that we are less willing to sacrifice on behalf of our fellow citizens and the community at large.

At the heart of Spiro’s book is a claim that American citizenship is losing its worth and indeed its meaning in a globalizing world. As the boundaries of the national community have blurred, Spiro tells us, citizenship itself has become less valuable. Fewer aliens living in the United States are electing to become U.S. citizens (pp. 56–58). And, he continues, why should they? Citizenship offers little in the way of tangible benefits, just as it demands little in the way of civic responsibility (Chapter Four). Changes in the law of plural citizenship, making it easy for a person to be a citizen of several countries at once, have undercut citizenship’s significance (Chapter Three).

* Professor of Law, Wayne State University Law School. I owe thanks, as always, to Jessica Litman.

1. Charles R. Weiner Professor of Law, Temple University Beasley School of Law.

Moreover, Spiro writes, in a world in which most of the global population shares American values and culture, there is little to distinguish members of the American community from outsiders. It is becoming increasingly incoherent to think of the United States as a “self-contained nation”—an entity with a sharp distinction between members and nonmembers, essentially different from other organizations, with a unique claim to its members’ allegiance. Rather, we are moving toward a post-globalization world in which the state will only be one membership organization among many (Chapters Five and Six). Citizenship, he concludes, is in irreversible decline.

This is an important book, essential reading for anyone seriously concerned with the nature of citizenship: Spiro raises crucial questions about the nature of American identity in the modern age. Historically, it was American civic culture—incorporating such elements as commitments to liberty, equality, individualism, and tolerance of diversity—that was said to set Americans apart from the rest of the world and form the basis of American national identity.² When that civic creed has become so successful as to be adopted across the globe, though, what differentiates those of us inside the American citizenship wall from those without?

Spiro, I think, draws too sharp a line between modern globalization and the world of the past. Part I of this Review challenges his view that the value of American citizenship is in decline. Part II critiques his discussion of the lines drawn by citizenship law—who is or can become a citizen—and what those lines mean for the nature of citizenship in the modern age. This Part urges that the lack of fit between our citizenship rules and the goal of organic community is hardly new; it was a feature of our citizenship law long before current globalization trends. Part III discusses the meaning of citizenship, and the basis for citizenship and immigration exclusions, in the context of contemporary thinking about citizenship and nationhood. It urges that the theoretical incoherence Spiro sees in the foundations of modern citizenship was also present before globalization and suggests that we can best address citizenship’s challenges by opening our borders broadly to people who want to become part of the American experiment.

I. THE VALUE OF CITIZENSHIP

In support of his thesis that U.S. citizenship is in decline, Spiro puts forward the argument that as a practical matter being a U.S. citizen is not very meaningful. Citizenship gets you little in the way of rights and demands little in the way of obligations. Aliens living legally in the United States, in increasing numbers, are not bothering to become citizens. U.S. law over the years has relaxed the requirements for naturalization; that, Spiro urges, reflects the fact that “[c]itizenship no longer presents a seller’s market”

2. See KENNETH L. KARST, *BELONGING TO AMERICA: EQUAL CITIZENSHIP AND THE CONSTITUTION* (1989).

(p. 36). On the contrary, “the long-term value added in citizenship is relatively insignificant” (p. 91).

At first glance, this argument seems odd. Across the world, there are millions of people who want to come to the United States to live and can’t do so because U.S. immigration rules forbid it. Those who live in Mexico, say, may be able to cross the land border in secret and live here illegally. Those who live in the Philippines, on the other hand, will not even be able to do that; the typical poor Filipino cannot get even a tourist visa to visit the United States.³ If these people were U.S. citizens, their right to live here would be unchallengeable. The ability to enter and live in the United States is a hugely important perk of citizenship that many people would give a great deal for.

Spiro, of course, doesn’t deny this. Rather, he explains, the right to enter and live in the United States can be separated from U.S. citizenship (Chapter Four). U.S. law recognizes the status of lawful permanent resident (or “green card” holder); such a person has the legal right to live in the United States but doesn’t have the status of citizen. Spiro is willing to concede that green cards are valuable: “[i]f there were a global auction for immigrant visas, they would command a substantial price” (p. 91). But, he continues, “citizenship is another story. As a product, it has almost gone begging for customers.”⁴

A. The Illusion of Declining Naturalization Rates

Unlike Spiro, I am not sure that we can so easily separate lawful permanent resident status from citizenship for the simple reason that American law has not much separated them. In order to become a U.S. citizen, one must first become a lawful permanent resident; once one becomes a lawful permanent resident, the road to citizenship is straightforward.⁵ U.S. law historically viewed lawful permanent residents as what Hiroshi Motomura has called “Americans in waiting.”⁶ There is no such thing as a U.S. immigrant visa that does not carry with it the promise of citizenship, and there is no prospect that U.S. law will create one.⁷

3. See Vanessa S. Barcelona, *How To Maximize Your Chances Of Obtaining a B2 Tourist Visa*, BASTA PINOY NEWS, Oct. 1999, <http://www.bastapinoy.com/immig910.htm>.

4. P. 91. Spiro suggests that even undocumented aliens have little to gain from citizenship, because they can often secure work and participate in civil society notwithstanding their illegal status. Pp. 90–91. This is hard to take seriously but not necessary to his larger argument.

5. One shouldn’t take it for granted, though. Between 1996 and today, the U.S. government has denied from 12% to over 30% of all naturalization petitions. Julia Preston, *Perfectly Legal Immigrants, Until They Applied for Citizenship*, N.Y. TIMES, Apr. 12, 2008, at A1. That’s a change: from the 1930s through 1990, it denied fewer than 5%. *Id.* This reflects either sharply increased interest by aliens in becoming citizens, leading to a larger proportion of marginal applications; tougher standards on the part of U.S. government evaluators; or both. *See id.*

6. HIROSHI MOTOMURA, AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES 123 (2006).

7. Immigrant visas are different from temporary visas, such as tourist visas, which do not create a path to citizenship. Some immigration reform proposals would grant temporary visas to

At the same time, Spiro is correct that it would tell us something important if lawful immigrants to the United States increasingly chose to live out their lives as noncitizens. That would indicate that people in a position to make the choice today do not especially value membership in the U.S. citizenry—that they want to live in America but not to become Americans.

But is it true? The facts don't bear it out. There is no reason to believe that immigrants today value citizenship less than participants in past waves of immigration did, and there is substantial reason to believe they value it more.

Here's a starting point: *Every* year since 1993 has seen a larger number of petitions for naturalization filed than *any* year before 1993. In all of U.S. history from 1789 through 1992, no more than 342,000 petitions for naturalization were filed in a given year. In the fourteen years from 1993 through 2006, the number of naturalization petitions filed each year has ranged between 461,000 and 1,413,000.⁸

That statistic doesn't resolve the issue. Numbers of naturalization petitions don't tell us too much about the *rate* at which aliens are applying for citizenship; presumably there are more applications now because there are more aliens living in the United States who are in a position to apply. Spiro writes that "the proportion of foreign-born residents who naturalize has been steadily decreasing, from 63.6 percent in 1970 to 37.4 percent in 2000" (p. 58). Adjusting Spiro's figures to exclude from the calculation aliens who are here illegally or otherwise are not legally eligible to naturalize, 59% of eligible aliens today are citizens.⁹ That figure does seem somewhat low; it has been higher at various points in U.S. history. Does it show that citizenship in the United States is currently going begging? Actually, it does not.

Immigrants are more likely to have naturalized the longer they have lived here. The citizen component of the immigrant population is highest in times of low immigration, when much of the nation's immigrant population entered long before; it is lowest after immigration surges, when more immigrants have recently arrived.¹⁰ In 1920, thus, the country had just seen a major wave of immigration; moreover, the newest immigrants were poorer, less educated, and slower to naturalize than those who had come before.¹¹ The result: only 49% of the country's legal immigrants were naturalized in

Mexican guest workers; because their visas would be only temporary, those workers would have no right to stay in the country long-term and no promise of citizenship. *See, e.g.*, Comprehensive Immigration Reform Act of 2007, S. 1348, 110th Cong. § 402 (2007).

8. *See* Office of Immigration Statistics, U.S. DEP'T OF HOMELAND SEC., 2006 YEARBOOK OF IMMIGRATION STATISTICS 51–52 tbl.20 (2006), available at http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2006/OIS_2006_Yearbook.pdf. The number of naturalization petitions peaked in 1997, largely in response to the bulge of applicants who gained permanent residence after the enactment of the Immigration Reform and Control Act of 1986. The 2006 figure was 730,642. *Id.*

9. *See* JEFFREY S. PASSEL, PEW HISPANIC CTR., GROWING SHARE OF IMMIGRANTS CHOOSING NATURALIZATION 14 (2007), available at <http://pewhispanic.org/files/reports/74.pdf>.

10. *Id.* at 6.

11. Irene Bloemraad, *Citizenship Lessons from the Past: The Contours of Immigrant Naturalization in the Early 20th Century*, 87 Soc. Sci. Q. 927, 929–30 (2006).

1920.¹² After several decades of sharp restrictions on immigration, with assimilation of long-term immigrants, that percentage moved to a high of 79% in 1950. Increasing immigration after that pushed the number back down; just after the Immigration Reform and Control Act of 1986¹³ added millions of newly legalized immigrants, the percentage of the legal foreign-born population who were citizens dropped to a low of 38%. It has been rising since then.¹⁴

If we want to learn about immigrants' propensity to naturalize over time, thus, it's unhelpful to measure the fraction of the total immigrant population who have naturalized at any given point; we do better to look at the percentage of an immigrant cohort who become citizens within a set number of years.¹⁵ That analysis reveals a marked *increase* in immigrants' desire to naturalize today in comparison with other points in our history.¹⁶ In 1920, toward the end of an immigration wave comparable in size to today's, only 31% of men who had arrived ten to fourteen years before had become citizens.¹⁷ Twenty-five years ago, in 1983, a comparable 30% of those who had entered ten years earlier had naturalized.¹⁸ But in 2005, fully 50% of those who had arrived ten years earlier had become citizens.¹⁹ A careful recent study similarly concludes that the tendency to naturalize increased significantly between 1995 and 2005.²⁰ Lawful permanent residents are becoming citizens sooner, and at a higher rate.²¹ "[I]t is clear that today's legal immigrants are signing on to a closer relationship with the U.S. than was the case a decade or two ago."²²

One can ask some serious questions about why U.S. naturalization rates are not higher than they are—and why the rates for Mexicans in particular

12. PASSEL, *supra* note 9, at 6; *see also* Nancy Foner, *Engagements Across National Borders, Then and Now*, 75 *FORDHAM L. REV.* 2483, 2486 (2007).

13. Pub. L. No. 99-603, 100 Stat. 3359 (codified as amended in scattered sections of 8 U.S.C.).

14. PASSEL, *supra* note 9, at 6.

15. *See* DEREKH D. F. CORNWELL, U.S. DEP'T OF HOMELAND SEC., *NATURALIZATION RATE ESTIMATES: STOCK VS. FLOW 1* (2006), *available at* http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_naturalizations_fs_2004.pdf.

16. It also reveals a large differential based on regions of origin. Approximately 70% of all eligible immigrants from Europe and Asia currently living in the United States are citizens, while only 35% of those from Mexico are. *See* PASSEL, *supra* note 9, at 14–15.

17. *See* Bloemraad, *supra* note 11, at 930 tbl.1.

18. *See* BRYAN C. BAKER, U.S. DEP'T OF HOMELAND SEC., *TRENDS IN NATURALIZATION RATES 1* (2007), *available at* http://www.dhs.gov/xlibrary/assets/statistics/publications/ntz_rates508.pdf.

19. *Id.* at 1 fig.1.

20. PASSEL, *supra* note 9, at 17.

21. *Id.* at ii. In particular, the naturalization rate for Mexican immigrants is increasing sharply, essentially doubling from 1995 to 2005. *See id.* at 18.

22. *Id.* at ii.

have been low.²³ The data, though, contradict any story that in the wake of globalization, immigrants have been spurning naturalization in ever-increasing numbers. Quite the contrary: the modern trend, for the last couple of decades at least, has been for immigrants to naturalize more quickly and in greater numbers than they did before.

B. *The Benefits of Citizenship*

Nor should it be surprising that substantial numbers of immigrants want to become citizens: ask a typical immigration lawyer, and she will tell you that naturalization carries with it important legal advantages. Most obvious is security from deportation. A lawful permanent resident can be deported because of a belated discovery that she was technically inadmissible or admitted in the wrong preference category, when she first entered the country;²⁴ because she committed any of a broad range of crimes, many of them not especially serious;²⁵ because she “endorse[d] . . . terrorist activity” or contributed money to an organization deemed to be supporting such activity;²⁶ or on a variety of other grounds. Citizens are immune from all this.

There are other immigration-law advantages to citizenship. Being a citizen is tremendously valuable if you want your relatives to be able to enter the country legally by virtue of their relationship with you. A U.S. citizen who marries, say, a Mexican citizen, and seeks an immigrant visa for his spouse, is entitled to one as soon as the Department of Homeland Security (“DHS”) completes its investigation and paperwork. On the other hand, a lawful permanent resident who marries a Mexican citizen and seeks an immigrant visa for his spouse gets the privilege of standing at the back of a queue; as of this writing, applicants who sought their visas in May 2002 were still waiting in line.²⁷ Precisely the same disparity applies to citizens and noncitizens seeking visas for the admission of their unmarried minor children.

There is also the matter of public benefits: while means-tested government benefits other than Supplemental Security Income (“SSI”) are generally available to permanent residents who have lived here for more than five years, they are limited by the “deeming” rule. U.S. law requires anyone seeking to immigrate on the basis of his family relationship to a U.S. citizen or permanent resident to secure an “affidavit of support” from his sponsor, in which the sponsor promises to support the alien financially (at

23. See *supra* notes 16, 21 and accompanying text. For useful research, see SUSAN GONZÁLEZ-BAKER ET AL., TOMÁS RIVERA POLICY INST., *THE MAKING OF AMERICANS: RESULTS OF THE TEXAS NATURALIZATION SURVEY* (2000).

24. 8 U.S.C. § 1227(a)(1)(A) (2006); see, e.g., Preston, *supra* note 5.

25. 8 U.S.C. §§ 1101(a)(43), 1227(a)(2); see, e.g., Guerrero-Perez v. INS, 242 F.3d 727 (7th Cir. 2001) (alien who had lived in the United States since he was an infant removed because, at age nineteen, he had had consensual sex with his fifteen-year-old girlfriend).

26. 8 U.S.C. § 1182(a)(3)(B)(i)(VII); accord §§ 1182(a)(3)(B)(iv)(VI), 1227(a)(4)(B).

27. U.S. DEP’T OF STATE, VISA BULLETIN FOR DECEMBER 2008, http://travel.state.gov/visa/frvi/bulletin/bulletin_4384.html.

125% of the poverty level) until the alien becomes a citizen, works forty Social Security quarters (ten years of continuous employment), or dies. Unless he naturalizes, the alien will generally be ineligible for federal means-tested benefits during that ten-years-plus period, because his sponsor's income and resources are deemed to be available to him in computing his eligibility for the benefits.²⁸

At the same time, it's not clear that any of these are the concerns that actually motivate immigrants to become citizens. According to one study, a key theme in some immigrants' thinking about citizenship is the fear that "the status of legal permanent resident is now insecure and that U.S. citizenship is necessary to recapture the rights they had as legal permanent residents."²⁹ In another study, the top three reasons would-be citizens gave, in anonymous surveys, as to why they were seeking citizenship were "I want to vote" (86%); "I plan to live in the United States for the rest of my life" (83.9%); and "I love the United States" (73.6%). Only about 44% offered "I want to help my relatives come to the United States," and only about 27% "I am afraid I will lose government services."³⁰

C. Everything Old Is New Again

Spiro is correct that, in a broad variety of ways, we do not treat lawful permanent residents much differently from citizens. Many aliens can receive a range of government benefits. They can participate in public discourse even without voting. All this may contribute to the fact that many permanent residents take a long time to naturalize. Some, as Spiro explains, "don't otherwise identify with the American community," and naturalization isn't "worth compromising their identity" (p. 81). For others, the "bureaucratic hassle" outweighs the benefits (p. 81).

That naturalization has advantages and disadvantages, though, is hardly new. Consider the situation in 1920. Citizenship had a different set of advantages and disadvantages. Some states allowed many noncitizens to vote.³¹ Immunity from deportation was less of an issue because the grounds for deportation were less extensive.³² Preference for entering relatives was not

28. See 8 U.S.C. § 1631. The statute provides an exception where applying the deeming rule would leave an alien "unable to obtain food and shelter." § 1631(e)(2). While some states provide state-funded benefits to immigrants ineligible for federal ones, the vast majority of states still take "deeming" into account before providing benefits other than health insurance. See National Center for Children in Poverty, 50-State Data, <http://www.nccp.org/tools/table.php?states=&ids=20-478,23-478,24-478,24-479,12-478&db=pol&data=text#2> (last visited Nov. 13, 2008).

29. Audrey Singer & Greta Gilbertson, *Naturalization in the Wake of Anti-Immigrant Legislation: Dominicans in New York City* 9 (Carnegie Endowment for Int'l Peace, Working Paper No. 10, 2000), available at <http://www.carnegieendowment.org/files/dominican.pdf>.

30. See GONZÁLEZ-BAKER ET AL., *supra* note 23, at 8 tbl.5.

31. See Bloemraad, *supra* note 11, at 946.

32. Few people were deported before 1920. MAE M. NGAI, IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA 59 (2004). Congress substantially expanded the bases for deportation with the Immigration Act of 1917, ch. 29, § 19, 39 Stat. 874, 889-90 (providing, among other things, that an immigrant could be deported if he or she committed a crime

an issue at all because we had no immigration restrictions in place to which such preferences would be relevant. And there was no social safety net from which immigrants could be excluded. On the other hand, some states had rules in place excluding noncitizens from certain occupations and restricting noncitizens from owning large amounts of land.³³ Some immigrants then were reluctant to naturalize because of their ties to their home countries,³⁴ and others were deterred by bureaucratic barriers;³⁵ the same is true now. Given enough time, the vast majority did naturalize then; the same is true now.³⁶ Indeed, immigrants now are naturalizing more quickly than they did then.³⁷

II. WHO CAN BECOME A CITIZEN?

Spiro devotes much of his book to charting the rules governing who is granted the status of U.S. citizen at birth, and who can claim that status through naturalization. Those rules, he urges, fit badly with our larger goals as to who *ought* to be a citizen. They include some people without meaningful ties to the United States (“happenstance Americans”), and exclude some whose ties are as strong as those of us inside the citizenship fence. Because the legal and the actual boundaries of our national community do not coincide, Spiro tells us, that community is becoming increasingly incoherent (pp. 30–32). But in an age of globalization, he continues, that incoherence is unavoidable.

A. Framing the Problem

Spiro begins by explaining the bedrock *jus soli* rule of U.S. citizenship: anyone born within the territorial confines of the United States is automatically a U.S. citizen. This rule has deep roots in the English common law and was written into the U.S. Constitution (after being rejected in the *Dred Scott* case)³⁸ via the Citizenship Clause of the Fourteenth Amendment. It is suffi-

involving moral turpitude within five years after entry, or committed two such crimes at any time before gaining citizenship). Congress expanded deportation further with the Act of 1924. Immigration Act of 1924, ch. 190, § 14, 43 Stat. 153, 162. Deportation, as a result, “came of age” in the 1920s. NGAI, *supra*, at 58–60.

33. Bloemraad, *supra* note 11, at 942–45.

34. See Nancy Foner, *Immigrant Commitment to America, Then and Now: Myths and Realities*, 5 CITIZENSHIP STUD. 27, 28 (2001) (noting Thomas Archdeacon’s suggestion that some pre-WWI immigrants failed to naturalize “ ‘because they viewed themselves as transients in the United States’ ” (quoting THOMAS ARCHDEACON, BECOMING AMERICAN 157 (1983))).

35. See Bloemraad, *supra* note 11, at 931–32, 941–42.

36. Compare *id.* at 930 (noting that in 1920, 80% of immigrants who had lived here twenty or more years had naturalized), with PASSEL, *supra* note 9, at 28 (noting that as of 2005, 75% of immigrants in the United States who have lived here twenty or more years have naturalized, including almost 90% of those from Asia and North Africa, and 80% of those from Europe, Canada, sub-Saharan Africa, and South America).

37. See *supra* notes 16–22 and accompanying text.

38. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857).

ciently entrenched as a constitutional and policy norm in this country, Spiro explains, that no attempt to change it could succeed (Chapter One).

Though *jus soli* has substantial merits, Spiro argues, it means that an increasing number of people are born Americans who lack future attachment to America. “Two facets of globalization are at work here: increased mobility and the maturation of sustainable transnational networks” (p. 20). A child may be born in this country to a visitor, or to an immigrant (legal or illegal) who is here temporarily; that child may move away quickly, following his parents to the country of their birth. Such a person, Spiro warns, is a U.S. citizen but only by happenstance—she has almost no meaningful connection with the United States (pp. 20–22).

Moreover, Spiro warns, children born in the United States to parents who are part of “diasporic communities”—emigrant communities maintaining strong ties with homelands in such countries as Mexico, Korea, India, China, the Philippines, Cuba, El Salvador, Colombia, and Haiti—pose a challenge to traditional citizenship rules (pp. 22–25). Globalization has empowered immigrants to the United States to maintain ties with their home countries; thus, a *New York Times* article in 1998 reported that as many as 10,000 American students with family ties to the Dominican Republic were attending high schools there so as to avoid the drugs, guns, and other dangers of American urban life (p. 23 n.32). The mere fact that these children are born and raised in the United States, Spiro explains, “may not be predictive of later community attachment. . . . Those who do remain in the United States may pursue their whole lives within their diasporic communities, defined not by geography but by social ties, even if they episodically venture into the larger national community otherwise defined” (p. 23). The *jus soli* rule makes those children citizens, but they may share little other than birthplace with the rest of us.³⁹ A “respectable abstract argument” (p. 23) could be made that they should not be citizens.

Spiro sees a similar disconnect in the rules for awarding citizenship by naturalization. The main criterion for naturalization is five years spent living in the United States after admission for permanent residence (three years if spent in marital union with a citizen spouse). In the past, he states, this made sense; as a general matter, we expected people who had lived here for five years to have absorbed the American identity through the activities and exposures of everyday life (p. 38). Today, on the other hand, that’s less true: Immigrants can lead their entire lives in “larger, geographically concentrated immigrant communities Such immigrants might as well be back home for purposes of assimilating the American identity. They are, in effect, in a different part of their homeland, one that happens to be physically located in the United States” (p. 39). The requirements for citizenship, Spiro argues, no longer give us any particular reason to believe that naturalized citizens

39. Much the same is true, Spiro urges, of the rules for awarding citizenship to children born abroad to U.S. parents. A person born outside the United States to American parents, who lives his entire life outside this country except for a few years as a college student and young professional, can nonetheless transmit his U.S. citizenship to a child. Thus, “United States passports will come to be held by another growing group of individuals who are effectively foreigners.” P. 27.

are meaningfully members of the American community, or indeed plan to stay here for the long haul.

This country does have civics and language requirements for naturalization. Applicants for citizenship must demonstrate “understanding of the fundamentals of the history, and of the principles and form of government, of the United States,” and they must be able to read, write, and speak the English language.⁴⁰ Spiro answers that in practice these requirements are not onerous and that it would not work to try and make them so. The world has become Americanized: most of the globe already is familiar with our social ways, our culture, and our style of democracy. Much of the world speaks English. It will not work to treat familiarity with American politics, American civic culture, or the English language as the dividing line separating those inside our community from those without.⁴¹

All of this is important, Spiro urges, because it leaves us with no basis for a conception of American citizenship. To the extent citizenship lines are disconnected from real communal bonds, we as a nation will not treat them as meaningful. We will not sacrifice on behalf of our fellow citizens absent some emotional connection to them. “I will not fight for someone who shares membership merely because his parents were passing through when he was born, nor will I be inclined to share my paycheck with him” (p. 31).

I’m skeptical, though. *Any* legal enactment will betray some lack of fit with its underlying goals. In the jurisprudential lexicon, legal statements can be characterized as falling somewhere on the continuum between rules (sharp edged and black letter, making legal consequences turn on a small number of easily characterized inputs) and standards (ad hoc and situationally sensitive, making legal consequences turn on the overall balancing of any seemingly relevant consideration). That it’s illegal to drive more than fifty-five miles per hour on a given road is a rule; that one can face liability for driving faster than would a hypothetical reasonable person, given all the circumstances, is a standard. The classic advantage of rules lies in their predictability and ease of application; rules avoid the arbitrariness that can result when decision makers have too much discretion. But rules foreclose potentially relevant factors from the decision maker’s consideration, and so their application in particular cases may disserve the legislature’s underlying goals. Indeed, so may any legal enactment that tells the decision maker anything other than “consider all of the facts, and then take whatever step it is that, on balance, best serves the legislature’s ultimate goals and values.”

There is good reason to want our criteria for citizenship to be rule bound rather than standards based. It is disturbing to imagine a judge having extensive, ad hoc discretion over whether an applicant for citizenship will be

40. 8 U.S.C. § 1423(a)(1)–(2) (2006).

41. Indeed, Spiro urges that our rules for citizenship are underinclusive as well as overinclusive. There are people who fall outside the boundaries of citizenship, he argues, who are nonetheless effectively members of our national community; U.S. policymaking interests and affects them. They include residents of communities straddling the U.S.-Mexican border, as well as communities in such countries as El Salvador and the Dominican Republic with close ties to relatives and community members who have migrated to the United States.

deemed worthy, in part because the judge might use that discretion to privilege some applicants (say, white wealthy ones) over others (say, poorer brown ones). Certainly immigration decision makers in the past used administrative discretion to effect racially based exclusions.⁴² But the consequence of relying more heavily on rules to make citizenship determinations is that some people will fit the rules' criteria who, perhaps, should not really be citizens, and some people may fall outside of those criteria even though, perhaps, they really should. That's just the way law works.

So we need to focus on two questions. First, is the fit between our citizenship rules and their underlying goals that much worse than in the past? And second, if so, how much of a problem is that?

B. *Past and Present*

As for the first question, the factors that Spiro identifies as leading to "happenstance" or uncommitted Americans did not just arise in the last few years. Spiro mentions circular migration (the phenomenon of immigrants moving to this country and then returning to their homelands) as a source of happenstance Americans, since a migrant might have an American child during the brief U.S. portion of her sojourn and then raise the child elsewhere (p. 19–22). But circular migration has long been with us; Spiro notes estimates that in the nineteenth and early twentieth centuries, more than half of all immigrants to the United States from southern Italy ended up returning home, at least for a time. Indeed, according to one source, the proportion of immigrants returning to their homelands in 1900–1920 was one-and-a-half times as high as the rate in 1971–90.⁴³

More fundamentally, transnationalism—the phenomenon of immigrants maintaining active involvement in, and ties to, their homelands—is not a new thing.⁴⁴ Immigrants formed diasporic communities at the turn of the last century.⁴⁵ Consider the following sentiment: "The conception of citizenship itself is rapidly changing The old barriers are everywhere breaking down. We may even bring ourselves to the point of recognizing foreign 'colonies' in our midst, on our own soil, as entitled to partake in the parliamentary life of their mother country."⁴⁶ The passage is nicely complementary to Spiro's concern that, by virtue of the ease of international travel and communication, insular "colonies" of migrants may be so strongly tied to their homelands as to lack primary identification with the United States.

42. NGAI, *supra* note 32, at 56–90.

43. NANCY FONER, IN A NEW LAND: A COMPARATIVE VIEW OF IMMIGRATION 65 (2005).

44. See Foner, *supra* note 12, at 2483–84; Alejandro Portes, *Conclusion: Theoretical Convergencies and Empirical Evidence in the Study of Immigrant Transnationalism*, 37 INT'L MIGRATION REV. 874, 875 (2003).

45. See FONER, *supra* note 43, at 67–69.

46. *Id.* at 62.

Gino Speranza, secretary of the Society for the Protection of Italian Immigrants, wrote those words in 1906.⁴⁷

Concerns about aliens forming insular, self-isolating communities within the United States are surely not new. As far back as 1889, Justice Field described Chinese immigrants as having “remained strangers in the land, residing apart by themselves, and adhering to the customs and usages of their own country,”⁴⁸ unwilling or unable “to assimilate with our people or to make any change in their habits or modes of living.”⁴⁹ The Supreme Court justified World War II-era Japanese internment in part by pointing to Japanese-Americans’ asserted inability to “assimilat[e] as an integral part of the white population.”⁵⁰ Many were more sanguine about European assimilation. Nonetheless, when in the 1920s Congress enacted legislation sharply restricting immigration by southern and eastern Europeans, it was prompted in part by calls that the melting pot was failing to break down pockets of insularity among those immigrants.⁵¹ A 1924 newspaper editorial, for example, explained that restricting immigration was desirable precisely because it would “result in the gradual elimination of foreign communities on American soil. There will be no more ‘little Germany,’ ‘little Russia,’ ‘little Poland’ or ‘little Italy.’”⁵²

In retrospect, those fears about immigrant acculturation were meritless. Immigrants to the United States abandoned their mother languages and shifted to (English) monolingualism more quickly than in any other country.⁵³ To the extent that the members of the great early-twentieth century wave of immigration did not assimilate, their children and grandchildren certainly did.⁵⁴ Is there reason to think that contemporary concerns are better founded? Modern advances in communication and travel have made transnational ties easier in ways that were unthinkable a hundred years ago. But the data do not support the notion that the affiliations and acculturation of children born into immigrant communities are very different now.

Consider language acquisition. Spiro suggests that language acquisition means less in the modern world, when so many immigrants already speak English, than it did a hundred years ago. But many immigrants today enter without language skills; in the 2000 census, two-thirds of recent immigrants

47. *Id.*

48. *Chae Chan Ping v. United States (The Chinese Exclusion Case)*, 130 U.S. 581, 595 (1889).

49. *Id.*

50. *Hirabayashi v. United States*, 320 U.S. 81, 96 (1943).

51. The phrase encapsulating this fear was “alien indigestion.” ROBERT A. DIVINE, *AMERICAN IMMIGRATION POLICY, 1924–1952*, at 7 (1957); JOSEPH NEVINS, *OPERATION GATEKEEPER: THE RISE OF THE “ILLEGAL ALIEN” AND THE MAKING OF THE U.S.-MEXICO BOUNDARY 101–02* (2002).

52. NEVINS, *supra* note 51, at 224 n.52 (quoting a May 14, 1924 *Los Angeles Times* editorial).

53. See ALEJANDRO PORTES & RUBÉN RUMBAUT, *IMMIGRANT AMERICA: A PORTRAIT 183* (1990).

54. See FONER, *supra* note 43, at 79–80; PORTES & RUMBAUT, *supra* note 53.

from Latin America reported that they spoke English “not well at all” or “not well.”⁵⁵ Where the parent does not speak English, the child’s acquisition of English both evidences and makes possible her integration into the larger society. Studies consistently show language acquisition in the second and third generations of modern immigrants to be comparable with that in earlier waves.⁵⁶

Alternatively, consider intermarriage. Census information, so far at least, belies the notion that Asian and Latin American immigrants find themselves in imperviously sealed communities that maintain their insularity across multiple generations; 1990 data show nearly two-thirds of U.S.-born Asians marrying non-Asians, and nearly forty percent of U.S.-born Hispanics marrying non-Hispanics.⁵⁷

To be sure, immigrants today often live in coethnic enclaves, just as immigrants in the past did.⁵⁸ But a “review of the social science research literature on immigration reveals that assimilation . . . appears to be progressing roughly as it always has.”⁵⁹ For “the great majority of the new second generation . . . let alone a third generation still in gestation, what the empirical tea leaves seem to suggest (in English) is that theirs is an American future, not a bilingual or binational one.”⁶⁰

C. *Citizenship and Community*

Even if one accepts Spiro’s argument that the match between citizenship rules and affective community is getting weaker, there is still reason to be skeptical of his thesis that, by virtue of that poor fit, we care for each other less and are less willing to sacrifice for one another. The argument makes theoretical sense. Given the fact that fellow citizens may well not have meaningful ties to the American enterprise, why should we feel strong ties to them? But laid up against the larger American narrative, the argument seems to miss the point.

55. See FRANK D. BEAN & GILLIAN STEVENS, *AMERICA’S NEWCOMERS AND THE DYNAMICS OF DIVERSITY* 156 (2003).

56. See, e.g., Kevin R. Johnson & Bill Ong Hing, *National Identity in a Multicultural Nation: The Challenge of Immigration Law and Immigrants*, 103 MICH. L. REV. 1347, 1379–80 (2005) (reviewing SAMUEL P. HUNTINGTON, *WHO ARE WE? THE CHALLENGES TO AMERICA’S NATIONAL IDENTITY* (2004)); Rubén G. Rumbaut, *Severed or Sustained Attachments? Language, Identity, and Imagined Communities in the Post-Immigrant Generation*, in *THE CHANGING FACE OF HOME: THE TRANSNATIONAL LIVES OF THE SECOND GENERATION* 43, 67–71 (Peggy Levitt & Mary C. Waters eds., 2002) (discussing language acquisition in modern immigrants).

57. FONER, *supra* note 43, at 38.

58. See, e.g., NATHAN GLAZER & DANIEL PATRICK MOYNIHAN, *BEYOND THE MELTING POT: THE NEGROES, PUERTO RICANS, JEWS, ITALIANS, AND IRISH OF NEW YORK CITY* (2d ed. 1970).

59. T. Alexander Aleinikoff & Rubén Rumbaut, *Terms of Belonging: Are Models of Membership Self-Fulfilling Prophecies?*, 13 GEO. IMMIGR. L.J. 1, 10 (1998).

60. Rumbaut, *supra* note 56, at 90. *But see* FONER, *supra* note 43, at 83 (“The verdict is not yet in on how important transnational ties really are—or will be—in the lives of today’s second generation . . .”).

Spiro suggests that the “bond of American citizenship” was probably stronger through the mid-nineteenth century, because of the homogeneity and shared backgrounds of the (propertied, white, and male) individuals with full participation rights in the new polity (p. 111). But if there ever were in the early nineteenth century a golden age of American fellow feeling and common purpose (and historians have argued powerfully that there was not, that Americans were deeply divided by the market revolution⁶¹ and the Jacksonian movement⁶²), we were not sundered by the expansion of American citizenship and the franchise. We were sundered by our divisions over slavery and race. It is racial hostility, not the inefficiencies of citizenship rules, that has stood as a prime obstacle to expanding programs for the redistribution of wealth in this country.⁶³ And while the current debates over immigration have engendered much controversy, it is hard to escape the conclusion that it is race—not concerns about whether *white* immigrants will be part of our affective community—that is the prime mover there too.

It has often been the case over the course of this country’s history that refusal to extend the bonds of community has been directed at immigrants, new citizens, or soon-to-be citizens. But it has not been motivated by abstract concerns that our citizenship rules might bring into our political community people insufficiently connected to the United States; it has been motivated by beliefs that immigration by folks of particular races, ethnicities, or cultures would damage the nation. In the nineteenth century, we saw fears of the “‘unsavory and repellent,’” mentally inferior throng then entering from southern and eastern Europe;⁶⁴ today we see Samuel Huntington’s urgent call that what is damaging American society today is its increasing inclusion of people from Mexico.⁶⁵ It is hard to be too concerned about the possibility that even if America were somehow entirely cleansed of racial and ethnic animosities, we might still suffer from a lack of fellow feeling because a few new citizens were insufficiently connected to the United States.

III. THE CONCEPT OF CITIZENSHIP

In the final chapters of his book, Spiro urges that the concept of American citizenship, in a globalizing world, is ultimately incoherent. He lays out basic contradictions in our thinking that relate to admitting outsiders to citi-

61. See CHARLES SELLERS, *THE MARKET REVOLUTION: JACKSONIAN AMERICA, 1815–1846* (1991).

62. See DANIEL WALKER HOWE, *WHAT HATH GOD WROUGHT: THE TRANSFORMATION OF AMERICA, 1815–1848* (2007).

63. See Keith Banting & Will Kymlicka, *Introduction, in MULTICULTURALISM AND THE WELFARE STATE: RECOGNITION AND REDISTRIBUTION IN CONTEMPORARY DEMOCRACIES* 25–26 (Keith Banting & Will Kymlicka eds., 2006).

64. JOHN HIGHAM, *STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM, 1860–1925*, at 63 (2d ed. 2002) (quoting an 1888 *Philadelphia Press* comment).

65. See SAMUEL HUNTINGTON, *WHO ARE WE? THE CHALLENGES TO AMERICA’S NATIONAL IDENTITY* 221–56 (2004).

zanship. Spiro's challenge is powerful, but in my view falls short. The contradictions he emphasizes are not really new, and are not intractable.

A. *Challenging the Philosophical Coherence of Citizenship*

How, Spiro asks, can the institution of citizenship embody American identity? It is too late, he writes, to center American identity on whiteness and a specific ethnic core; history and the pressures of immigration have passed that nativist vision by (pp. 110–12). Nor, he continues, will it work to follow a conservative, nationalist vision in which all immigrants must “Americanize” by adopting the English language, the American way of life, and American ideals. While some would have would-be citizens pass a tougher citizenship test to show their understanding of American history and politics, few of the native born could pass such a test, and devoting more resources to gauging the Americanization bona fides of would-be citizens would strain DHS beyond the breaking point (pp. 112–15).

More to the point, Spiro adds, there *is* no core of American identity beyond the popular culture (Snoop Dogg, anyone?) that we share with the world (p. 115). There was a time, he explains, when it was meaningful to ask new immigrants to Americanize. American beliefs and values—including a commitment to democratic governance—were distinctive. But today those values are near-universal; their success is “both America’s triumph and its decline” (p. 52).

Spiro is surely correct that nobody today could credibly seek to impose on immigrants the harsh “Americanization” programs of the 1920s. Not for us is the pageant staged at Henry Ford’s English School, where a long line of students dressed in individual and outlandish native costumes marched into a giant “melting pot” as another stream of students emerged, all wearing identical suits and carrying American flags.⁶⁶ But Spiro’s denial that there exists any such thing as American identity suggests an odd tension at the heart of his argument. In this age of globalization, Spiro insists, the knowledge base that once defined the American community has become the property of much of the world. If one really believes this, though, then what exactly is the problem posed by the “happenstance American” born in the United States but who spends much of her life outside it? With the child growing up in a “diasporic community” said to be socially and culturally disconnected from the larger nation? It seems that even Spiro believes that a sufficient period of acculturation and residence, meaningfully situated within the American community, does convey *something*—knowledge, values, more—that makes you American. That something is American identity.

It may be that Spiro is saying that the problem with those citizens is not that they lack American values or knowledge, but rather that they may lack attachment—that they may not be committed to making a life within the American community. To that extent, he situates himself within the project he critiques as liberal nationalism. Liberal nationalists see American identity

66. See HIGHAM, *supra* note 64, at 247–48.

as resting in its politics: the nation is “‘united in patriotic attachment to a shared set of political practices and values.’” (p. 116; quoting Michael Ignatieff). Under the liberal conception, “the individual’s will to belong and to maintain the [American] civic faith” is what America is about (p. 118).

But Spiro goes on to argue that liberal nationalism too is flawed. The problem, he explains, is that the institution of citizenship is exclusive; its essence is closure. The state presents itself as expressing the will and furthering the interests of a particular, bounded citizenry—and no nation can be bounded unless its rules exclude outsiders while including insiders.⁶⁷ After all, a group’s ability “to demand singular membership, to set the terms of admission . . . may be necessary to maintaining community cohesion and identity” (p. 156). If America conferred a universal right to citizenship, it would “not be much of a nation” (p. 119).

At the same time, Spiro continues, liberal thought’s universalist premises demand that citizenship be “an inclusive institution, available to all wishing to subscribe.”⁶⁸ Here is where liberalism finds itself in a bind: on what basis can a person seeking citizenship be excluded? Liberal thought, Spiro urges, cannot justify any meaningful condition on membership for those professing belief in the constitutional system. Indeed, it is hard-pressed to justify even a rule requiring that aspirants to U.S. citizenship be territorially present: Cannot people in other countries be just as committed to democracy, the rule of law, and American civic nationalism as anyone else? Might they not be just as invested in U.S. government decision making?

Moreover, Spiro argues, in a world of plural nationality and transnational connections, we need no longer see the state as the primary guarantor of rights (Chapter Six). Civil society exists on a transnational basis; its actors are not confined within national boundaries. The international law regime incorporates human rights protections. The security threat in the modern world, Spiro urges, comes from terrorism, not from nation-states; local law enforcement and private actors, not just the nation-state, participate in the provision of defense and security against that threat (pp. 139–40). Non-state institutions such as churches and corporate entities are gaining in importance (pp. 140–44).

B. *Critiquing the Critique*

I’m less than fully convinced by Spiro’s account of the rise of non-state organizations in the modern world. International law and civil society organizations don’t play a meaningfully greater role in protecting rights in the United States today than they did in the past. Certainly, many non-state organizations play roles in our lives; some of them regulate conduct or

67. Pp. 115–35; *see also* ROGERS BRUBAKER, *CITIZENSHIP AND NATIONHOOD IN FRANCE AND GERMANY* 21–34 (1992).

68. P. 116. *See generally* LINDA BOSNIAK, *THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP* (2006).

redistribute wealth. But as Spiro recognizes, that's not new. Spiro urges that non-state organizations are saliently different today because so many of them are transnational and thus transcend the state (pp. 125–26). But I'm doubtful how much the transnational nature of (some of) today's non-state organizations affects everyday lives. And can one seriously argue that the role of the nation-state as provider of national security and defense is dissipating in the age of terrorism? Notwithstanding the peculiarities of U.S. federalism, it's unconvincing to classify local law enforcement as a non-state actor.

I'm also unconvinced that imposing immigration controls and arbitrary restrictions on citizenship is a necessary component of national identity. Spiro notes Michael Walzer's defense of such restrictions on the ground that they are necessary to the maintenance of "communities of character" (pp. 156–57): "historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life."⁶⁹ Yet certainly there are many churches and religious organizations today, for example, that have no barriers to membership and yet succeed at maintaining identity, community, and fellowship. American identity was powerful through the 1880s, when this nation was open to the immigration and eventual citizenship of the vast majority of those who wanted to enter;⁷⁰ it was powerful through the 1920s, when we remained open to the immigration and eventual citizenship of the vast majority of those who weren't Asian.⁷¹ American identity was powerful, Spiro reminds us, in part because America's constitutional democracy was distinctive—and given that fact, we did just fine with no more than minimal restrictions on entry and citizenship.

To help draw the connection between citizenship barriers and national identity, Spiro calls the reader's attention to the Supreme Court's 1972 decision in *Dunn v. Blumstein*, in which the Court held that a state could not condition voting in state and local elections on a person's having lived in the state for more than thirty days.⁷² *Blumstein* instantiates a thin citizenship regime for membership in state political communities: the United States requires that an immigrant live here for at least five years before he can gain the right to vote in U.S. elections, but the states are forbidden to impose comparable requirements. Spiro insightfully observes that "thin citizenship regimes correspond to thin identity constructs" (p. 54). It's not coincidental, in other words, that folks in this country for the most part don't identify

69. MICHAEL WALZER, *SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY* 62 (1983).

70. This country had immigration restrictions even before 1882, see Gerald L. Neuman, *The Lost Century of American Immigration Law (1776–1875)*, 93 COLUM. L. REV. 1833 (1993), but they were minor compared to what followed.

71. For a good account of the "Chinese exclusion laws" enacted beginning in 1882 (nominally repealed in 1943, though not fully repealed until 1965), see LUCY E. SALYER, *LAW HARSH AS TIGERS: CHINESE IMMIGRANTS AND THE SHAPING OF MODERN IMMIGRATION LAW* (1995).

72. 405 U.S. 330 (1972).

themselves with their states and don't feel special bonds of loyalty to others in their particular states.

Spiro sees in *Blumstein* a lesson that the “relatively low existing threshold for naturalization both reflects and contributes to a diminishing sense of national identity” (p. 56). I see a different lesson in *Blumstein* and the continuing importance of the five years' residency requirement as an ingredient of U.S. citizenship. The Court in *Blumstein* conveyed the message that the nation—the United States—is the unit within which we are to feel bonds of loyalty and community. The nation is crucial; state boundaries are just lines on a map.

It's because we in the United States take seriously the notion that this nation is, meaningfully, an affective community (as the states are not) that we impose a set of naturalization requirements directed toward assuring ourselves that the prospective citizen is somebody to whom the rest of us can feel organically connected, to whom we can feel a bond of loyalty. How do we do that? Precisely through a durational residency requirement: Before we get married, we live together. Before we welcome someone new into our community, we require a probationary period so as to get to know them. The durational residency requirement is there to reassure those of us who already have citizenship that prospective citizens have been around long enough for us to trust them. On that level, we restrict membership in our club, if only because we can: because it is our club, and our affective community, and restricting membership is one of the things that members of clubs do.

The biggest restriction on U.S. citizenship, of course, is not the five-year requirement as such: it is the rule that before the five-year clock can start running, you must first be admitted for permanent residence, together with immigration controls that ensure that the vast majority of people seeking entry into this country never will be so admitted. That returns us to Spiro's twin challenges to liberal nationalism. First, are these restrictions on U.S. citizenship consistent with the nature of liberal thought? Is it morally justifiable that mere accident of birth should determine who can be a U.S. citizen, with all that comes with it (most importantly, the right to live and work in the United States), and who cannot be? Second, with or without these restrictions, is there anything left of American identity?

It's worth noting that the challenge Spiro identifies liberal nationalism as posing to immigration controls and citizenship restrictions has nothing to do with globalization. The contradictions he discusses go back to our exclusion of Asians from immigration starting in the 1880s and our near-exclusion of southern and eastern Europeans starting in the 1920s. That was when we first faced the question whether, if the American community was defined by its commitment to American values, we could justify denying admission to people who wanted to enter this country and commit themselves to those values. Our answers were rooted in the concerns of a California state senate committee that the Chinese, “inferior to any race God ever made,” had “no

souls to save, and if they have, they are not worth saving”;⁷³ the charge of a prominent sociologist that Italians “‘lack the power to take rational care of themselves’”;⁷⁴ the concern expressed in a report offered up by the chair of the U.S. House Committee on Immigration that Jews were “‘filthy, un-American, and often dangerous in their habits.’”⁷⁵

We maintain numerical immigration restrictions today, though they are no longer racially based. Do we have more legitimate justifications today? It doesn’t seem to me that we do. Here I agree with Spiro: Liberal thinking does—properly—condemn our exclusion of outsiders based merely on accident of birth. That condemnation is heightened by the fact that nearly all of us in white America are the beneficiaries of our country’s prior open door. To exclude those born elsewhere, we need to argue that they are less worthy, less deserving, than our own grandparents and great-grandparents, who were offered admission without conditions. We can’t do so.⁷⁶

I would open American borders broadly to people who want to immigrate here and become part of the American experiment. Without sweeping restrictions on entry, we would lose today’s most important practical restriction on citizenship. Where would that leave American identity? Spiro urges that absent meaningful American identity in an age of globalization, and absent coherent justification for immigration controls and citizenship restrictions, we face “the end of the self-contained nation” (p. 123). But it seems to me that American identity is not so devalued. The elements of the American creed include, notably enough, a commitment to immigration and to the experiment—an enterprise of perpetually rebuilding and reconstructing our City upon a Hill,⁷⁷ a city that we collectively built, rather than merely inherited, and that therefore we can rebuild—that we in the United States still see as distinctively American. There are more democracies in the world today than there were a hundred years ago, but we still see our own experiment as, in Abraham Lincoln’s words, “the last best hope of earth.”⁷⁸ Even without arbitrary restrictions on immigration, devotion to that American ideal and the American experiment still works as a principle of identity. It’ll do.

73. SELECT COMM’N ON IMMIGRATION & REFUGEE POLICY, STAFF REPORT, U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST 180 (1981) (quoting CAL. STATE S. SPEC. COMM. ON CHINESE IMMIGRATION, CHINESE IMMIGRATION: ITS SOCIAL, MORAL AND POLITICAL EFFECTS (1876)).

74. *Id.* at 178.

75. HIGHAM, *supra* note 64, at 309.

76. Bruce Ackerman has suggested that those born outside the nation can be excluded to the extent that uncontrolled admission of outsiders would cause our own liberal institutions to collapse, perhaps because “the presence of so many alien newcomers [would] generate such anxiety . . . that it [would] prove impossible to stop a fascist group from seizing political power.” BRUCE A. ACKERMAN, SOCIAL JUSTICE IN THE LIBERAL STATE 93–95 (1980). To say the least, that limit would permit far more immigration than we allow today.

77. The phrase is that of American settler John Winthrop. See John Winthrop, *A Modell of Christian Charity* (1630), in COLLECTIONS OF THE MASSACHUSETTS HISTORICAL SOCIETY, ser. 3, vol. 7, at 47 (1838).

78. Abraham Lincoln, Second Annual Message (Dec. 1, 1862), in 6 JAMES D. RICHARDSON, A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS 126, 142 (1897).

CONCLUSION

Beyond Citizenship is an important and thought-provoking book. Spiro concludes that American citizenship—like citizenship generally—is doomed. The nation-state itself will fall from its pedestal, to become just another form of association. In the end, the book's arguments do not convince me. Whether they convince you or not, though, anyone interested in citizenship needs to take Spiro's book—and the future he predicts—seriously.