

Spheres of Citizenship

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The Article argues that, contrary to its state-centered conception, citizenship is determined, managed and controlled in three distinct yet intertwined territorial spheres: the local, the national and the global. Without claiming that the national sphere is vanishing or becoming irrelevant for the determination of rights, duties, group belonging and participation in public life (all different aspects of citizenship), I argue that sub-national territorial units as well as supranational political organizations are increasingly impacting citizenship. All three spheres take part in deciding who shall be entitled to various rights (political, social and economic), what shall be the exact content of those rights, and who shall have the power to make such determinations. Yet each sphere bases its citizenship on a distinct logic and on a different set of assumptions and justifications: the local on residency; the national on lineage or place of birth; and the global on belonging to humanity. The Article demonstrates the ways in which citizenship is impacted by the three spheres and the different forms of legitimation that each sphere enjoys. The realization that our citizenship is a product of developments and activities in all three levels has theoretical, analytical and practical implications.

INTRODUCTION

The changing uses and meanings of the concept of citizenship as a political and legal instrument have been rightly understood by a large number

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of scholars to be a result of the "postnational situation"¹: the weakening of the nation-state and the loss of its monopoly over the determination of its members' rights, their ability to participate in politics and public life, and their primary group affiliation and loyalty. Alongside the dwindling yet still powerful nation-state, other entities — local authorities, religious orders, economic corporations, international and global organizations — have been gradually acquiring control over these matters, thus becoming important *spheres of citizenship*. The growing body of citizenship scholarship has paid considerable attention to the various territories and socio-legal interactions in which citizenship seems to be an applicable legal and political concept. This Article is an attempt to draw attention to the *legal* interconnections between the various spheres in which citizenship is determined, managed and controlled, and to underline the fact that despite the relative autonomy of these distinct spheres, what marks our times is an increased legal (as well as social, political and economic) dependency among them. In addition, I have tried to identify the *logic* — neither essential nor inherent, but nonetheless of great importance — according to which each sphere operates and differentiates itself from the others. In other words, while I point to the fact that the dominant spheres of citizenship heavily "bleed" into each other and are not neatly contained within one another, I also insist that there is currently something to be gained from maintaining their (semi) autonomy, both analytically and normatively.

These understandings, I claim, have both analytical and practical implications for citizenship discourse, scholarship and activism. Analytically, clarifying the unique logic according to which each sphere operates as well as the interconnection between the various spheres in which citizenship is determined and managed helps to exemplify the theoretical claim that citizenship is not just the formal possession of various legal rights (political, social and economic) by individuals and groups; nor is it only about obtaining the formal status of membership in a political community; nor is it merely the practice of collective self-government.² Rather, the content of citizenship is decided and managed through existing legal structures and unique experiences that together shape each sphere, as well as by power struggles between these different spheres (e.g., local, regional, national and global); often it is an outcome of concrete institutional

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- 1 YASEMIN NUHOGLU SOYSAL, *LIMITS OF CITIZENSHIP: MIGRANTS AND POSTNATIONAL MEMBERSHIP IN EUROPE* (1994); Linda Bosniak, *Multiple Nationality and the Postnational Transformation of Citizenship*, 42 VA. J. INT'L L. 979, 982-91 (2002).
 - 2 Linda Bosniak, *Citizenship*, in *THE OXFORD HANDBOOK OF LEGAL STUDIES* 183 (Peter Cane & Mark Tushnet eds., 2005).

arrangements and governance schemes of distinct entities that exist in many countries throughout the world. Hence, what I emphasize in this Article is both the separation and the interrelation between the spheres that currently shape our citizenships.

Practically, the emphasis I put on the distinct spheres of citizenship opens up and even dictates different routes for activism. Indeed, if citizenship is not determined solely by the national sphere but rather by and through local governments, global and international institutions and economic corporations, it would be a mistake to address all citizenship claims to only one of these spheres or actors. A better course is to form flexible strategies that address all the spheres at once and target the different legal variables that currently impact the content of citizenship.

Before I go on to offer an analysis of the spheres of citizenship, an important clarification and delineation of my discussion in this Article is in place. I discuss only three major spheres in which citizenship is determined, negotiated and managed, all three of which are signified most prominently by their *territorial* nature. As I have already indicated, various aspects of what is currently understood as part and parcel of the meaning of citizenship — formal rights, de facto equality and membership within a political community, participation in collective self-government — are determined within the family, religious groups, economic corporations and virtual associations; citizenship scholarship has indeed extended its reach to these important social and political spaces.³ Yet my analysis insists that there is still great importance to carving out three dominant spheres — local, national and global — with which most citizenship literature deals, and in which most citizenship struggles take place. In part, this is so because it is quite difficult to grasp and analyze all the spheres at once, and in part because these three spheres — unlike others — are institutionalized as political units that can be analyzed as such.

I concede that there is great difference between the centrality of territoriality for localities and states and the universal, almost virtual territoriality of the whole world that is the basis for the global sphere of citizenship; nevertheless, I argue that what underlies the current discussions concerning global citizenship is a conception that views the globe as a

3 This volume offers a glimpse into the variety of spaces in which citizenship has become a useful concept of analysis and activism. *See, e.g.*, Guy Mundlak, *Industrial Citizenship, Social Citizenship, Corporate Citizenship: I Just Want My Wages*, 8 THEORETICAL INQUIRIES L. 719 (2007); *see also* Karen Knopp, Private Membership (May 2006) (unpublished workshop paper, on file with Theoretical Inquiries in Law).

territorial extension (or expansion) of the nation-state, analogous to the way the state is seen as a territorial expansion (or a "container") of the sphere of the locality: it transcends territorial political units and contains them in a larger unified political unit. Indeed, the dominant conception of citizenship, which I refer to in the Article as the "container" conception, regards these three spheres as if they were neatly contained within each other: the globe (the big container) contains various nation-states (smaller containers), each of which contains various localities; ideally speaking, there is no territorial overlap between the various containers within each sphere, hence there is no piece of land that properly belongs to more than one nation-state or to more than one locality within it,⁴ and no locality belongs to more than one nation-state. Furthermore, an important part of the container conception of citizenship is that individuals, too, are neatly organized within these containers, with no overlap between their container-belongings. Thus, a person is usually the citizen (or resident) of only one locality and of only one state.⁵

This Article not only casts doubt on the accuracy of the container conception as a description of reality, but also questions its normative desirability. The interconnections between the different territorial spheres — a result of a growingly globalized world — are also causing a breakdown of the containers, rendering more and more individuals citizens of more than one state.⁶ A growing number of people are becoming residents of more than one locality, and even though many national legal systems refuse to recognize this fact and have failed to establish a legal regime of multiple local residencies, the challenge of overlapping local belongings is becoming more pressing, as various local government theorists have argued.⁷

4 Clearly, exceptions to this rule exist, but they are usually regarded as aberrations.

5 Both the global and the local spheres could be (and too often are) understood to be "creatures" of the state and therefore subordinate to it: localities are commonly conceived as administrative subdivisions of the state that can be cancelled at its will, and the international (often confused with the global) is conceptualized as the realm where states voluntarily agree to submit themselves to a common legal system. However, these understandings are highly contested and are far from accurate, as this Article seeks to demonstrate.

6 Peter J. Spiro, *Dual Nationality and the Meaning of Citizenship*, 46 EMORY L.J. 1411 (1997) (an extensive analysis of the changes in attitude towards dual nationality in the United States).

7 Jerry Frug, *Decentering Decentralization*, 60 U. CHI. L. REV. 253 (1993); Richard T. Ford, *City-States and Citizenship*, in *CITIZENSHIP TODAY: GLOBAL PERSPECTIVES AND PRACTICES* 209 (Thomas Alexander Aleinikoff & Douglas Klusmeyer eds., 2001).

These overlapping affiliations and identifications are causing individuals to participate, care, influence and feel impacted by more than one locality and more than a single state. Once the real contents of their citizenship are determined not only in their place of formal residency but also in other spheres — local, national and global — the pressure to acknowledge and regulate the de facto situation with de facto citizenship status (local or national) becomes ever more intense.

This Article begins with a brief overview of the emerging consensus in citizenship scholarship on the different locations and spaces where citizenship has become an operative political and legal concept. This consensus accepts the fragmentation and disintegration of the national realm into distinct spheres, but at the same time it quickly analogizes between all the new spheres, finding resemblances between them. I then move on to critique this hasty analogy by analyzing the uniqueness of each of the three territorial spheres of citizenship on which I have focused, their distinct logics of operation, and, finally, the way in which, despite their distinct logics, they are legally and institutionally intertwined with each other. Lastly, I offer some preliminary thoughts on the novel structure of citizenship and the normative possibilities for managing it.

I. THE STATE OF CITIZENSHIP

A student of contemporary citizenship literature can trace a new consensus among scholars, asserting that political, social and economic rights as well as participation in public life and identity-formation — all of which constitute various aspects of the broad concept of citizenship⁸ — are generated, managed and controlled today not only in the national sphere and by the organs representing it, but, in parallel, in many other spheres and by the multitude of organs representing these spheres. Among them, special attention had been paid to two new emergent species of citizenship: local and global. If citizenship had been, at least over the past two hundred years, a term exclusively associated with the nation-state — describing the legal relationship between an individual and his nation-state — it is currently moving, or "repositioning" itself (to use Saskia Sassen's term), to other domains as well, thus also changing the meaning of the term and its uses.

⁸ For an extremely helpful overview and analysis of the different trends within citizenship scholarship and various uses of the concept of citizenship, see Bosniak, *supra* note 1.

As I have already indicated, many scholars understand this transformation of citizenship to be a result of the weakening of the national state,⁹ which is itself both a propeller and an outcome of the process of globalization, in which people, goods, capital and images are increasingly disseminated throughout the world, and at an ever growing pace.¹⁰ This process involves a double movement of external global pressures on the nation-state and internal challenges that are weakening it from within. As Sassen clarifies, the current repositioning of citizenship — its shift from the national sphere into other locations as well — is a result of an extremely complicated set of changes that are transforming the previous world of sovereign nation-states: technological transformations that have accelerated globalization (such as new means of transportation and communication); the worldwide spread of an ideology and practice of deregulation and economic privatization; and the emergence of individuals and groups who are "increasingly unwilling automatically to identify with a nation as represented by the state."¹¹

The unwillingness (or perhaps inability) of various individuals and groups to automatically identify with a nation as represented by the state and its official organs is thus no less important than technological innovations and institutional rearrangements to understanding the transformation of national citizenship and the rise of local and global citizenships. Indeed, multiple identifications, overlapping communities and conflicting individual loyalties are yielding, as Thomas Franck argues, more complex personal identities¹² that are as powerful a source of the transformation of citizenship as other ideological changes or technological innovations. Decentered subjects,¹³ it can be maintained, possess a decentered citizenship(s) rather than a nationally-centered one; their membership, rights, belonging and participation

9 Saskia Sassen, *The Repositioning of Citizenship*, 3 NEW CENTENNIAL REV. 41 (2003) [hereinafter Sassen, *The Repositioning of Citizenship*]. Previous works by Sassen, as well as by other scholars, have amply made the point that nation-states throughout the world are currently losing their control (and monopoly) over significant segments of activities that used to be almost exclusively within their power to emerging global forces and to internal entities. See SASKIA SASSEN, *LOSING CONTROL? SOVEREIGNTY IN AN AGE OF GLOBALIZATION* (1996).

10 ARJUN APPADURAI, *MODERNITY AT LARGE: CULTURAL DIMENSIONS OF GLOBALIZATION* 1-23 (1996).

11 Sassen, *The Repositioning of Citizenship*, *supra* note 9, at 41.

12 Thomas M. Franck, *Community Based on Autonomy*, 36 COLUM. J. TRANSNAT'L L. 41, 63-64 (1997).

13 Frug, *supra* note 7.

in collective self-rule are no longer vested solely in the hands of the nation-state, but instead are determined and controlled in numerous spheres and by various entities.

Notwithstanding the claims that pure and exclusive state sovereignty never truly existed and that such sovereignty was merely a myth and "organized hypocrisy,"¹⁴ enough clear-cut processes currently mark a significant break from previous periods in which state and non-state actors (be they sub-national or supranational) shared the substance of that bundle of powers and authorizations called "sovereignty." Indeed, even if it is yet unclear what will come after the stage of exclusive state sovereignty, and what the main domain(s) of citizenship will be after the nation-state's decline (if such a stage will indeed take place), it seems that the belief in an inherent connection between the concept of citizenship and that of the nation-state — a connection that Hanna Arendt has expressed so strongly and many others have supported for a long period¹⁵ — is rapidly waning.

An important element in the disintegration of the institution of citizenship is the fact that, in T.H. Marshall's famous characterization, citizenship has increasingly been understood to require — both theoretically and practically — that the state provide its citizens with a comprehensive package of rights: civil, political and social.¹⁶ The concept of citizenship has also gradually come to mean that there cannot possibly be a "second class" citizen, and every form of legal discrimination against a group or individuals who are formal citizens of the nation-state has been framed as an offense to the equality implied in their citizen status.¹⁷ This progressive expansion of the concept and institution of citizenship has meant that more and more human activities and needs are understood to be within the purview of the nation-state, thus putting an incredible pressure on the concept and institution of citizenship as well as on the nation-state — the provider of these rights and needs. Various scholars suggest that, paradoxically, the expansion of citizenship to domains previously

14 STEPHEN D. KRASNER, *SOVEREIGNTY: ORGANIZED HYPOCRISY* (1999).

15 HANNA ARENDT, *MAN IN DARK TIMES* 81-94 (1968). A citizen, argues Arendt, "is by definition a citizen among citizens of a country among countries." *Id.* at 81. See the discussion Bosniak dedicates to Arendt's conception of citizenship in Linda Bosniak, *Citizenship Denationalized*, 7 *IND. J. GLOBAL LEGAL STUD.* 447 (2000).

16 T.H. MARSHALL, *CITIZENSHIP AND SOCIAL CLASS* (1949).

17 Indeed, this fact has already been observed by Marx in his famous essay "On the Jewish Question." See KARL MARX, *On the Jewish Question*, in *WRITINGS OF THE YOUNG MARX ON PHILOSOPHY AND SOCIETY* 216 (Loyd D. Easton & Kurt H. Guddat eds. & trans., 1997) (1844).

understood to be entirely private (usually referring to the component of social rights) is responsible, at least in part, for its disintegration.

That the meaning of being a citizen of a nation-state has evolved into a concrete, albeit contested, set of entitlements that go far beyond classical political rights (voting and being voted for office) has had two crucial consequences: First, in many countries the struggle over who is entitled to become a citizen has intensified, sparking a backlash of exclusion of "foreigners" — the meaning of which has become a highly debated issue — which has anyway been a feature of citizenship for a long time: harsher rules regarding immigration and naturalization and stricter border controls have been imposed. This has meant that many individuals increasingly find themselves unable to obtain citizenship status in their countries of residency, and hence are deprived of even the most basic political rights, let alone social and economic ones. Second, as states extended their reach into social and economic realms in order to provide their citizens with the substantive (and not only formal) aspects of their citizenship — schools, health, social services, housing and more — it became extremely difficult for them to determine which services their citizens actually needed and desired; it also became more difficult for them to provide the services efficiently and at high quality. In other words, pressures have arisen to decentralize the huge welfare state apparatus that evolved over the years in order to meet some of the challenges that it faced: the difficulty of figuring out the "general good" of large and diverse populations, and the inefficiency in the provision of public services (this view of localities is rightly attributed to the Tieboutian model).¹⁸

As I shall explain below in greater detail, both these processes are, I argue, interconnected with the growing importance of the local and global spheres of citizenship. The global sphere of citizenship is where newly formed institutions and norms have been steadily developing over the past fifty years, and even though they are far from being full and complete, even though these institutions are often even more prone to fall victim to the concerns over the ability to articulate a (global) general will/public good or to efficiently provide it, a tangible global sphere of citizenship is something that is worth discussing. The existence of the local sphere as a meaningful domain in which citizenship claims — for rights, membership,

18 These are the classic reasons that public choice literature has identified as motivating states to decentralize their service-provision powers to smaller territorial units. Suspicion of central states' ability to figure out the general good and provide it to their populations has motivated the famous work of Charles Tiebout. See Charles Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956).

and collective self-rule — are made and addressed is much more intuitively understood, mainly due to the long history of local citizenship, which precedes that of national citizenship. However, in recent decades local citizenship — or urban citizenship, as some call it¹⁹ — has been reinvented, reconfigured and refashioned, as a result of both internal transformations such as decentralization and privatization (that have taken place in many countries across the world) and external changes, namely, globalization (with special emphasis on immigration).

The very multitude of meanings that citizenship has acquired in recent years is undoubtedly linked both to the *actual* fragmentation of the national sphere and to the *ideological* shift, which has made the national-liberal project of weakening intermediary spheres between the state and the individual normatively less appealing than it used to be. Privileges, rights, duties, meaningful group memberships and collective identities are managed in various civil society associations and territorial units, and the ideological attack on the centralizing project of the nation-state has contributed significantly to this development.²⁰ Thus, the concept of citizenship is discussed not only in the context of the nation-state, but also in that of the city, the workplace, religions, the internet and elsewhere.

In part, the critique of rights and the understanding that rights, even when formally declared at the national level and by national institutions, are de facto managed, withheld, expanded, and balanced by various public, private and civil society entities, has contributed to this reality. Perhaps as a result, citizenship literature has emphasized the similarities between the various spheres in which citizenship is negotiated, often abstracting from the concrete realities in order to make broad claims regarding the validity and applicability of the concept of citizenship to all of them. In Part II I argue that it is important to maintain the distinction between the different territorial spheres but also to emphasize their interdependency in order to understand how citizenship operates today.

19 See, e.g., Reiner Bauböck, *Reinventing Urban Citizenship*, 7 CITIZENSHIP STUD. 139 (2003); Robert A. Beauregard & Anna Bounds, *Urban Citizenship*, in DEMOCRACY, CITIZENSHIP AND THE GLOBAL CITY 243 (Engin F. Isin ed., 2000).

20 Clearly, this attack has come at times from distinct, if not opposite, directions. One such important strand of anti-state-centralization is the public choice theory, which has doubted the existence of a general will of the people that can be formulated and represented by the state. See Tiebout, *supra* note 18.

II. THREE TERRITORIAL SPHERES OF CITIZENSHIP

This Article advances a conception according to which three meaningful territorial spheres currently structure the various aspects of what is understood to be citizenship, and there are good reasons for discussing them in greater detail and in some separation from other spheres of citizenship. To be sure, a first objection might be: why only three spheres and why these three? Indeed, the broad definition that citizenship has acquired today makes workplace citizenship, family citizenship, cyberspace citizenship and other types of citizenship all good candidates for a meaningful discussion. Why, then, focus on these somewhat "conservative" locations of citizenship, all territorial and governmentally controlled, and neglect the important discussion of alternative memberships? As many scholars suggest, there is a profit to be made discussing every sphere of human existence and its influence on our collective identities, group memberships and *de facto* — as well as *de jure* — rights.²¹ However, given the current structure of government in many countries all over the globe, and when considering various developments which I will analyze in some detail, territorial units — especially local and national units — rather than other civil society associations still occupy a unique place in our social and political existence.

This is mainly due to the fact that despite the advances in telecommunication technology, there seems to be a lingering real difference, as far as human experience goes, between virtual connection — be it by telephone, video, or the internet — and physical presence. Territoriality implies humans' embodied-ness, corporeality, and the fact that in territories, individuals can interact with one another in a way that is *qualitatively* different from non-physical encounters and existentially distinct from interactions in other, more virtual spheres. Clearly, this does not justify an automatic distinction between territorial spheres and non-territorial ones such as the family, workplace, or religion. Indeed, workplaces, families, NGOs and other supposedly non-territorial spheres also have a material existence with very concrete places and territories in which they are set. Where large territories are concerned, on the other hand, physical encounters and the importance of physical proximity become completely theoretical.

²¹ Indeed, this volume is a fine example of the wide range of topics for which citizenship is meaningful and constructive as a theoretical and practical lens through which to look at various pressing legal dilemmas and problems.

Yet what truly distinguishes the territorial nature of localities, of states and of the world is the fact that, *as a legal matter*, they are understood to be related to a concrete territory, and by necessity so; territoriality, rather than other elements, is perhaps the most crucial component of their legal definition and also of the way they are understood and justified ideologically. The centrality of the territorial aspect to the legal personality of the local, national and global sphere has implications that I will discuss here. It also explains why, despite various analogies that can be made between these distinct spheres, they function differently and have different logics as regards the citizenship that each implies.²²

A. The Local Spheres of Citizenship

There seems to be a consensus among legal theorists, political scientists, and social theorists that there is such a thing as local (or urban) citizenship.²³ It is less clear, however, what this actually means, what its concrete substance is, or what it should be. It is often also not entirely agreed what the term "local" refers to, since it depends on a highly contingent matter: the exact internal division of governmental authority in each national setting between different levels of government. In some instances, discussions of local or urban citizenship refer to a single city; at other times local citizenship deals with issues pertaining to the behavior of a group of localities (forming a metropolitan area) — each a distinct legal entity — thus obscuring the exact legal form and context in which the localities operate; sometimes, "local" actually means regional, provincial, or some other sub-national governmental level, not necessarily a local authority. These different meanings and uses of the term reflect both disciplinary boundaries — local government scholars are naturally interested in localities in the narrow sense while political scientists are usually interested

22 Clearly, my focus on territoriality misses important human interactions that resemble citizenship, which take place in other spheres. The same can be said of other territorial units such as private communities, company towns and communal arrangements that have not received the full political acknowledgement of the state and thus remain outside the scope of this Article. I believe that my analysis can serve as a basis for future discussions of these spheres as well.

23 See, e.g., Janine Brodie, *Imagining Democratic Urban Citizenship*, in *DEMOCRACY, CITIZENSHIP AND THE GLOBAL CITY*, *supra* note 19, at 110; Beauregard & Bounds, *supra* note 19; James Holston & Arjun Appadurai, *Introduction: Cities and Citizenship*, in *CITIES AND CITIZENSHIP I* (James Holston ed., 1999); Bauböck, *supra* note 19; KATHERINE TEGTMEYER PAK, *TOWARDS LOCAL CITIZENSHIP: JAPANESE CITIES RESPOND TO INTERNATIONAL MIGRATION* (2001).

in various forms of "localisms," broadly understood as sub-national entities — as well as differences in the political and legal realities in different countries.

Clearly, matters pertaining to citizenship — membership in a polity and a comprehensive package of rights and entitlements — are granted, negotiated and managed in and by *various* types of sub-national territorial units. In theory, sub-national territorial units function in two distinct ways: as far as national citizenship goes, they execute and provide many of the rights and entitlements granted by the nation-state; in addition, they offer their residents a "local" citizenship which reflects the fact that, alongside the national political community and citizenship, there exists a local polity with its own principles of membership, procedures of participation, and catalogue of rights and entitlements (hence, local citizenship).²⁴ The legal nature of these sub-national units varies dramatically: some are constitutionally protected and others might be considered creatures of the state that can be abolished at will (sometimes even administratively); some have a history preceding that of their state and others were created only recently; some are treated as legally more fundamental than their state (whose function is merely to coordinate and enable the autonomy of the sub-national units), while others are viewed as administrative subdivisions of their state.

They all, however, share three important traits in common: first, they provide various services and protect certain rights that are part of the national citizenship package (education, welfare, health, etc.). Second, such sub-national political-legal entities mediate between the national community and smaller sub-national communities or, to put it differently, between national elites and sub-national territorial elites. In this capacity, they help nation-states negotiate the inherent tension between a national "public interest" (as problematic and artificial as it may be) and the preferences and specificities of smaller sub-national groups (as much as they, too, disguise internal conflicts and disagreements).²⁵ In this sense, they manifest the need to break down the larger national body into subsections with flexible functionality and relative autonomy, thus creating a structure of relatively private spheres within a larger public sphere. Third, and highly important

²⁴ I address the conflation, confusion and interconnection between these two types of citizenship in the following paragraphs.

²⁵ To be clear: I do not mean to suggest that such a national public interest is something whose existence is natural or unproblematic. Indeed, it is highly contested and many doubt that it exists. However, as an ideal construction, nation-states act on the basis of such unified public interest all the time. Likewise, smaller sub-national units do not necessarily have a coherent interest or a set of clear preferences, and they too are rife with internal conflicts and competing views.

to my argument in this Article, is the unique *logic of citizenship* that local citizenship seems to be based upon, which follows from its traits: this logic seems to assume a unique type of membership that is based on the presence in a territory more than on any essential traits such as belonging to a nation or to a species (such as humanity, which is the basis for global citizenship). Indeed, the mere presence in a sub-national territory is often underscored, albeit in slightly different terms, when considering the merits of localism: physical proximity between individuals that enables better democratic deliberation and direct political action; random daily encounters that function as a good means of monitoring their political representatives for the constituency.²⁶

It is extremely interesting that despite their obviously unrealistic and romantic nature, these proximity- and smallness-related virtues still hold sway over the imagination of most political theorists.²⁷ Many sub-national territories are as big as nation-states,²⁸ yet they are still thought of as enabling a different kind of politics than the national variety: one that is based on a bottom-up ethos, that encourages the participation and political involvement of ordinary people and of lay persons, and that does not suffer (or suffers less) from corrupt rent-seeking elites that manipulate the concept of the "public good" for their own private interests. In Part III I will reconsider this logic of

26 These are the advantages of small territorial units: territorial proximity between individuals that enables daily and random encounters; the feeling of being "stuck" together in a small place; cheaper transaction costs; greater ease in formulating common goals, purposes, and preferences; lack of circularity problems in decision-making; ability to better monitor officials; greater accessibility of the government to the people, which induces people to participate in self-rule. These are just some of the factors that seem to characterize smaller territorial units. Undoubtedly, they also stand at the heart of contemporary fascination with decentralization in general and with urban citizenship in particular. Altogether it is a strange mix of communitarian values, free-market ideology, suspicion of large government and participatory-democracy political theory that is helping to promote decentralization schemes throughout the world, often referred to as the principle of subsidiarity (according to which central governments should be limited to a subsidiary function, only acting where a more immediate local level is unable to act, or fails to do so).

27 See Roderick M. Hills, Jr., *Romancing the Town: Why We (Still) Need a Democratic Defense of City Power*, 113 HARV. L. REV. 2009 (2000); Roderick M. Hills, Jr., *Corruption and Federalism: (When) Do Federal Criminal Prosecutions Improve Non-Federal Democracy?*, 6 THEORETICAL INQUIRIES L. 113 (2005). Cf. Yishai Blank, *The Resilience of Participation: A Comment on Prof. Hills*, 6 THEORETICAL INQUIRIES L. 155 (2005).

28 Many cities and definitely provinces and cantons throughout the world are nowadays larger than unitary states were a hundred years ago.

local citizenship and contrast it more sharply with the competing logics of the national and global spheres. Let me now return to the organizing principle of local citizenship.

1. The Principle of Residency

When I analyze the spheres of local citizenship in this Section, I use the plural "spheres," as it captures various sub-national territorial legal entities, ranging from states and provinces to cities and towns. And although the types of local spheres conjoined under this term differ sharply from one another, they share a similar logic of citizenship that stands in opposition to — and complementarity with — the spheres of national and global citizenship. This logic, I argue, is manifested in the principle of residence: *jus domicili*.²⁹ Traditionally, and not insignificantly, local citizens are referred to as residents and not citizens; and, indeed, the basis for granting an individual local citizenship is neither *jus soli* (birth in the territory) nor *jus sanguinis* (descent from a citizen parent), nor a complicated form of naturalization, but rather some kind of *jus domicili*, i.e., residency in the locality. Even radical localists — strong proponents of local power — such as Jerry Frug and Richard Ford, who offer to extend local suffrage to non-residents, base their claim on semi-residential attachments of the individual to a locality.³⁰ In other words, what is almost never discussed is the option of fully analogizing the conditions of local to those of national citizenship, in the sense that local citizenship would be dependent on local lineage (local *jus sanguinis*), birth in the locality (local *jus soli*), or some complicated form of naturalization.³¹ Instead, one can become a local citizen as long as one is a resident of the locality *and* is also a national of the relevant country. The second condition is not always required, as we shall see below, and as the image of the undocumented migrant worker has made visible. In other words, local citizenship is, in fact, a result of *jus domicili* at the local level and, often (but not always), of an additional condition which requires the individual also to be a national.³²

The principle of residency reveals a profound distinction between the theoretical foundations of local citizenship and those of national citizenship. This Article is too short to provide a comprehensive summation of

29 This fact has been pointed out by Bauböck. See Bauböck, *supra* note 19, at 150.

30 Such attachments can be based on workplace, relatives, or other tangible connections to the locality. See Frug, *supra* note 7; Ford, *supra* note 7.

31 Similarly, the option of granting national citizenship to everyone who resides within a country is hardly accepted anywhere as a process of naturalization.

32 Bauböck, *supra* note 19, at 149-50.

nationalism and its philosophical underpinnings, yet the principles of *jus soli* and of *jus sanguinis* demonstrate the profound attachment that is assumed — and constructed — between the citizen and her nation, especially as compared to the alternative principle of *jus domicili* (and the weaker attachment it constructs between a local citizen and her locality).³³ The power of the two dominant principles of national citizenship — lineage and birth in the territory — stems precisely from their arbitrary nature and the fact that the individual has no control over them; one cannot choose where and to whom to be born. Not only does this arbitrariness put a limit on the number of citizens, but it also creates the somewhat mystical connection between the individual and her nation. By comparison, residency is thought to be supremely liberal: voluntary, rational, and justifiable; one elects in which locality to live, contributes to it through her taxes and/or activities, is granted membership in this community, and is given the equal rights that follow this membership status. And what structures the discussion regarding local citizenship is the legal norm accepted almost worldwide, according to which all those who reside within a locality, for all practical reasons, are its citizens, or will become its citizens within a limited timeframe.³⁴

Where countries vary, however, is whether they link local to national citizenship by requiring the latter as a precondition for the former.³⁵ This, of course, is a highly important variation that has caused much controversy and struggle, as it challenges the container conception of citizenship. Theoretically, only nationals are expected to reside within the whole of the national territory, and thus the problem of non-citizens becoming permanent residents of a locality should come up only rarely. Yet this issue has become extremely salient and pervasive due to globalization — the huge flow of immigrants and (documented and undocumented) guest workers — which disturbs the ideal of the container conception, and exposes the possibility of de-linking local and national citizenship.³⁶ Enabling localities (and other

33 Those who obtain their national citizenship status through naturalization are usually only a small minority of the population, and monitoring the percentage of citizenship-through-naturalization is — at least over the past hundred years — the concern of states.

34 It is common to have a qualification period in which the newcomer is not yet granted the full package of rights that comes with the status of a local citizen (or, as they are more commonly called, local residents).

35 On efforts in the United States to break down the linkage between national citizenship and local citizenship, see Virginia Harper-Ho, *Noncitizen Voting Rights: The History, the Law and Current Prospects for Change*, 18 L. & INEQ. J. 271 (2000).

36 Bauböck, *supra* note 19, at 149-50; Harper-Ho, *supra* note 35.

sub-national territories) to grant their residents local citizenship regardless of their nationality raises the distinction I made previously between two meanings of local citizenship, indeed between two opposing understandings of sub-national territories: one in which the locality is seen as an organ of the central government, and the other in which it functions as an autonomous political community with self-rule and an independent package of rights and entitlements.³⁷

These two articulations of sub-national, "local" governmental entities are of course ideal types that mark the extremes of a spectrum on which most sub-national territorial units are located. In the real world they do not exclude each other, and in many countries local entities function as both organs of the nation-state as well as autonomous, self-governing associations. Normally, local authorities such as cities and towns would be closer to the organ-of-state ideal-type, while provinces and cantons in federal regimes would be more like an autonomous self-ruling association.³⁸ Yet what truly characterizes sub-national territories is precisely the maintenance of the ambivalence between parochial particularism and the universal aspirations that nationalism (paradoxically) represents. When severing the connection between national and local citizenship is considered, these two functional approaches should be taken into account, since it could be maintained, at least initially, that when a sub-national territory functions as an organ of the state — providing national services and representing the nation-state — it makes sense to maintain the requirement that local citizens be also national ones. But on the other hand, if only purely local rights and local matters are concerned (i.e., matters that have been declared to be of no national interest and within the autonomy of the local entity), there seems to be no problem in letting non-nationals become local citizens, surely if the already existing local citizenry so agrees.

However, in real-life scenarios, the clear distinction between the two types of local citizenship is considerably more blurred. First, local entities are sometimes represented as such in national assemblies (this is the case with regard to states and provinces in many federal regimes and

³⁷ Peter Spiro analyzes various federal models and their attitude towards the immigration policies adopted by their sub-national units. He finds interesting variations between the different approaches, depending on the federal model they adhere to. See Peter J. Spiro, *Federalism and Immigration: Models and Trends*, 53 INT'L SOC. SCI. J. 67 (2001).

³⁸ This is a broad-brush depiction of the legal and constitutional situation, and exceptions can be found throughout the world. Scandinavian localities are one such exception, better described by the autonomous conception.

also localities, though more rarely, in some unitary systems as well).³⁹ In this case, extending the local franchise to non-nationals might mean that non-citizens would influence the national democratic process, turning local citizenship into a de facto national franchise. Second, it is extremely unrealistic to postulate that local entities — regardless of their formal representation in national organs — have no influence whatsoever over the de facto provision of the so-called national package of social and economic rights. Even when functioning as service providers, local entities have some degree of discretion — often greater than that of the state's central organs — over the quality and quantity of services such as education and welfare. Hence, if local officials and decision-makers are elected by non-nationals, this might have an impact on their decisions regarding the content of so-called national citizenship. Third, any attempt to draw a sharp boundary between purely local matters that are (or should be) delegated to the local citizenry and national matters that should be decided upon by nationals only is doomed to fail.⁴⁰ This means that there will always be slippages from the local to the national sphere and vice versa.

2. *Residency and Free Movement*

Let us now turn our attention from the important yet specific problem of non-national local residents to the more common issue of national citizens who move around the national territory from one locality to another. For this group, the idea that local citizenship — be it defined as full membership, as (political or other) rights and duties, as privileges, or as active participation — is obtained by the simple act of moving into a town (within the national territory) is taken for granted and seen as a matter of fact, not of law. But clearly, this is a legal rule, and like every rule it could be different. In fact, proclaiming that residency is the principle for obtaining local citizenship is saying very little, since deciding who is a resident is a complicated legal determination. It can range from simply being in the relevant territory for a certain number of days in a year, through demonstrating significant ties to the territory (work, investment), to permanently living in the territory (either renting or owning an apartment), and so on. Each of these possible residency tests would make a different group of individuals eligible for local citizenship; each would exclude others.

The idea that local citizenship should be obtained, indeed is obtained,

³⁹ In Germany and Austria, for example, some localities have obtained federal status and are thus represented in national organs. See Bauböck, *supra* note 19, at 149-50.

⁴⁰ For a brilliant and comprehensive analysis of such attempts in the United States, see David Barron, *Reclaiming Home Rule*, 116 HARV. L. REV. 2255 (2003).

by simply moving from one place to another seems to lie at the heart of public choice theories that explain why sub-national governments — rather than national ones — are better fit to provide various public services to national citizens.⁴¹ In this view, one of the deficiencies of national citizenship is that individuals have no effective way of leaving their country due to the common legal norm according to which every person usually has only one nationality.⁴² This norm is compounded by other legal norms — some international, others domestic — that usually make naturalization in other countries extremely difficult. National citizens are thus "imprisoned" within their national territories, which creates a monopoly of the state over public services and goods.⁴³ As a result, citizens' true preferences cannot be disclosed and there is a decline in the quality of public goods and services.⁴⁴ Establishing sub-national entities — states, provinces, localities — and endowing them with powers over the provision of certain public services allows the national citizens to "exit" without actually leaving the country, insofar as they can move between these territorial entities and choose which will provide them with the public goods to which their national citizenship status entitles them. Once competition develops between such sub-national entities, more efficient provision of public services will probably follow;⁴⁵ individuals will also enjoy

41 This theory was developed, as already noted, by Tiebout. See Tiebout, *supra* note 18. For a detailed analysis of public choice theory's analysis of the importance of local governments and of freedom of movement, see Yishai Blank, *Brown in Jerusalem: A Comparative Look on Race and Ethnicity in Public Schools*, 38 URB. LAW. 369, 380-84 (2006).

42 As already indicated, this norm seems to be waning. See Spiro, *supra* note 6.

43 The basic attributes of public goods are that they are non-exclusive and non-rivalrous, and thus they will not be produced by any private entity since shirking and free-riding cannot be prevented. However, there are goods that are non-exclusive and non-rivalrous in the local sphere, but other localities' residents can be excluded. Such goods are not purely public, since private actors might wish to provide them, but they can be produced by public entities such as localities. See Paul A. Samuelson, *The Pure Theory of Public Expenditure*, 36 REV. ECON. & STAT. 387, 388 (1954).

44 Very roughly and crudely, this is the famous "tragedy of the commons." See Garrett Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243 (1968).

45 I still need to explain why such competition would evolve at all. It can be argued that localities will have no incentive to compete with each other in order to attract citizens into their territory, since they are indifferent towards the size of their population, and as long as they can get the funding from the central government for the services they provide their residents with anyway. However, it may reasonably be assumed that this is not the case, and that most sub-national territories actually care to attract people into their territory. First, local politicians often draw their political clout from the population size, and thus they personally have an interest in enlarging their local constituency. Second, under most funding schemes, localities will be able to enjoy

greater liberty, since they will be able to choose their place of habitation more freely.

But without free movement between sub-national territories, there can be no real competition, and efficiency and liberty might be curtailed. This is why free movement between localities is such a governing principle of federalism and of local government policy according to public choice theorists. This is also the reason why so many attacks on the normative desirability of the Tieboutian model have emphasized the fact that, in reality, many citizens are actually tied to their locality, or their movement at least is seriously hampered due to a variety of reasons.⁴⁶ Some do not move because they have freely chosen to live where they were born, where their family and friends live, where the weather is better, or where they feel comfortable. But many others cannot move due to a legal regime that imprisons them within their sub-national territory. Planning and zoning, business licensing, public housing policies and other, often locally controlled rules and regulations are all used by sub-national territories to constrict the movement of citizens within the national territory.⁴⁷ Furthermore, there are countries in which movement between localities is explicitly restricted by national law.⁴⁸ In other words, local residency is not so easily obtained, and there are indications that sub-national units are increasingly engaged in practices whose main goal is to curb the mobility of weaker populations and prevent them from obtaining local citizenship.

Thus, contrary to the simplistic notion that the local citizenry is shaped by the legal rule of *jus domicili* and the free choices of individuals who decide to live in one locality rather than another, it is in fact determined in a much more complicated way. *Jus domicili* is only one legal factor within an array of legal norms and social realities that impact the degree of ease with which one can become a resident of a locality, including: the cost of housing (often a result of planning laws at both the local and national level) and the

the advantages of economies of scale, even if the sub-national entity is formally equally funded. The money saved from an increase in the number of local residents will be directed to local causes and usually benefit the local population.

46 See GERALD E. FRUG, CITY MAKING: HOW TO BUILD COMMUNITIES WITHOUT BUILDING WALLS (1999); William W. Bratton & Joseph A. McCahery, *The New Economics of Jurisdictional Competition: Devolutionary Federalism in a Second-Best World*, 86 GEO. L.J. 201 (1997).

47 See Blank, *supra* note 41, at 383-84.

48 Of this kind is the Chinese system, which imposes strict limitations on the permanent movement of citizens from one locality to another. Such restrictions are regarded as a clear indication of the legal system's tyrannical and illiberal nature. Bauböck calls such regimes "authoritarian." See Bauböck, *supra* note 19, at 149.

availability of affordable public housing; the existence of social services and their accessibility to poor people; the variety of jobs and land uses, a result of local zoning and land use schemes; the level of violence, aggression and determination with which local law enforcement agencies chase away the homeless (or those without permanent residency), and more. These factors derive from a combination of local and national policies. Quite importantly, the exact division of powers between the national and local governments as regards these important determinations of local citizenship has been, until quite recently, a matter of national policy, or to be more exact, the result of an ongoing dialogue between the national parliament, central national government, and local governments. But, as I have demonstrated elsewhere, these dynamics are currently changing, as more and more global actors are becoming involved in these previously internal affairs of determining the degree of movement between localities in the same country.⁴⁹

One such example is the Israeli case of *Adalah v. Tel-Aviv*,⁵⁰ where the practice — commonly engaged in by predominantly-Jewish localities in Israel — of posting names on street signs in Hebrew and English only, rather than in Arabic as well, was challenged. Domestic law delegates localities with the duty to place names on street signs within their jurisdiction. A striking argument made by the plaintiffs was that according to the United Nations International Covenant on Civil and Political Rights (ICCPR),⁵¹ the State of Israel has to "respect and protect" the language of minorities, and since localities are state organs, they too are bound by this duty. The Israeli Supreme Court rejected the claim that the ICCPR established a positive duty upon the state and the city, but finally accepted the petition on different grounds. The case thus demonstrates not the dissolution of the state or the "victory" of global over national forces, but the changing dynamics in the determination of the meaning of citizenship.

Though this case can be analyzed as dealing with the substantive meaning of being an equal citizen of the State of Israel, and more particularly with being an *equal local* citizen of Tel-Aviv (and other localities), it should also be seen as being about the more basic issue of mobility and the ability to become a local citizen throughout the national territory. Localities, so it seems, did not object to Arabic signs only because they would cost them money,⁵² but also because it meant that these localities would become more

49 See Yishai Blank, *The City and the World*, 44 COLUM. J. TRANSNAT'L L. 875 (2006).

50 HCJ 4112/99 *Adalah v. Municipality of Tel-Aviv* [2002] IsrSC 46(5) 393.

51 International Covenant on Civil and Political Rights, Mar. 23, 1976, 999 U.N.T.S. 172. The ICCPR was ratified by the State of Israel in 1991.

52 There is no doubt that money played a role in localities' opposition to the petition.

accessible to Arabs. Clearly, language barriers are highly important in limiting the exit and residential options of various groups, especially minority groups. By prohibiting such language barriers, the Israeli Court curbed the ability of localities to place obstacles in the way of Arab citizens to become local citizens in predominantly Jewish localities. What is even more significant than the substantive position taken by the Court is the fact that international covenants, such as the ICCPR, could be construed as impacting the mobility of citizens between localities, thus *de facto* — even if not purposefully so — restricting the ability of states and localities to impose limitations on the acquisition of a specific local citizenship.

3. *Who Decides?*

The example discussed above brings me to the second important question regarding local citizenship. While the first, most basic question is probably: who should be a citizen of X? — a question answered by the various tests discussed in this Part (*jus soli*, *jus sanguinis* and *jus domicili*) — the second is, to my mind: who should decide who a citizen of X should be? And while traditionally (definitely in the context of national citizenship) the answer to this question has been those who are already citizens through their representatives, the *Adalah* example might suggest otherwise. Although citizenship is indeed understood to be a practice of self-rule, and as such it ought to be for the citizens to decide who a citizen is, as regards local citizenship things are slightly different.

First, I have already argued that the ability of local citizens to decide for and by themselves who is a local citizen is regularly disrupted by the national sphere, through legislative or administrative means. Indeed it is often the business of national legislatures to determine who is entitled to vote in sub-national (regional, provincial or local) elections; such voting schemes are frequently subject to revision and public debate. In Israel, for example, non-citizens — who are obviously deprived of the national franchise — can vote in local elections if they have acquired the status of permanent residency⁵³ (as determined and applied by the national legislative and executive branches).⁵⁴ In some European countries (such as Germany and Austria), non-nationals are specifically prohibited from voting in municipal elections, while in other countries (Sweden, Denmark, Norway and Finland)

Localities fought the petition since it would cost them a lot of money, which they would not receive from the state due to their incorporation as independent public corporations vested with exclusive authority over street signs.

⁵³ Municipalities Ordinance (New Version), 1964, 9 Dinei Medinat Yisrael 256.

⁵⁴ Citizenship Law, 1952, S.H. 146.

it is a common practice to grant non-nationals local suffrage.⁵⁵ And the United State is internally divided on this issue, with the final authority to determine it given to the states.⁵⁶

Second, the makeup of the body of the local citizenry also results from the way sub-national boundaries are drawn. While in federal regimes the constitution often protects the integrity of states' boundaries, it is hardly ever the case that municipal borders receive such constitutional protection.⁵⁷ The procedures for the determination and demarcation of local boundaries vary quite drastically in different domestic settings. Some countries make it the business of the national legislature, while other countries make it a prerogative of the national executive. Other legal systems give localities themselves wide discretion over this determination: in some it is a matter for the local governments to decide, while in others it is delegated to a plebiscite; and while sometimes it requires a consensus of all the localities involved, in other instances no single locality holds veto power over this decision.

Yet this national monopoly over the determination of local boundaries may be slowly waning, as global and international norms regarding this issue are in the offing. European Union citizenship, for example, inherently grants voting rights in local elections throughout the Union, depriving member states of the ability to limit the local franchise to the state's citizens only.⁵⁸ An anecdotal yet fascinating example of the evolution of an international norm regarding the demarcation of local boundaries is the Slovenian case of *Uradni*. In this case, the Slovenian Supreme Court intervened in a national scheme of local boundary demarcation, ruling it did not conform to the "European concept of local government" since it created a locality with too many inhabitants.⁵⁹ The term "European concept" here clearly suggests a reference to an international standard, to which states are now expected to conform, even when dealing with what was previously an exclusively national matter: the internal division of the territory into sub-national territorial units.

55 Bauböck, *supra* note 19, at 146-52.

56 Harper-Ho, *supra* note 35.

57 Localities in Scandinavian countries are, once again, an example of rare protection of extreme local power.

58 Bauböck, *supra* note 19, at 148. However, since EU citizenship does not imply a franchise in provincial or regional elections, where a city is also a region (or province) EU citizens cannot vote in its municipal elections. *Id.*

59 Oldočba št. U-I-90/94, Uradni list Republike Slovenije št. 29/94 (Slovn.), available at <http://www.sigov.si/us/eus-decs.html> (English translation). For a detailed description of the case, see Blank, *supra* note 49, at 920, and Bojan Bugaric, *Courts as Policy-Makers: Lessons from Transition*, 42 HARV. INT'L L.J. 247, 268-69 (2001).

A possible development of international norms pertaining to local citizenship and local boundary demarcation may materialize if the United Nations further advances its plan to formulate a World Charter of Local Self-Government.⁶⁰ Though still far from completion (let alone being signed and ratified by any state), the document urges countries to adopt constitutional protections of sub-national territorial units (such as localities and regions), and to particularly respect the demarcation of local boundaries.⁶¹ Such exact protection of local boundaries from state intervention has existed in the European context since the publication of the European Charter of Local Self-Government in 1985.⁶²

These developments suggest that the answer to the question "who decides on local citizenship?" is much more complicated than might have been initially supposed, and it involves local, regional, national, and global constituencies. In the following Section I address the impact of this understanding on the substance of citizenship.

4. The Content of Local Citizenship

Until now I have refrained from dealing with what may be the hardest question: what is the substantive content of local citizenship? I have not left it to the end of my discussion of local citizenship by mistake. As already indicated, due to the multitude of meanings of the term citizenship, it would be overly ambitious to address all the possible substantive meanings of

⁶⁰ In 1998, the United Nations Center for Human Settlements (UNCHS), together with the World Association of Cities and Local Authorities Coordination (WACLAC), published a document entitled "Toward a World Charter of Local Self-Government." See U.N. Ctr. for Human Settlements (Habitat) & World Ass'n of Cities & Local Auths. Coordination (WACLAC), *Towards a World Charter of Local Self-Government* para. 4 (May 1998), <http://www.unchs.org/unchs/english/feature/charter.htm> [hereinafter *World Charter*]. The document, as well as the workings of UNCHS — now called UN-Habitat — are an ongoing process to strengthen localities and "human settlements," which began in the late 1970s and has produced other pro-local documents such as the Habitat Agenda and other UN declarations. For a detailed description of this process, see Blank, *supra* note 49, at 907-15.

⁶¹ Article 5 of the World Charter, *supra* note 60, states that: "Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is legally permitted."

⁶² European Charter of Local Self-Government, Oct. 15, 1985, Europ. T.S. No. 122. The European Charter of Local Self-Government was issued for publication after its final drafting in 1985 in Strasbourg, in the framework of the Council of Europe. Since then it has been signed by over thirty countries, and is a prerequisite for accession by new member states to the Council of Europe and the European Charter of Human Rights.

local citizenship: rights and privileges, participation, equal membership. It is more important to me in this discussion to demonstrate that whatever the substantive challenges that sub-national territorial units have to deal with — immigration, social fragmentation, economic development, etc. — structurally they constitute unique governmental entities: at the same time that they function as service providers on behalf of the nation-state, they also are independent associations that *recognize and construct* semi-private territorial spheres for socio-cultural-political communities. Therefore, the content of local citizenship manifests the dynamic tension between the larger national citizenry (with its specific articulation of rights and entitlements) and smaller voluntary territorial associations that articulate their own preferences through their legal powers and institutions. These struggles necessarily impact the identity of the local citizenry, the identity of those who will make this determination, and the substantive meaning of local citizenship. Hence, when one moves from one locality to another, one does not really choose among presumably pre-existing packages of services but actually goes through qualitatively different territories; and one's movement pretty rapidly impacts the very content of the localities.

It is tempting to view the legal institutionalization of sub-national territorial entities such as cantons, provinces and cities as being either totally artificial, resulting in the *creation* of local identities and communities out of thin air, or as being wholly natural, consisting simply of the *recognition* of pre-existing local identities and communities.⁶³ It is also tempting to think that the first conception implies a "thinner" local citizenship, while the latter mandates a thicker one. After all, if local citizenship is anyway an artificial construct devised and controlled by the state, sub-national territories ought to supply services to their residents with as little discretion as possible, and must owe the highest degree of fidelity to the national citizenry and its representative organs in all important matters. If, on the other hand, local citizenship is a legal construct that aims to *recognize* an already existing, pre-legal local community, local citizenship should be thick, meaningful, and respectful of the community's self-rule. However, in many cases the distinction between recognition and construction is murky, if not outright fictitious, and very soon it becomes unclear whether a legal determination to establish this or that sub-national territory (be it a locality or district)

⁶³ Richard Ford analyzes the way in which the ambivalence between construction and recognition of local communities plays a role in U.S. local government law, and in the perpetuation of racial segregation in the U.S. in particular. See Richard T. Ford, *Geography and Sovereignty: Jurisdictional Formation and Racial Segregation*, 49 STAN. L. REV. 1293 (1997).

is the reason for a local identity or its outcome. It is usually the case that sub-national territorial units have a historical origin whose own source might sometimes be legal rather than purely pre-legal; and anyway the legal "recognition" also constructs the territorial division, since by reinforcing and authorizing certain territorial units it hampers the "organic" evolution of others.

Regardless of this inherent ambivalence, local citizenship is most obviously an area where an elusive national identity and common good clash with local preferences and particularistic tendencies. Which rights and entitlements a locality grants its citizens is an outcome of a complicated mixture of national substantive decisions about social and political rights, the degree of autonomy and discretion the state delegates to its sub-national territories, and the independent determinations made by the locality within its semi-autonomous sphere. Over the past few decades, various global and international entities — international organizations, transnational organizations, and international trade agreements (such as NAFTA) — have begun impacting local citizenship as well, by affecting both the form and content of sub-national territorial units and their relationship with their states.⁶⁴ The evolution of international legal norms — both customary and treaty — that dictate a catalogue of substantive political, civil and social rights that states ought to give to every citizen (and often even to aliens) throughout their territory means that provinces, cantons and cities are also under the obligation to provide and protect these rights, since territorial sub-national units are, as a matter of international law, considered to be part of the state.

Thus, though we began with a stylized notion that local citizenship — whatever its concrete content might be — is determined by the state and the localities themselves, we have now reached a conclusion that global forces are also involved in the determination of the local sphere of citizenship. Such global forces are no mere social actors who operate through the market — these forces obviously also have a crucial impact on the conditions in which local citizenship is formed and shaped; they are legal actors who operate through international legal mechanisms, regional treaties, and transnational legal norms. In Part III I shall discuss the meaning and some of the normative implications of this transition.

⁶⁴ A few recent works analyze this development in detail. See Gerald E. Frug & David J. Barron, *International Local Government Law*, 38 *URB. LAW.* 1 (2006); Yishai Blank, *Localism in the Global Legal Order*, 47 *HARV. INT'L L.J.* 263 (2006); Blank, *supra* note 49.

B. The National Sphere of Citizenship

To national citizenship I shall devote a much leaner discussion than to local citizenship. National citizenship has dominated the theories and practices of citizenship over the past two centuries, so much so that the very term "citizenship" itself has come to be identified with national citizenship, despite its origin and despite long periods in which citizenship was actually tied to local communities. Furthermore, citizenship has traditionally been associated with political rights — the franchise to vote and be voted for — and with the basic notion of being a member of a polity. This is why so much of the writing and debate over citizenship still revolves around the issues of basic political rights and immigration. However, over the past one hundred years (even longer in some countries), citizenship has been understood to include a wide range of social and economic rights.⁶⁵ And, as Bosniak convincingly shows, parallel to the rights-based citizenship there is also an understanding of national citizenship as being about participation, sharing a burden, civic virtues and duties.⁶⁶ As I demonstrated in the previous Section of this Article, however, the dilemmas of citizenship involve a whole lot more than its concrete content. Therefore I would like to engage, albeit more succinctly than in my discussion of local citizenship, with the structural problems of national citizenship and its relations to local and global citizenship and to the unique logic that they present.

Here, then, I argue that in the context of national citizenship, too, questions regarding who a citizen is and who gets to determine who a citizen is are not peripheral but central to debates about citizenship and that, more than ever, *global and local actors are impacting the form and content of national citizenship*: who is a national, who decides on these matters, and what rights, privileges and immunities citizens possess vis-à-vis their state. It is important to observe that the nation-state is being "attacked" both from above (i.e., international and transnational entities) and below by elements that were once contained within the state (or even operated as agents of the state) and are now becoming independent and autonomous.⁶⁷ It's an overwhelming though unorchestrated attack. Some of the forces are new, others are even

⁶⁵ For this seminal formulation of citizenship and its evolution, see MARSHALL, *supra* note 16.

⁶⁶ Bosniak, *supra* note 2.

⁶⁷ Anne Marie Slaughter makes the case for a novel conceptualization of the New World Order, in which the state is "disaggregating into its separate, functionally distinct parts." See Anne-Marie Slaughter, *The Real New World Order*, FOREIGN AFF., Sept.-Oct. 1997, at 183, 183-84. Though Slaughter does not mention local governments as one of these elements, elsewhere I have identified them as also

older than the state itself; and while some are purely ideological, others are material and technological. That national citizenship has been trespassed upon and decentralized over the past few decades is a result of a large number of factors; in this Article I can only sketch several of them very briefly, and focus on those that have impacted citizenship most directly.

Among the *legal* factors that have weakened state monopoly over citizenship I would like to note the following. First, we have seen the evolution of a large number of international norms and institutions whose main goal is to do just that: to place procedural and substantive limits on state autonomy vis-à-vis other states and vis-à-vis its own citizens, and to transform — if not put a complete end to — the concept of sovereignty that has reigned in the international sphere for centuries. Binding international legal norms now exist in numerous substantive areas of citizenship, limiting state discretion as regards the rights — political, social, economic, cultural and other — that the state grants its citizens.⁶⁸ Notwithstanding the acute problem of enforcement and low state compliance with international norms, this development means that states can be thought of as mere suppliers of rights and services, the content of which is determined elsewhere: in the global sphere. This radical re-conceptualization of the role of the national sphere places states in the same relation vis-à-vis the "globe" as sub-national territories have traditionally stood vis-à-vis their state. It therefore has the potential to collide directly with traditional understandings of the role of states in the international sphere, and is a source of the most heated debates among international lawyers, political thinkers and policymakers around the world as it involves a reconfiguration of the most basic political units. And even if we reject the extreme formulation of the new developments in international law and politics, the evolution of international rights and substantive norms does indeed mean that national citizenship today is far more fragmented than before; the full control over it that national citizens once enjoyed (at least theoretically if not de facto)⁶⁹ is now at least shared with the larger — if not

operating in a similar manner to other global networks of disaggregated-state's organs. See Blank, *supra* note 49, at 884-85.

68 An attempt to sum up these international norms would of course be futile as it amounts to summing the evolution of the entire body of international law in the past half century. For seminal analysis of the expansion of international protection of a thick catalogue of rights, see HENRY J. STEINER & PHILLIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* (3d ed. 2004); *JUDICIAL PROTECTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: CASES AND MATERIALS* (Bertrand G. Ramcharan ed., 2005).

69 The historical question whether nation-states did indeed have full sovereignty over their entire citizenry within their territory and what the limits of this professed

altogether different — constituency of the global sphere. Later I will examine the nature of this evolving "global constituency" (or, as it sometimes called, "the international community") and the difficulty in treating it as merely an extension of the national sphere of citizenship.

In fact, the new postnational constellation (to use Habermas's term)⁷⁰ changes not only the content of national citizenship but also the very definition of who a national citizen is — if not formally then *de facto*. This change owes, once again, to the large body of international treaty law and customary law, which often mandates states to grant various rights to non-citizens who reside within their territory. This includes an impressive and ever-growing catalogue of social and economic rights, as well as various political rights. And although international law definitely falls short of granting stateless individuals full and formal citizenship — only seldom requiring states to nationalize non-citizens — it is moving in the direction of granting *de facto* citizenship, *i.e.*, the substantive content of citizenship (often devoid of the political rights).

The second most important factor linked with the decline of national sovereignty over matters pertaining to citizenship has been a global trend of decentralization and privatization of public services. For quite a while, local spheres of sorts were major locations for the *de facto* fulfillment of so many of the rights, entitlements and services that national citizenship comprises. Over the past two decades, however, a tidal wave of decentralization schemes has flooded Western and developing countries alike, and many services previously provided by central state organs have been delegated to the private sector and to sub-national territories. This has occurred for various reasons, some of them mentioned above. Economic efficiency and managerial functionalism undoubtedly were important causes of this shift, but so were multicultural ideology and communitarian political theory: constructing powerful and semi-autonomous territorial units within the state could offer various identity groups (ethnic, cultural, racial, religious and other) a space of self-determination and self-rule, and create a nest where community-oriented virtues might be fostered. Delegating governmental authorities to sub-national territorial units became the fallback position and miracle solution to many political dilemmas and deadlocks, all over the world.⁷¹ This meant that sub-national territories gained more power and

sovereignty were is highly debatable. Some, like Stephen Krasner, argue that sovereignty is no more than a myth and that central state organs always shared their control over their citizenry and territory with other actors, both international and local. See KRASNER, *supra* note 14.

70 JURGEN HABERMAS, *THE POSTNATIONAL CONSTELLATION: POLITICAL ESSAYS* (Max Pensky trans., 2001).

71 See Bratton & McCahery, *supra* note 46. Various international and transnational

control over citizenship matters, thus further intermingling national and local citizenship.⁷²

As such, sub-national territories also became among the first governmental agencies to encounter the challenges facing states in our age: waves of immigration, social and economic problems, mounting inequalities within societies, and ethnic tensions. Problems presented themselves at the local level long before remote national governments even noticed them. This further exacerbated the tensions between national and sub-national levels of government and deflected the relationship between local and national citizenship from harmony to contestation.

However, one important fact cannot be emphasized strongly enough: while the state is indeed no longer the sole source of citizenship rights and entitlements, it is definitely still there as a crucial actor. As Audrey Macklin recently stated: "though many versions of citizenship decentre the state as a privileged locus of citizenship, it still seems premature to announce (or celebrate) its displacement."⁷³ The new world order is not one in which the state has disappeared (at least not yet), but one in which many actors share power with the state. In this emerging world order, one in which some argue that citizenship is turning into "neo-liberal citizenship,"⁷⁴ the decision of the state to withdraw from various activities and to delegate its control over them to other actors — global, local, economic, religious, and other — is often a willful and purposeful decision that needs to be understood as such and not as an accident or unavoidable event. The state is still extremely powerful and has tremendous resources — both material and ideological —

organizations have adopted this position over the past decade as well. *See, e.g.,* THE WORLD BANK, *CITIES IN TRANSITION: WORLD BANK URBAN AND LOCAL GOVERNMENT STRATEGY* (2000).

72 Various states are currently using local authorities in order to manage ethnic, religious and cultural tensions. That such identities are also serving as a basis for delegating powers to localities means that the principle of domicile is being augmented — if not supplemented — by a different logic for local citizenship. Indeed, the more localities assume power and autonomy, the more they are likely to use their powers in order to de facto (or even de jure) circumvent the logic of residency and turn it into something different (be it based on identity, class, etc.).

73 Audrey Macklin, *Who Is the Citizen's Other? Thinking About the Heft of Citizenship* 1 (May 2006) (workshop draft, on file with Theoretical Inquiries in Law) (a revised version appears in this volume).

74 Matthew Sparke, *Passports into Credit Cards: On the Borders and Spaces of Neoliberal Citizenship*, in *BOUNDARIES AND BELONGING: STATES AND SOCIETIES IN THE STRUGGLE TO SHAPE IDENTITIES AND LOCAL PRACTICES* 251 (Joel S. Migdal ed., 2004).

that it can use in order to determine the lives of people who reside within it. States still manage, even if to a lesser degree, to control both international and transnational organizations (public and private) as well as local actors. Hence, it is in the new spheres that citizenship is now *also* being determined, alongside the important sphere of the nation-state.

Indeed, the tallest hurdle I've tackled in this Article is to try to make a convincing case that despite the immense powers that states possess, the local and global spheres are *also* crucial to the practice of citizenship. And I've made it that much taller by refusing to adopt the "end-of-the-state" narrative. The images of undocumented workers, of refugees and other stateless persons, or of persons whose formal citizenship might condemn them to a miserable life are so overpowering that the contribution of the local and global spheres seems marginal at best. The formal concept of national citizenship and the privileges it grants nationals — possessing a passport and the ability to legally reside in the state whose passport one carries — is still extremely powerful and holds sway over our imaginations. And yet it is important to understand that despite the huge impact that states do have over citizenship — where we can live, where we can vote, where we can marry and raise children — this power sometimes obscures the fact that no less crucial issues are being decided and managed by other institutions and other groups of people, i.e., in other spheres as well.

The third crucial factor that has contributed to the weakening of the national sphere as the sphere of the most meaningful citizenship is probably a crisis of legitimation of its foundational logic. As compared to the logic of the local sphere — which is based on notions of physical proximity, local (indigenous) culture, vibrant participatory democracy, homogeneity and sameness — the logic of the nation hasn't been able to survive contemporary changes or reinvent itself. While the local has been reformulated as the locus of efficiency, participation, proximity and multiculturalism, the national remains arcane and based either on unfounded mystique or defunct racism. Whereas sub-national units are reconfiguring themselves — vis-à-vis emerging virtual spaces such as the internet or vis-à-vis the abstract space of the global — as the realm of the "real," where close-knit communities can reassert themselves and people can directly interact with each other, the national sphere is viewed with suspicion and skepticism only: it is not "real" — for it has been revealed that the nation is a historical construction⁷⁵ — nor is it sufficiently virtual; it does not accurately represent the general good,

⁷⁵ I am clearly referring to Benedict Anderson's seminal work on the topic but also to a voluminous body of literature that has convincingly demonstrated this point. *See*

nor is it truly universalistic. The logic of the national sphere, be it lineage or birth in a territory, is thus based on normatively unappealing values, on tautology, or on pure psychological positivism: that the citizens of a state are those who in fact contribute to its wealth and therefore should be the recipients of its protection, and that the national identification and belonging is crucial to their sense of self and identity. These justifications, I think, fail to provide an adequate response to the challenge posed by the emergent alternative spheres of meaningful citizenship and belonging.⁷⁶

It is no surprise that national citizenship is now also being refashioned to resemble local citizenship more and more: many countries are now moving away from basing all citizenship rights on either birth or lineage, adopting various residency tests for the provision of social and economic rights. However, these residency requirements are superimposed over the traditional conditions for national citizenship (birth or blood). In part, the justification for residency requirements is mounting economic pressures on the state to save money, and non-resident citizens are the most obvious target for cuts in expensive social and economic rights; they are politically weaker due to their geographic dispersal and sometimes are deprived of an effective right to vote. However, the move to residency requirements is more often justified by republican values: only a person who contributes and actively participates in sharing the burden should also be entitled to the benefits bestowed by the community. In small territorial units, it is much clearer why residency is highly important as an organizing principle for the granting of local citizenship. If the advantages and benefits are all related to a limited number of people interacting with each other, deciding together, involved with each others' lives, and so forth — what good would it do to grant local citizenship to those who were merely born to a local citizen (the equivalent of *jus sanguinis*) or who were born in the location but never spent a day of their lives there (*jus soli*)? Only a participating member, inhabiting a place, residing in it, and interacting with other citizens should be given the rights, benefits, and political standing within the community in

BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* (1983).

76 Other prevalent justifications for more centralized power — coordination, prevention of externalities, and economies of scale — obviously still operate to legitimate and support state power. However, I argue, they no longer justify the necessity of the state but only that of other central powers, most notably regional arrangements and international/transnational governance regimes. Thus, the state is becoming, despite such justifications, a theoretical compromise between the advantages of the local and the importance of flexible central authority.

order to influence it. Indeed, what connects these people is not primordial traits or metaphysical characteristics but rather the territory itself, which has created them as a polity. And while the traditional logic of national citizenship was based not on residency but on a belonging to a pre-existing nation (whose members need not be territorially bound to the collective or to other individuals in order to belong to it), residency requirements adopted as part of a neo-liberal agenda that stresses responsibility, contribution and self-reliance demonstrate the current shift in national citizenship.

C. The Global Sphere of Citizenship

While there is an increased willingness to acknowledge the applicability of the concept of citizenship to sub-national territories, skepticism towards the idea that there is — or should be — such a thing as global citizenship is fierce.⁷⁷ Often conflated with the term cosmopolitanism, global citizenship is a somewhat vague concept that seems to refer to the struggles led by international and transnational NGOs on matters pertaining to human rights (writ large), immigration, workers' rights and more. Indeed, since one of the meanings of citizenship is participation and political action, and since the global sphere is thought to be incapable of providing rights and entitlements to its citizens, where global citizens come into being is not by getting rights but by struggling globally on behalf of various global causes. Throughout this Article, I have argued that no less — possibly even more — important than mere "global participation" is the fact that many concrete issues of citizenship

⁷⁷ Linda Bosniak powerfully analyzes the debate regarding cosmopolitan citizenship. See Bosniak, *supra* note 15, at 447-50. See also Amy Gutmann, *Democratic Citizenship*, in FOR LOVE OF COUNTRY: DEBATING THE LIMITS OF PATRIOTISM 66 (Joshua Cohen ed., 1996); Gertrude Himmelfarb, *The Illusions of Cosmopolitanism*, in FOR LOVE OF COUNTRY: DEBATING THE LIMITS OF PATRIOTISM, *supra*, at 72; Michael Walzer, *Spheres of Affection*, in FOR LOVE OF COUNTRY: DEBATING THE LIMITS OF PATRIOTISM, *supra*, at 125 [hereinafter Walzer, *Spheres of Affection*]. The title of my Article clearly refers to Walzer's famous book, "Spheres of Justice," and also to his more recent article "Spheres of Affection." See MICHAEL WALZER, SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY (1983). While Walzer develops a moral and political theory of the state's obligation towards its citizens, I aim to describe and analyze the legal developments that currently take place in many countries throughout the world. Below I also criticize Walzer's refusal to acknowledge some of these developments and his insistence that the global sphere is unreal. More importantly, Walzer seems to possess a highly formal and unrealistic conception of citizenship, one which insists on naturalization processes, passports, and formal rights as necessary traits of citizenship. I hope it is clear by now that my Article goes directly against this formal conception of citizenship.

are actually determined in the global sphere: where international organizations (IOs), transnational organizations and associations operate and interact with states, sub-national territories and other actors.⁷⁸

The evolution of a global citizenship is linked with several phenomena that, even if not entirely new, have been significantly accelerated over the past few decades. These include globalization in the broad sense of the term, the exponential growth in the volume of international legal norms and international institutions, the resurgence of cosmopolitan identity and ethics,⁷⁹ and the growing influence of the ideology of humanism. Indeed, once we understand citizenship as a bundle of rights (that goes far beyond the classical political rights of voting and being voted for public office), membership in a community, and participation in a polity (in the republican sense of the term), we can begin to understand why global citizenship has become such an important concept over the past decade.

And yet, the global sphere of citizenship is still lacking many of the characteristics we associate with the national and local spheres, and which we think are necessary for the construction of a meaningful sphere of citizenship. Indeed, in all substantive aspects of citizenship the global sphere is wanting, especially if we consider international law and IOs to be the most important locations for the exercise of global citizenship. Firstly, although IOs may declare and de jure grant a wide array of rights and privileges (and even impose duties on individuals), global institutions have only little means of providing positive rights or protecting negative rights from infringement.⁸⁰ Secondly, IOs are structured in a way that hardly allows individuals and groups to participate in decision-making processes. Various efforts by international legal process scholars to argue that the democratic-participatory deficit of IOs is not as severe as it might seem do not, I think, counter the remoteness of IOs from public debate and participation.⁸¹ Thirdly, given the institutional design of many IOs, even the mechanisms of states' representation in them,

78 Indeed, these various entities, I already suggested, play a crucial role in shaping our citizenship, yet this Article focuses on the more overtly political territorial units.

79 See Martha Nussbaum, *Patriotism and Cosmopolitanism*, in FOR LOVE OF COUNTRY: DEBATING THE LIMITS OF PATRIOTISM, *supra* note 77, at 2; SEYLA BENHABIB, THE RIGHTS OF OTHERS: ALIENS, RESIDENTS AND CITIZENS (2004).

80 The lack of enforcement mechanisms for international law is a problem of crucial importance here. Despite various changes in this respect, it is still fair to say that as compared to states, the decisions taken at the international plane need to be implemented by willing state agents.

81 Famous works by international legal process scholars include, for example, Harold Hongju Koh, *Transnational Legal Process*, 75 NEB. L. REV. 181 (1996); Anupam Chander, *Globalization and Distrust*, 114 YALE L.J. 101 (2005); Catherine Powell,

which is arguably the oblique way in which individuals do participate in the international sphere, are highly deficient. This is why many scholars are worried that the new world order may not be as rosy as it seems: its chaotic and undemocratic nature might give small but strong interest groups (such as industrial lobbyists) more voice than other groups, enable them easy exit from their national settings, and offer them better normative arrangements.⁸² Fourthly, some argue that the most important elements of citizenship are simply and inherently missing from the global sphere: a territory in which people meet and share a common material space, and a community with whom people can identify and to which they can be loyal. Without these elements, global citizenship is no more than an abstract and hypothetical normative system, a hollow utopian (some would actually argue, dystopian) concept.

Michael Walzer has expressed this view sharply:

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 structure, 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.⁸³

What Walzer and other opponents of global citizenship have missed are a few facts that complicate matters. First, recent developments in international law suggest that there may be a gradual shift in these problematic aspects of international law and IOs. For the purposes of this Article, it is especially important to note that part of the reason why international law has been criticized for its lack of enforcement was the lack of enforcement *on behalf of states*, which failed to uphold their own commitments. Yet some researchers have argued that where states have failed, sub-national territories may succeed. International norms and standards are being willfully and voluntarily adopted by local governments and other sub-national units around the world, infusing the somewhat ephemeral global citizenship with

The Role of Transnational Norm Entrepreneurs in the U.S. "War on Terrorism," 5 THEORETICAL INQUIRIES L. 47 (2003).

82 A powerful argument on this point was made by Eyal Benvenisti. See Eyal Benvenisti, *Exit and Voice in the Age of Globalization*, 98 MICH. L. REV. 167 (1999).

83 Walzer, *Spheres of Affection*, *supra* note 77, at 125.

concrete meaning: whatever local communities and officials choose to give it.⁸⁴ Thus, local enforcement of international norms and standards means two opposite things: first, local citizenship is not purely local (or national) in the sense that its content may be decided and determined by IOs (as we have seen earlier); but, second, it also means that international norms and standards are becoming localized and originating in local settings. Consequently, global citizenship is determined in local settings and by local groups that gradually conceive of themselves as being no less global than they are local; and these individuals and groups direct their activism towards three communal horizons (and three constituencies), corresponding to their multiple and overlapping identities: local, national and global.

Second, note that throughout this Article I refer to a *global* rather than an *international* sphere, though admittedly I attribute many global changes to transformations and developments in international law. Indeed, while the latter is in many ways toothless and treats individual participation with disdain, the broad term of a global sphere includes many actors with changing degrees of ability to enforce their norms and policies (and, hence, the rights they grant and duties they impose) and with varying degrees of participatory schemes for the individuals comprising them. Such global entities/actors — sometimes they are referred to as multinational or transnational entities — have been acquiring dominance in spheres that used to be relatively insular and immune to "external" intervention. The World Bank, the International Monetary Fund, multinational corporations and regional associations (such as the European Union and the NAFTA) have much more effective mechanisms of enforcement, regulation and implementation, and it is one of the hallmarks of globalization that such entities are, in effect, dominating greater and greater portions of the lives of individuals and groups. In part, this is why debates regarding industrial citizenship and other types of citizenship have gained so much attention: with the weakening of the state — at least in the sense that it is gradually losing the monopoly it once had over various fields of activity — other

84 International human rights law was the first area to become a major target for local enforcement efforts. Sarah Cleveland, Howard Fenton, Catherine Powell and others show that local enforcement of human rights norms has been taking place for quite a while with respect to Northern Ireland, apartheid South Africa, Indonesia, Nigeria, and Cuba. Nowadays, U.S. localities are adopting laws in compliance with international human rights norms that protect workers such as living wage municipal bylaws, and are mounting campaigns to preserve the environment and protect various minority groups such as migrant workers and gays and lesbians. For a detailed discussion, see Blank, *supra* note 49.

entities are becoming crucial to individuals and groups for the purposes of obtaining rights, goods, and a sense of identity. Though in this Article, as I have already clarified, I deal only with territorial units, this point is eminently demonstrated by many articles in this volume.

Third, it is important for me to stress that I am not denying the imaginary and somewhat intangible aspect of global citizenship. Some important points, however, need to be made concerning it. Throughout this Article I have tried to show that, contrary to Walzer's claim, even if the world is chaotic, its institutions are numerous, its internal workings are unclear, it does not (yet) issue passports and hasn't yet actually naturalized anyone, one can still learn a lot about real global institutions and see they deliver *de facto* (and also *de jure*) rights and entitlements, which impact many aspects of our so-called "national" (and local) citizenships. But even if I admit that, to some degree, global citizenship is intangible, unlike Walzer and others who see this as a bad thing or as a marker of the fallacy and inherently vacuous nature of global citizenship, I think it is a trait common to all citizenships (including the national and local varieties); and if this is so — it may be a sign that citizenship literature and discourse in general is problematic rather than global citizenship itself. And by overstating the realness of national citizenship and the imaginary notion of global citizenship, opponents of the latter achieve two unfortunate goals: they hide the problematic nature of contemporary national citizenship and erase the possibility of imagining a different configuration of the world order.

Indeed, it is pretty difficult to see "the world," but we definitely know it exists as an enclosed piece of earth, probably more enclosed than any state will ever truly be: its boundaries are more inherently finite and more naturally drawn than any country's, and it is harder to escape it than it is to exit any state. The world's territoriality and finality have become more real to humans in recent decades as debates about the limitedness of natural resources intensified, and as the interdependency between states was made visible in various environmental contexts. Along with this understanding, the most basic notion of citizenship — being bound together, being dependent on one another, understanding one's dependency on one's fellow citizens — has become all too true to those who share the globe as their habitation.

On the other hand, national citizenship is also not as obvious or as determinate as Walzer would have it: it is full of contradictions, exclusions, and inequalities to which many people can respond with the same critique that Walzer points at global citizenship: these people were never informed what their state's institutions or procedures are; they may have never been offered citizenship by any nation at all; and even if they are formal citizens of a state, they have never been treated as equal citizens, as they have been deprived of

rights and entitlements that their fellow citizens received; their culture and their collective identity might have been excluded by their state, and thus they have never really enjoyed its "common commemorations and celebrations." What anti-global citizenship discourse therefore reveals is often simply the bias of (some) citizenship literature, a classical liberal bias that neglects the critique of rights over and over again and reifies the rights that have been formally declared. This forgetfulness creates a bias towards looking at issues of classical political citizenship, i.e., investigating social groups and individuals who are formally non-citizens and therefore excluded from the political process, even though citizenship studies have long abandoned this "narrow" outlook on citizenship. Thus, though citizenship is currently understood to be a broad analytical framework within which various political conceptions exist — including a wide range of rights and privileges, and a variety of membership formations and participatory schemes — many citizenship studies (even those relating to local and global citizenship) still focus primarily on groups which are *formally* excluded from the local polity: immigrant workers, second-generation immigrants, aliens, and the like. Specifically in the context of local citizenship this creates a false notion that the majority of problems associated with current local government structure have to do with exclusions and inequalities between the "citizenry" and the non-citizens, rather than rivalry between the national and local citizenry along, for example, class lines. And this is why anti-global citizenship scholars can easily claim that they have never seen the world since "it" has never formally offered them citizenship.

III. RECONSIDERING THE SPHERES

What are we facing, then, when dealing with the three spheres of citizenship? Clearly, a reconfiguration of the way elites govern and rule persons and things across the globe, but also a reconfiguration of identities and of claims for the satisfaction of needs (which sometimes are called "rights"). The way the different territorial units — local, national and global — interact with each other is of great importance to this reconfiguration since many of these individual and collective claims are still being managed within these three spheres. And governments or decision-making entities within these spheres still have significant means with which they can address — reject, accept, nurture, or fight — such claims. This is why it is imperative to ask what each sphere may be capable of, what its current limitations are, which ideas principally govern it, and therefore also what it can be expected to achieve as a matter of citizenship claims. However, given the limit on the length

of this Article I shall constrain myself to offering some initial guidelines that might explain what I mean and where I think this research should be heading.

To here, I have mostly given a positive description of legal rules and principles and tried to analyze what they mean to citizenship claims. I have further argued that the neat division of the spheres and assumption of their separateness is overrated and should be qualified. I have also examined the theoretical foundations of these separate spheres — their logics of citizenship — in order to explain why it is that some problems may be encountered if one attempts to draw quick analogies from citizenship claims that were addressed in one sphere to another. Thus, it is my purpose to stress the distinctions in order to draw normative conclusions as to the scope and meaning of citizenship, membership and participation in each of these spheres.

As I have previously indicated, the container conception of citizenship is still prevalent among citizenship scholars, who not coincidentally also share the belief that the distinction between the various spheres of citizenship is only a matter of scale. According to this conception, different scales of territories — in geographic size and population — allow for different functions to be performed, different human interactions, different kinds of politics, and a different efficiency calculus. From this also flows a different content of substantive rights to each sphere of citizenship.

As it stands today, the difference in scale works very neatly, in theory: the smaller the sphere, the more efficient it is, the more democratic and participatory it can be, the more particularistic and parochial it might be, and the more it will induce republican-civic virtues. On the other hand, the larger the scale, the more it can counter negative externalities that smaller-scale spheres create, the more it will enjoy the benefits of economies of scale, and the more universalistic its values probably will be. In addition, the differences in scale are understood to affect the content of citizenship in a way that translates large size into dilution and abstraction: the global scale of citizenship can promise only general and abstract rights, while the national can offer more concrete rights, and the local sphere can grant even thicker and more generous rights and entitlements.

What I have tried to demonstrate in this Article is that this neat picture can and indeed should be disrupted for both its descriptive deficiency and normative undesirability. Firstly, based on size alone, no categorical distinction can be drawn between national and local citizenship, since equating smallness with the local sphere and large territories and populations with the national sphere is simply incorrect. In addition, some studies cast serious doubt over some of the advantages associated with smallness: it is

hardly the case that geographical proximity naturally breeds civic virtues, democratic participation, economic efficiency and the like; it also doubtful that it organically facilitates homogeneity of preferences and tastes; and it is extremely difficult to figure out how a broad and indeterminate concept such as subsidiarity can actually determine which is the optimal level of government for a certain purpose. To these problems we might add, of course, the regular problems associated with fragmentation: collective action problems, externalities, and the fear of oppression of minorities.⁸⁵

This is why it is important to understand the insistence on a difference between the organizing logics of national and local citizenships — between *jus sanguinis/jus soli* on the one hand and *jus domicili* on the other — as representing an aspiration, an ideal, and perhaps existentially different human experiences. Equating the experience of living in a huge metropolis with the experience of living in a small village is, I argue, futile and regrettable, as it is to equate the experience of engaging people politically by means of representatives elected through elections at large with the practice of civic engagement and direct political action. At least in theory, each sphere of citizenship represents a different human experience and the logic according to which each sphere operates manifests the urge to conserve this experience and give it its due space. This does not mean that these experiences are insular and isolated from each other, or that they should be. On the contrary, most humans have various needs and identities, and these are manifested in their parallel belonging to the different spheres. Schematically, this is the way it would work: one's universalistic aspirations would come to fulfillment in the global sphere; her most parochial and particularistic preferences and aspirations would be given voice in the local sphere; and the need for an enlarged community in-between the universal and the particular would be met in the national sphere.

Clearly, this is an extremely stylized depiction, as it disregards so many other points on the spectrum between the universal and the particular. And indeed, I started off by saying that I have chosen to ignore so many other locations where rights, entitlements and common belongings are being negotiated: the family, religions, and the workplace are all loci of citizenship as well, and they too represent human experiences that mark our contradictory needs for solidarity and individuation, universalism and

85 The danger that small and homogeneous "factions" might oppress minorities more easily was expressed most clearly in the Federalist Papers. See THE FEDERALIST Nos. 10, 46-52 (James Madison). For an elaboration of the risks of localism and the dangers of small territorial units, see Richard Briffault, *Our Localism: Part I — The Structure of Local Government Law*, 90 COLUM. L. REV. 1 (1990).

particularism, private existence and public being. The global, national and local spheres are unique only in that they also demonstrate more vividly our embodiedness and physicality, as they revolve around territoriality. As such, more than they reflect and recognize already existing human experiences, these spheres construct them and give them proper location. Indeed, we need to consider the fact that citizenship should also be understood as *a performance*: rules of behavior, public actions, and self-understanding. These do not need to be based on something that preceded them. A performance both establishes its own reason and theoretical idea and is its manifestation. As such, global, local and national citizenships look different, people experience them differently, and they occupy a different location within the psyches of individuals and collectives.

What can we conclude from this discussion? As I have already argued, one first needs to be careful when making claims in the form of "citizenship (in the national sphere) means so and so and therefore citizenship (everywhere) should also mean so and so." Such analogies ignore the rational foundation and theoretical framework within which various conceptions of citizenship were constructed. Furthermore, the spheres I have considered here are not as separate as we might think. I have emphasized their interrelatedness and how, more than anything else, the distinctions between these spheres are contingent and based upon the way they construct one another and reflect and shape our own human experiences.

CONCLUSION

Hardly any political concept has been left unchanged in recent decades. Paraphrasing Marx's famous prophecy, every solid political concept has melted into air, rendering citizenship, nationality, communities and states liquid, malleable and subject to transformation. Many scholars have already observed that citizenship no longer means what it traditionally has meant — a legal status within a nation-state that confers various rights and immunities and the ability to participate in governance — but rather has come to denote a flexible idea of obtaining a standing in an existing political community. The changing role of cities and other sub-national territorial governments in the new global order has had an impact on this transformation and contributed significantly to the emergence of new forms of citizenship and to a reconfiguration of these basic political concepts.

As a newcomer to citizenship discourse, I find it fascinating how distinct methodological and conceptual frameworks can deal with the same questions using a different set of concepts, concerns and theoretical tools. I am still

rather uncertain whether the disciplinary boundaries that I have encountered during the writing of this Article carry with them normative implications and political ramifications, or whether they are merely a different form of abstraction and do not matter so much for political activism or the substantive analysis. Specifically, I am unsure what the implications are of framing some of the questions regarding the dynamics of inequality, subordination and privatization in urban and other local settings as issues that pertain to citizenship. I am worried that giving up the language of domination and power and replacing it with the language of rights, participation and exclusion may sometimes obfuscate the way in which the legal structure itself is part of the problem rather than the solution; that sometimes more rights are not the answer to the social problems we face, but rather part of the regime of domination and disempowerment of groups due to an inherent lack of accessibility, built-in deficit of awareness, and foreseeable and incurable inequality in the de facto fulfillment of rights.

Whatever the substantive content of citizenship might be, by defining a certain sphere of human activity as a sphere of citizenship, one is making a certain theoretical and practical implication: the term citizenship transforms groups and individuals into "members" who have rights, or who are "participants" in some kind of a group (be it political, social, cultural, etc.). In addition, common to all the many substantive ideas about citizenship is a deeply ingrained notion of equality between all citizens on the one hand and the logic of exclusion of non-citizens on the other hand. To analyze a social and political situation as revolving around issues of citizenship often means not to analyze it as a matter of domination, violence and power structures.⁸⁶ Even for theorists writing within a republican tradition that emphasizes civic virtues and duties and obligations of citizens, the liberal framework still dominates the discussion, along with its focus on inclusion, equality and rights. This carries the risk that the myth of the Greek polis and the participatory community will prevail over the realities of elite self-rule and structural inequality.

Yet the lens of citizenship brings crucial questions into crystal-clear focus: who should get what in each of the geopolitical spheres we already have? Who should decide who will get what in each of them? What should each of these types of citizenship — in terms of benefits, services, protections and entitlements — substantively include? And what is the theoretical

⁸⁶ On this point, see also Mundlak, *supra* note 3, and Ratna Kapur, *The Citizen and the Migrant: Postcolonial Anxieties, Law and the Politics of Exclusion/Inclusion*, 8 THEORETICAL INQUIRIES L. 537 (2007).

foundation that justifies the maintenance of each of the citizenship spheres and the exclusion that is embedded in their construction?

I have shown that these questions reveal not only the similarities between the three spheres of citizenship, but also the singularity and uniqueness of each. Their functions and justifications may vary, and hence also the meaning of being a member in them. Since each of these spheres is a legal construct that stands in a complicated relationship with the other two spheres, what becomes clear as a result of this investigation is that contemporary legal regimes have created overlapping memberships which are far more important to the lives of individuals and groups than is commonly understood. That being said, the interplay and interconnection between the three spheres means that claims of citizenship, in many places across the globe, can no longer be directed only towards one governmental sphere, but rather to all of them at once. For instance, since local citizenship is managed not only locally but also nationally and globally, individuals and groups who want to argue for various (political, social or economic) local rights cannot limit their claims to the local sphere and its government; rather, they must also address the national government as well as international and transnational actors. And claims which seem, at first glance, to be connected to the national sphere of citizenship should be understood as being under the control and management of the local as well as the global sphere. For all this to take place, we need to be able to understand the way these spheres function both in our legal world and in our mental existence.