

## THE END OF CITIZENSHIP AS WE HAVE KNOWN IT

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### TABLE OF CONTENTS

I. INTRODUCTION.....	1359
II. CITIZENSHIP PARADISE, LOST.....	1361
A. <i>Citizenship (Formerly) as Rights</i> .....	1362
B. <i>Citizenship (Formerly) as Political Activity</i> .....	1364
C. <i>Citizenship (Formerly) as Collective Identity</i> .....	1366
D. <i>Citizenship (Only) as Status</i> .....	1369
III. THE PREMATURITY OF TRANSNATIONAL CITIZENSHIP.....	1371
IV. CONCLUSION.....	1375

### I. INTRODUCTION

It's hard to be hopeful about anything these days. Established American institutions are being degraded at an astonishing pace, and there is almost no quarter that has been insulated from the catastrophe. "This is a grim, sick, mean time."<sup>1</sup>

Citizenship is counted among the victims. The institution is unlikely to persist in its recognized form as a fulcrum of constitutional democracy. Citizenship will no longer sustain positive associations. Instead, it will increasingly be a marker of artificial privilege.

This will be partly the doing of Trump and Trumpism. Even as Trump and his allies claim to be restoring citizenship to its former glory, as in other areas his radical actions will have the opposite effect. The abandonment of birthright citizenship, for example, would put an obvious punctuation mark on constitutional conceptions of American citizenship. But even if the courts protect this and other traditional understandings, citizenship's fall has been a long time in the making. As with other hollowed-out components of the American republic (and perhaps of

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1. Linda Bosniak, *Citizenship and Bleakness*, 26 CITIZENSHIP STUD. 382, 384 (2022).

democracy more broadly), our old conceptions of citizenship have been listing badly even against efforts to buck it up.

The slow-burn disruption of citizenship has attracted renewed interest in its place in the American and global contexts. Citizenship had long been neglected as constitutionally inconsequential.<sup>2</sup> In recent years, the subject has attracted the attention of international legal political scholars.<sup>3</sup> Among American theorists, Linda Bosniak has been a star of her generation, distinguished especially by her work on rights and territoriality as they relate to citizenship.<sup>4</sup>

Bosniak's broader framing of citizenship is also canonical. In her schema, citizenship has four dimensions: legal status, rights, political activity, and collective identity.<sup>5</sup> This Essay rebalances the four perspectives in light of recent developments. It argues that citizenship as rights, political activity, and collective identity is now in a state of freefall. While these three elements are dissipating, the salience of citizenship as legal status has magnified. This is not a normatively neutral adjustment. Rights, political activity, and collective identity have supplied a virtuous tripod for the institution. It was only on this tripod that citizenship's valence as legal status has been morally sustainable. It is the legal status of citizenship that centers citizenship's formalism, which has no essential normative content. Status also highlights the binary nature of citizenship status. Some people have it, some people do not. So long as privileges attach to the status, citizenship translates into inequality. That inequality has been tolerable so long as its virtuous functions remained in place. Once they are gone, citizenship loses its normativity.

This Essay will then turn to the development of citizenship alternatives, in which context Bosniak first presented her schema. Citizenship's disruption has trained new attention on the place of citizenship within states. It has also posed the possible migration of

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2. See, e.g., ALEXANDER M. BICKEL, *THE MORALITY OF CONSENT*, 53–54 (1975) (“[W]e live under a Constitution to which the concept of citizenship matters very little.”).

3. See, e.g., CHRISTIAN JOPPKE, *CITIZENSHIP AND IMMIGRATION* (2010); DIMITRY KOCHENOV, *CITIZENSHIP* (2019); AYELET SHACHAR, *THE BIRTHRIGHT LOTTERY: CITIZENSHIP AND GLOBAL INEQUALITY* (2009); RAINER BAUBÖCK, *DEMOCRATIC INCLUSION* (2017); AYELET SHACHAR ET AL., *THE OXFORD HANDBOOK OF CITIZENSHIP* (2017).

4. See, e.g., LINDA BOSNIAK, *THE CITIZENSHIP AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP* (2006); Linda Bosniak, *Persons and Citizens in Constitutional Thought*, 8 INT'L. J. CONST. L. 9 (2009); Linda Bosniak, *Being Here: Ethical Territoriality and the Rights of Immigrants*, 8 THEORETICAL INQUIRIES L. 2 (2007); Linda Bosniak, *Varieties of Citizenship*, 75 FORDHAM L. REV. 2449 (2007); Linda Bosniak, *Constitutional Citizenship Through the Prism of Alienage*, 63 OHIO STATE L. J. 1285 (2002).

5. Linda Bosniak, *Citizenship Denationalized*, 7 IND. J. GLOB. LEGAL STUD. 447, 455 (2000).

citizenship's value to the transnational sphere. During the last thirty years or so, as citizenship on the domestic front faced new challenges, the argument has run that a transnational substitute was emerging: a byproduct of globalization that is better adapted to transformed material dynamics on the ground. For some of us, this was the best prospect in the face of the irreversible decline of citizenship within the state.<sup>6</sup> The hope was that global locations of citizenship would in effect take up the slack.

Bosniak took this prospect seriously, as well as it should have been. Some of us were bullish where she was more guarded. Alas, her view has been vindicated. Although transnational and non-state venues may present citizenship-type attributes over the longer run, any such shift will be tectonic. Transnational developments have been a stressor on citizenship within the state, disrupting the dimensions of rights, politics, and identity. But those global spheres have not developed to carry the weight of an institution that was itself centuries in the making. In the meantime, we are left with a kind of citizenship interregnum, a scary prospect against the scary challenges that the world faces now on so many fronts.

## II. CITIZENSHIP PARADISE, LOST

Citizenship as a concept would (if anyone bothered) poll well. It is an institution that has been hard to oppose, so foundational it has been to our understanding of democracy. Without citizenship, democracy doesn't really compute. That is true at a mechanical level; one needs a bounded polity for operational purposes. But citizenship also supplies "a core concept in our political and moral vocabulary";<sup>7</sup> citizenship is a normative anchor.<sup>8</sup> This mostly holds, in theory, along the dimensions of rights, political activity, and collective identity. Writing in 2000, Bosniak assumed these aspects of citizenship still to be anchored in the state.<sup>9</sup> That assumption was surely sound at the time. Today, citizenship in the state warrants a more intensively critical perspective. Citizenship in the state is dissipating, at least in its virtuous aspects. At the same time, locational security and mobility privilege have reinforced the status

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6. See, e.g., PETER J. SPIRO, BEYOND CITIZENSHIP: AMERICAN IDENTITY AFTER GLOBALIZATION 137–57 (2008); Peter J. Spiro, *The Citizenship Dilemma*, 51 STAN. L. REV. 597, 625–30 (1999).

7. Bosniak, *supra* note 5, at 451.

8. See Linda Bosniak, *Making Sense of Citizenship*, 9 ISSUES IN LEGAL SCHOLARSHIP 1, 15 (2011) (“[C]itizenship has come to be deployed by increasing categories of people in ever-widening domains to press their emancipatory claims.”).

9. Bosniak, *supra* note 5, at 454.

aspect of citizenship. Citizenship's goodness is fading but its consequence is not.

A. *Citizenship (Formerly) as Rights*

Citizenship in the Western tradition has long been associated with civil and political rights. The twentieth century added social rights to the bundle. Whatever the content, the rights element of citizenship is girded by an equality norm. Indeed, one might recharacterize the rights aspect as an equality aspect, that citizenship as we know it works from an equality baseline. There is no more damning critique of a governmental policy than to stick it with "second-class citizenship"; it simply doesn't compute.

But the rights/equality component of citizenship is past peak, perhaps irreversibly so. In the United States, at least, there has been both a dissipation of the content of rights attaching to citizenship and a departure from equality norms. Since the advent of Trump's first term in 2016, civil rights have been under attack from all sides.<sup>10</sup> If that first term left positive rights and negative liberties bruised and bloodied, the second one looks to inflict more permanent damage.<sup>11</sup> The political branches of the federal government are no longer even pretending to serve as rights guarantors, and the courts are showing themselves largely supine in the face of the assault.<sup>12</sup> Citizenship is no longer associated with peculiar insulation from governmental deprivations (with the major exception of physical removal – about which more below).

Social rights of citizenship have been perhaps more degraded. T.H. Marshall, credited with developing this understanding of citizenship, wrote in 1949 that citizenship had become infused with "the right to a modicum of economic welfare and security," that "[p]ublic policy has unequivocally given the citizen a legitimate expectation of a home fit for a family to live in."<sup>13</sup> Today, few would describe these as prevailing

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10. See, e.g., Spencer Overton, *12 Ways the Trump Administration Dismantled Civil Rights Law and the Foundations of Inclusive Democracy in Its First Year*, THE CONVERSATION (Jan. 16, 2026), <https://theconversation.com/12-ways-the-trump-administration-dismantled-civil-rights-law-and-the-foundations-of-inclusive-democracy-in-its-first-year-273433> [<https://perma.cc/GY87-Q5HS>].

11. See Bosniak, *supra* note 1, at 384 (suggesting "a moment in which rights – most dramatically in the United States – are being reduced to the purely atomistic-counter-social – i.e. gun freedom, religious opt-outs, corporate speech.").

12. See, e.g., Fareed Zakaria, *Strongmen Around the World Are Increasingly Inspired by America's Example*, WASH. POST, Nov. 28, 2025, <https://www.washingtonpost.com/opinions/2025/11/28/america-executive-power-expansion/> [<https://perma.cc/SGR8-X56P>].

13. T.H. MARSHALL, *CITIZENSHIP AND SOCIAL CLASS* 8, 35 (Pluto Classics ed. 1992).

expectations of American citizenship. It has been many years since the social safety net has seemed so tattered. Meanwhile, established rights like abortion are being watered down or eliminated by the courts.<sup>14</sup>

The degradation of citizenship rights is compounded by a longer-term trajectory in which such rights were extended to all on the basis of territorial presence, not on the basis of citizenship status. Citizenship was not determinative. This has always been the case with respect to civil rights. Non-citizens have long been entitled to almost all constitutional protections.<sup>15</sup> A citizenship-blind model of civil rights has been reinforced by international human rights. Even if global institutions fall short in the enforcement of human rights, the discursive reinforcement of civil rights beyond the state has detached them from conceptions of citizenship.<sup>16</sup> It is no longer within state discretion to deny civil rights to non-citizens.<sup>17</sup>

Beyond the reach of rights established at the international level, inclusion in the welfare state has not, for the most part, turned on citizenship status. Serious legal disabilities have been historically attached to alienage.<sup>18</sup> More recently, noncitizens have enjoyed eligibility for many, though not all, public benefits.<sup>19</sup> The blurring of the boundaries

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14. See *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (overruling *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992)).

15. See, e.g., *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) (noncitizens entitled to constitutional equal protection); *Developments in the Law-Immigration Policy and the Rights of Aliens*, 96 HARV. L. REV. 1286 (1983) (discussing noncitizens' rights under the First and Fourth Amendments); Pratheepan Gulasekaram, "The People" of the Second Amendment: *Citizenship and the Right to Bear Arms*, 85 N.Y.U. L. REV. 1521, 1539–42 (2010) (discussing noncitizens' rights under the Second Amendment).

16. See Gershon Shafir & Alison Brysk, *The Globalization of Rights: From Citizenship to Human Rights*, 10 CITIZENSHIP STUD. 275 (2006).

17. See International Covenant on Civil and Political Rights, art. 9, Dec. 16, 1966, 999 U.N.T.S. 171 ("Everyone has the right to liberty and security of person."); David Weissbrodt & Stephen Meili, *Human Rights and Protection of Non-Citizens: Whither Universality and Indivisibility of Rights?*, 28 REFUGEE SURV. Q. 34, 38 (2009).

18. Most countries, for example, restricted inheritance of real property owned by aliens. See William L. Boyd, Jr., *Treaties Governing the Succession to Real Property by Aliens*, 51 MICH. L. REV. 1001, 1002 (1953). In the United States, many states restricted land ownership by non-citizens. Polly J. Price, *Alien Land Restrictions in the American Common Law: Exploring the Relative Autonomy Paradigm*, 43 AM. J. LEGAL HIST. 152, 176 (1999). Non-citizens were also barred from various professions and other forms of employment. Between 1871 and 1976, for example, New York State enacted 38 laws requiring citizenship for occupations ranging from architects, private investigators, physicians, dentists, and pharmacists to embalmers, plumbing inspectors, and blind adult vendors of newspapers. See Luis F.B. Plascencia, Gary P. Freeman & Mark Setzler, *The Decline of Barriers to Immigrant Economic and Political Rights in the American States: 1977-2001*, 37 INT'L MIGRATION REV. 5, 9 (2003).

19. Peter J. Spiro, *The (Dwindling) Rights and Obligations of Citizenship*, 21 WM. & MARY BILL RTS. J. 899, 904–06 (2012).

of state-based rights and entitlements has challenged a rights-based conception of citizenship. It also poses at least a puzzle for the equality assumption. If there is a “citizenship of aliens,” in Bosniak’s felicitous coinage,<sup>20</sup> does equality come with it? Not always, in which case a second-class citizenship is normalized. In any case, if social benefits are withdrawn from all territorial inhabitants, it does not make much of a difference whether legacy citizenship-contingent eligibility requirements remain in place.

### B. *Citizenship (Formerly) as Political Activity*

Parallel observations can be made respecting political activity. Americans no longer appear to be participating in the same political space. Divided by media streams that deliver alternate realities, there is little opportunity for engagement across the divide.<sup>21</sup> Few Americans in any case are politically active in line with small-“r” republican ideals. Low-information voters predominate, at least with respect to national politics.<sup>22</sup> Meanwhile, the exercise of core political rights is being obstructed by Trumpists who are looking to deprive many Americans of their access to the ballot box, obstructions that are being sustained by the courts.<sup>23</sup> The very landscapes of political activity are being ravaged, in ways that are hard to fathom, by a rapacious President, his corrupt paymasters, and a supine Republican party.

Republicans, of course, have made much of supposed non-citizen voting, a battle cry that one can situate in some intention to revive citizenship (remember, it’s “Make America Great Again”).<sup>24</sup> Never mind that this is a complete fiction.<sup>25</sup> A very strange one, at that: what non-

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20. See generally Linda Bosniak, *The Citizenship of Aliens*, 56 SOC. TEXT 29 (1998) (examining citizenship and noncitizen exclusion from legal protections and social service programs, and advocating for new, inclusive approaches).

21. Colleen McClain, Monica Anderson, & Risa Gelles-Watnick, *How Americans Navigate Politics on TikTok, X, Facebook, and Instagram*, PEW RSCH. CTR. (June 12, 2024), <https://www.pewresearch.org/internet/2024/06/12/how-americans-navigate-politics-on-tiktok-x-facebook-and-instagram/> [https://perma.cc/3MM6-MWXX].

22. See Ben Kamisar, *Poll: Biden and Trump supporters sharply divided by the media they consume*, NBC NEWS (Apr. 29, 2024 at 06:00 ET), <https://www.nbcnews.com/politics/2024-election/poll-biden-trump-supporters-sharply-divided-media-consume-rcna149497> [https://perma.cc/3KZJ-VZHM].

23. See, e.g., Richard L. Hasen, *The Supreme Court Is Putting Democracy At Risk*, N.Y. TIMES, July 1, 2021, <https://www.nytimes.com/2021/07/01/opinion/supreme-court-rulings-arizona-california.html> [https://perma.cc/RWM2-9FTA].

24. See Jude Joffe-Block & Miles Park, *How Republicans Mainstreamed the Baseless Idea of Noncitizen Voting in 2024*, NPR (Oct. 18, 2024), <https://www.npr.org/2024/10/16/nx-s1-5147790/noncitizen-voting-claims-trump> [https://perma.cc/A72L-MKPR].

25. See *id.*

citizen would risk her immigration status to illegally exercise a relatively insignificant power? More to the point, non-citizens have better, perfectly legal channels of political participation. Permanent residents can make federal campaign contributions,<sup>26</sup> a more powerful form of influence than voting. Non-citizens can volunteer for political campaigns.<sup>27</sup> They can retain lobbyists.<sup>28</sup> Non-citizens enjoy First Amendment rights to express opinions on American politics, a phenomenon hugely magnified by the explosion of social media.<sup>29</sup> So, the line between citizen and non-citizen is also blurred in the context of political activity.

Transnational developments have transformed the spheres of political activity. Politics used to “stop at the water’s edge.”<sup>30</sup> No longer. Domestic political constituencies seem more at home with their ideological allies in other countries than they do with their domestic political antagonists. That holds true on the left and the right, though it is perhaps more brazenly obvious on the right as Trump and his acolytes engage in fawning exchanges with the likes of Nigel Farage, Viktor Orbán, and parties such as Germany’s far right AfD, giving rise to the “nationalist international.”<sup>31</sup> There is also the phenomenon of non-citizen political disinformation. This may not break the citizen/non-citizen

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26. 52 U.S.C. § 30121(b)(2) (carving out permanent residents from bar on campaign contributions by foreign nationals).

27. See Notification from Sid Rocke, Assistant Gen. Couns., Fed. Election Comm’n, to Timothy Swain (Feb. 20, 2009), Commission, <https://www.fec.gov/files/legal/murs/current/78789.pdf> [https://perma.cc/RRB2-JVZY] (finding no violation in \$2.5 million benefit solo concert for Hillary Clinton by non-U.S. national, Elton John); Juliana Barbassa, *Unable to Vote, Noncitizen Immigrants Volunteer*, USA TODAY (Oct. 30, 2008), [http://usatoday30.usatoday.com/news/politics/2008-10-30-2806448683\\_x.htm](http://usatoday30.usatoday.com/news/politics/2008-10-30-2806448683_x.htm) [https://perma.cc/7GQF-92DM].

28. See 22 U.S.C.A. § 612(a).

29. See *Bridges v. Wixon*, 326 U.S. 135, 148 (1945) (“Freedom of speech and of press is accorded aliens residing in this country.”) (citing *Bridges v. California*, 314 U.S. 252 (1942)); *Bluman v. FEC*, 800 F. Supp. 281, 284 (D.D.C. 2011) (while rejecting right of non-immigrant residents to donate to political campaigns, affirming rights of non-citizens to engage in political speech); Michael Kagan, *Do Immigrants Have Freedom of Speech?*, 6 CAL. L. REV. 84, 87 (2015). The Trump administration’s moves to deport non-citizens on the basis of speech activities will surely test the proposition. See Sam Levine, *Mahmoud Khalil’s Case is Setting Up an Epic First Amendment Battle with Trump*, GUARDIAN (Mar. 16, 2025, at 7:00 EDT), <https://www.theguardian.com/us-news/2025/mar/16/mahmoud-khalil-first-amendment-trump> [https://perma.cc/K9G6-SZLS].

30. The phrase was coined by U.S. senator Arthur Vandenberg. See *Arthur Vandenburg: A Featured Biography*, UNITED STATES SENATE, [https://www.senate.gov/senators/FeaturedBios/Featured\\_Bio\\_Vandenberg.htm](https://www.senate.gov/senators/FeaturedBios/Featured_Bio_Vandenberg.htm) [https://perma.cc/HE2Z-9P79] (last visited Aug. 15, 2025).

31. See, e.g., CLIFFORD BOB, *THE GLOBAL RIGHT WING AND THE CLASH OF WORLD POLITICS* (2012); David Szalay, *The Rise of the International Nationalists*, N.Y. TIMES (Dec. 5, 2022), <https://www.nytimes.com/2022/12/05/special-series/orban-le-pen-international-nationalism.html> [https://perma.cc/3A6V-YX2C].

envelope in the same fashion, but it poses the degradation of the political sphere by non-members.<sup>32</sup> These non-members may well have a stake in the outcomes of the politics they seek to influence (everyone in the world has a stake in U.S. presidential elections, for better or worse), but, in some cases at least, they are hardly oriented by the best interests of the citizen-based community.

*C. Citizenship (Formerly) as Collective Identity*

Such a community as there may be. Collective identity may be the most important citizenship predicate—a sense of solidarity which paves the way to rights (a form of redistribution, whether civil or social) and politics (which requires some level of mutual trust). A sense of American collective identity has been diminishing for decades. The end of the Cold War was a moment of triumph but also marked the loss of a defining adversary; national communities are most intensively felt as security communities. That sense was partially and temporarily revived by the terrorist threat—an imperfect, asymmetric fit (as a non-state threat)—and, in the end, an ephemeral one.<sup>33</sup> Today, no adversary, or at least an agreed adversary, helps define Americans as such or bring them together in mutual defense. To the extent there is an enemy, it is from within.

But the decline of community is overdetermined. Identity politics, on the left and on the right, have diminished a core understanding of what it means to be American. Agreeing on the value of difference and diversity supplies a thin foundation for solidarity. Detonating national myths are, of course, justified on the merits, but, with no agreed substitute, there is now effectively no shared community baseline. Metaphorically at least, no statues are left standing. There are few remaining shared understandings of any kind. Not even the Constitution, once the cornerstone of civic conceptions of U.S. citizenship, seems capable now of undergirding a national community. Trump is ignorant of it, and ignores it, but progressives are themselves increasingly bearish on its continuing efficacy.<sup>34</sup>

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32. See, e.g., Hedvig Ördén & James Pamment, *What Is So Foreign About Foreign Influence Operations?*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Jan. 2021), [https://carnegie-production-assets.s3.amazonaws.com/static/files/Orden\\_Pamment\\_ForeignInfluenceOps2.pdf](https://carnegie-production-assets.s3.amazonaws.com/static/files/Orden_Pamment_ForeignInfluenceOps2.pdf) [<https://perma.cc/N5DH-ZC3Y>].

33. Dominic Tierney, *Does America Need an Enemy?*, NAT'L INT. (Oct. 20, 2016), <https://nationalinterest.org/feature/does-america-need-enemy-18106> [<https://perma.cc/T8YS-KF3X>].

34. See generally AZIZ RANA, *THE CONSTITUTIONAL BIND: HOW AMERICANS CAME TO IDOLIZE A DOCUMENT THAT FAILS THEM* (2024) (discussing the flawed nature of the Constitution and its impact on the American life); see also Jennifer Szalai, *The Constitution*

Siloed information sources are, again, at root. Without any intention to normalize the stream of lies emanating from right-wing media, as a descriptive matter the result is the emergence of two different nations within the territorial boundaries of the United States. Obviously, this phenomenon is coterminous with divided spheres of political activity, but it is much broader than that. Individuals on opposite sides are increasingly sorted by neighborhood and family.<sup>35</sup> Intermarriage across parties is now uncommon.<sup>36</sup> There are many spaces in which Republicans and Democrats still interact, but one supposes that it is at a mostly superficial level. They no longer have any faith in each other, a sense that they share a project that sets them apart from the rest of the world.<sup>37</sup> Separation is becoming apparent even with respect to sports, perhaps the one realm in which Americans could set aside their differences, if only on football Sundays. One friend of mine refused to watch the Super Bowl when she learned that Trump, breaking precedent, would attend in person.

That is, within the citizenry, a radical departure from the state of solidarity even twenty-five years ago. Citizenship does not otherwise define community on the ground. As a nation of immigrants, there have always been community members, long-term residents, who had become sociological members of the community. In the historical understanding, however, those non-citizens were on a trajectory to citizenship. Historically, lawmakers singled out so-called declarant aliens for favored treatment, including those non-citizens who had started the naturalization process.<sup>38</sup> That was consistent with the broader understanding that naturalization would parallel the process of

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*is Sacred. Is It Also Dangerous?*, N.Y. TIMES (Aug. 24, 2024), <https://www.nytimes.com/2024/08/31/books/review/constitution-secession-democracy-crisis.html> [<https://perma.cc/3RWK-ULHV>].

35. See, e.g., Emily Badger, Kevin Quealy & Josh Katz, *A Close-Up Picture of Segregation Among 180 Million Voters*, N.Y. TIMES (Mar. 17, 2021), <https://www.nytimes.com/interactive/2021/03/17/upshot/partisan-segregation-maps.html> [<https://perma.cc/P9PX-7CBW>] (“Democrats and Republicans live apart from each other, down to the neighborhood . . .”).

36. See Wendy Wang, *Marriages Between Democrats and Republicans Are Extremely Rare*, INST. FOR FAM. STUD. (Nov. 3, 2020), <https://ifstudies.org/blog/marriages-between-democrats-and-republicans-are-extremely-rare> [<https://perma.cc/VTG2-QPK9>]. Only 4% of politically mixed marriages are between Democrats and Republicans. *Id.*

37. See, e.g., Amber Hye-Yon Lee, *Social Trust in Polarized Times: How Perceptions of Political Polarization Affect Americans’ Trust in Each Other*, 44 POL. BEHAVIOR 1533 (2022).

38. The system also supplied lawmakers with a proxy for racial classifications, insofar as Asians were barred from naturalization and thus could not declare an intention to naturalize. See Gabriel J. Chin, *A Nation of White Immigrants: State and Federal Preferences for White Noncitizens*, 100 B.U. L. REV. 1271, 1280 (2020).

immigrant assimilation—to the extent that non-citizens were members of the community, they were citizens in the making.<sup>39</sup>

These historical understandings are being revised. First, there is phenomenon of unauthorized non-citizen members of the community. Twentieth century practice managed to assimilate this phenomenon into the standard narrative, insofar as a cycle of regularizations put unauthorized immigrants on a trajectory to citizenship. But the last major regularization was in 1986,<sup>40</sup> and it seems unlikely, in the current political environment, that Congress will follow this path anytime soon. The result is a permanent component of the community, such as it may be, that is walled off from the citizenry. The disconnect of citizenship and community is most obvious with respect to so-called “DREAMers.”<sup>41</sup> This would be severely compounded if Trump’s birthright citizenship order survives judicial scrutiny.<sup>42</sup>

The rise of transnational communities further decouples collective identity from citizenship. Immigrants to the United States have often sustained meaningful ties to their homelands.<sup>43</sup> But the rise of the internet and reduction in movement costs have elevated these ties to the point where they rival new ties in the country of resettlement.<sup>44</sup> Indeed, “resettlement” is itself an anachronistic characterization. Many migrants

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39. See HIROSHI MOTOMURA, *AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES* 17 (2006).

40. See Immigration Reform and Control Act, Pub. L. No. 99-603, 100 Stat. 3359 (1986) (codified in scattered sections of the U.S. Code); see also Elaine Kamarck & Christine Stenglein, *Can Immigration Reform Happen? A Look Back*, BROOKINGS (Feb. 11, 2019), <https://www.brookings.edu/articles/can-immigration-reform-happen-a-look-back/> [https://perma.cc/5BZY-Y74K].

41. See Elizabeth Keyes, *Defining American: The DREAM Act, Immigration Reform and Citizenship*, 14 NEV. L.J. 101, 103 (2013) (“The DREAM movement . . . lives at and vividly illustrates the disjuncture between American citizenship as a formal legal status (something DREAMers clearly lack) and citizenship as American identity (something DREAMers have in abundance).”).

42. If allowed to become effective, the executive order scaling back birthright citizenship to exclude the children of unauthorized immigrant parents would create an additional population of five million children lacking citizenship over the next twenty years, most of whom would remain in the United States. See Brief of Social Science Scholars as Amici Curiae in Support of Plaintiffs-Appellees at 19, *Washington v. Trump*, 145 F.4th 1013 (9th Cir. 2025) (No. 25-807).

43. See generally Thomas Soehl & Roger Waldinger, *Inheriting the Homeland? Intergenerational Transmission of Cross-Border Ties in Migrant Families*, 118 AM. J. SOCIO. 778 (2012).

44. See, e.g., Nancy Foner, *Second-Generation Transnationalism, Then and Now*, in *THE CHANGING FACE OF HOME: THE TRANSNATIONAL LIVES OF THE SECOND GENERATION* 242 (Peggy Levitt & Mary C. Waters, eds., 2002).

live their lives here and there.<sup>45</sup> A degraded national community based on citizenship has become a less attractive substitute, thus enhancing the social value of homeland ties. Those ties are increasingly bolstered by citizenship as migrants retain their citizenship of origin, as either mono- or (after naturalization) dual nationals.<sup>46</sup> In greater contrast to earlier waves of immigrants, these transnational identities are more easily retained on an intergenerational basis as immigrant children grow up with ties to both.<sup>47</sup> As with Bosniak's other citizenship portals, transnational forces have helped dilute the sense of collective identity that once, at least, putatively undergirded American citizenship.

These observations respecting rights, political activity, and collective identity are offered mostly in a descriptive mode. It almost goes without saying that there is normative value to rights and political activity, instantiating liberal and republican conceptions of citizenship. One might contest the collective identity dimension as a communitarian model. Framed as a matter of self-determination, it looks more virtuous.<sup>48</sup> A people comprises itself; a polity cannot be exogenously determined, hence the insulation of citizenship allocation from international law.<sup>49</sup> In any case, as material conditions erode American citizenship along all three dimensions, they will no longer supply the ballast that historically made up for citizenship's inherent exclusions.

#### D. *Citizenship (Only) as Status*

That leaves status as the remaining dimension. Status locates citizenship's continued salience. The status itself is stable and remains a binary value; you either have citizenship status or you do not. The question is what value that status has. The answer is, of course, tied up with the rights and political activity dimensions of citizenship. I have suggested that those elements have dissipated, the result of a mix of internal and external forces.

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45. See generally Peggy Levitt & Nina Glick Schiller, *Conceptualizing Simultaneity: A Transnational Social Field Perspective on Society*, 38 INT'L MIGRATION REV. 1002 (2004).

46. See, e.g., Kim Barry, *Home and Away: The Construction of Citizenship in an Emigration Context*, 81 N.Y.U. L. REV. 11 (2006).

47. See, e.g., DAVID FITZGERALD, A NATION OF EMIGRANTS: HOW MEXICO MANAGES ITS MIGRATION 140–41 (2008); Ruth Cheung Judge, *I Realise That They are Doing It for My Own Good: 'Homeland' Education Mobilities and Intergenerational Negotiation in Nigerian Diaspora Families*, 51 J. ETHNIC & MIGRATION STUD. 1470 (2025).

48. See Christopher Heath Wellman, *Immigration and Freedom of Association*, 119 ETHICS 109, 128–29 (2008).

49. Peter J. Spiro, *A New International Law of Citizenship*, 105 AM. J. INT'L L. 694, 745 (2011).

But there is one set of rights that I have bracketed: those relating to locational security. Citizens are immune from deportation and have an absolute right of reentry.<sup>50</sup> Even these may be less absolute than in the past. Brown citizens will no doubt be caught up in any mass deportation efforts, and the citizen children of undocumented immigrants will effectively face removal along with their parents.<sup>51</sup> Before Trump, there were some cases in which citizens were obstructed from entering the country.<sup>52</sup> But, for the most part, these rights are likely to survive even a Trump-level barrage.

That does not, however, normatively sustain citizenship. Detached from other rights and a sense of collective identity, migration-related entitlements are not citizenship reinforcing; they are not and never will be “a part of our political culture,” nor do they sound in the “language of rights [that] provides the potential for emancipatory political practice.”<sup>53</sup> To the extent that citizenship is allocated on an arbitrary basis, the fact that it comes with locational security will not by itself validate the institution. Civil and political rights can reinforce a sense of solidarity. Locational security by itself will not.

Citizenship status has also accreted value in the global context. With a U.S. passport comes mobility privileges. U.S. citizenship facilitates global mobility at a high level; one can assume that one will be allowed entry almost anywhere in the world with minimal advance

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50. By its terms, the removal powers of the Immigration and Nationality Act apply only to non-citizens. *See, e.g.*, 8 U.S.C. 1229(a) (notice of removal proceedings “shall be given in person to the alien”). *See also, e.g.*, *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922) (“Jurisdiction in the executive to order deportation exists only if the person arrested is an alien.”).

51. *See, e.g.*, Emmanuel Felton & Maegan Vazquez, *Three U.S. Citizens, Ages 2, 4 and 7, Swiftly Deported From Louisiana*, WASH. POST (Apr. 26, 2025), <https://www.washingtonpost.com/immigration/2025/04/26/us-citizen-children-deported-ice/> [<https://perma.cc/4ZBG-MMFD>].

52. *See* Ramzi Kassem, *Passport Revocation as Proxy Denaturalization: Examining the Yemen Cases*, 82 FORDHAM L. REV. 2099, 2100 (2014) (highlighting cases in which dual Yemeni-American citizens were effectively denied reentry into the United States after their passport renewal applications were rejected by consular authorities in Yemen).

53. Bosniak, *supra* note 5, at 470 n.84. One might add that these mobility entitlements are not distinctive. Passports from other developed economies also afford holders visa-free entry privileges. The result is not so much a reaffirming of distinctive nationalities but rather the emergence of a global elite who can travel freely around the world, the intensification of border controls notwithstanding. *See* Steffan Mau et al., *The Global Mobility Divide: How Visa Policies Have Evolved Over Time*, 41 J. ETHNIC & MIGRATION STUD. 1192, 1205 (2015) (documenting discriminatory visa policies); *see also* DIMITRY KOCHENOV, CITIZENSHIP (2019) (coining “citizenship apartheid” to describe gulf between premium and non-premium passports for mobility purposes).

requirements.<sup>54</sup> That is extremely valuable in the context of globalization, during which travel flows are eased for some and obstructed for others.<sup>55</sup> Many seek to acquire or retain citizenship for these purposes: to secure rights of entry into the United States and to secure rights of entry into other countries.<sup>56</sup> And with broad acceptance of dual citizenship, they can do this at the same time as they retain or acquire other citizenships.<sup>57</sup> The result is that many come to hold U.S. citizenship for the mobility privileges alone.

That is far from historically valorous conceptions of citizenship. To the extent citizenship is instrumental, it loses its normative justifications. This is compounded by the decoupling from other historical associations. If citizenship is not about civil or political rights, or about collective identity, it is simply an arbitrary marker of global inequality.

### III. THE PREMATURITY OF TRANSNATIONAL CITIZENSHIP

Around the turn of the century, scholars turned their sights on the possibilities of citizenship beyond the state.<sup>58</sup> Globalization was thought to facilitate new associative possibilities. Institutional evolutions suggested that citizenship capacities could be migrating to the global level. For the most part, these developments were dismissed or ignored by legal scholars and political theorists.<sup>59</sup> Bosniak, by contrast, took such possibilities seriously, as both a descriptive and normative matter.<sup>60</sup> “There are good reasons, grounded in commitments to social justice and democratic engagement,” she wrote, “to challenge the presumed inevitability and desirability of a statist conception of citizenship and to prefer, instead, a multiple, pluralized understanding of citizenship

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54. See *The Henley Passport Index*, HENLEY & PARTNERS, <https://www.henleyglobal.com/passport-index/ranking> [https://perma.cc/VS9C-XYGQ] (last visited Jan. 11, 2026).

55. See YOSHI HARPAZ, CITIZENSHIP 2.0: DUAL NATIONALITY AS A GLOBAL ASSET 7–8 (2019) (discussing “[c]itizenship as global sorter”).

56. See *id.*

57. See *id.* at 6–13 (introducing concept of “strategic citizenship” enabled by acceptance of dual nationality). See generally PETER J. SPIRO, AT HOME IN TWO COUNTRIES: THE PAST AND FUTURE OF DUAL CITIZENSHIP (2016) (discussing the rise of dual citizenship); Maarten Vink et al., *The International Diffusion of Expatriate Dual Citizenship*, 7 MIGRATION STUD. 362, 362–63 (2019).

58. See, e.g., DAVID J. ELKINS, BEYOND SOVEREIGNTY: TERRITORY AND POLITICAL ECONOMY IN THE TWENTY-FIRST CENTURY 39 (1995) (“Virtually all observers now assume that citizenship is tied to a territorial nation-state. Why must they assume that? What is the harm in saying that I am a citizen of a professional organization? Or of a sports team? Or a religious order?”).

59. See Bosniak, *supra* note 5, at 447.

60. See *id.* at 508–09.

identities and solidarities (however uncertain the precise institutional forms these might take may be).<sup>61</sup>

The move was one to be applauded. In the end, she remained a skeptic, appropriately so, alas.<sup>62</sup> Transnational citizenship has not taken hold, at least not in any form to substitute for citizenship in the state.<sup>63</sup>

Bosniak's analysis in 2000 considered the proposition through her four dimensions, with transnational citizenship coming up short along each.<sup>64</sup> To revisit each twenty-five years later is to validate those conclusions while nonetheless justifying the exercise. Transnational citizenship has not, first of all, taken root in rights. Although international human rights have advanced since the end of the Cold War, enforcement remains irregular.<sup>65</sup> The prospect of domestic rights being mirrored and supplanted at the international level (conceptualized by Yasemin Soysal with her theory of "postnational" citizenship),<sup>66</sup> while theoretically elegant and appealing, has not taken hold on the ground.<sup>67</sup> Human rights have established a baseline standard for the treatment of individuals, shared by all humanity.<sup>68</sup> Imperfect compliance does not refute the proposition; no law is comprehensively effective in deterring and enforcing against proscribed conduct. The baseline supplies the basis for a kind of world citizenship, a sense of solidarity shared by all (though contested in its contours).<sup>69</sup> But that solidarity, founded in rights, remains protean at best. The exercise of institutional jurisdiction is a patchwork.<sup>70</sup> The traditional horizontal model of international law enforcement continues to be ineffectively executed in many cases.<sup>71</sup>

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61. *Id.* at 508.

62. *See id.* at 508–09.

63. *See id.* at 505–07.

64. *See generally* Bosniak, *supra* note 5 (discussing the weakening link between citizenship and the nation-state).

65. *See, e.g.*, BETH A. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* (2009).

66. *See* YASEMIN SOYSAL, *LIMITS OF CITIZENSHIP: MIGRANTS AND POSTNATIONAL MEMBERSHIP IN EUROPE* 1–4 (1994).

67. *See* Peter J. Spiro, *Membership and Global Legal Pluralism*, in *THE OXFORD HANDBOOK OF GLOBAL LEGAL PLURALISM* 1021, 1024–26 (Paul Schiff Berman ed., 2020).

68. *See* Weissbrodt & Meili, *supra* note 17, at 37–47.

69. *See* Spiro, *supra* note 67, at 1030–34 (arguing for “[t]aking [g]lobal [c]itizenship [s]eriously”); Richard Falk & Andrew Strauss, *Toward Global Parliament*, 80 *FOREIGN AFF.* 212, 216–17 (2001).

70. *See* Mette Eilstrup-Sangiovanni & Jason C. Sharman, *Enforcers Beyond Borders: Transnational NGOs and the Enforcement of International Law*, 19 *PERSP. ON POL.* 131, 131–34 (2021).

71. *See id.*

Political activity reflects perhaps the most promising vector for world citizenship. Political engagement across borders is now dense.<sup>72</sup> The channels of transnational political activity have proliferated and been institutionalized.<sup>73</sup> More important than supranational intergovernmental institutions, and beyond the transnational political alliances noted above, much of this activity transpires through non-state entities.<sup>74</sup> Nongovernmental organizations have mushroomed in visibility and influence, as have corporate actors.<sup>75</sup> There were suggestions that transnational regulation could be effected through those channels, without state supervision.<sup>76</sup> The theory, again, was sound; there were remarkable innovations in non-state governance.<sup>77</sup> Mobilization at the individual level suggested the iterated engagement of citizenship in the state, minus the vote. Global constituencies have pursued clearly defined political agendas against corporate and governmental actors. There have been notable material successes in some contexts, and non-state actors advancing environmental, human rights, and other goals have impacted global political discourse.<sup>78</sup>

This was not a chimera or pie-in-the-sky. Although there has been a tendency to validate NGOs as a counterweight to growing corporate power, their rise attracted critical perspectives.<sup>79</sup> Ultimately, they have not proved up to the task. State and corporate power (including the power of the new technology giants) has proved too formidable.<sup>80</sup> Transnational politics has tended to be oriented to particular issues or identities; it is not a capacious, integrated landscape, and few would see it as an

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72. See generally David J. Bederman, *Diversity and Permeability in Transnational Governance*, 57 EMORY L.J. 171 (2007) (discussing the impact of globalization on political governance).

73. See *id.*

74. See *id.* at 177–83.

75. See *id.*

76. See, e.g., Eilstrup-Sangiovanni & Sharman, *supra* note 70, at 133–36; Peter J. Spiro, *New Global Potentates: Nongovernmental Organizations and the “Unregulated” Marketplace*, 18 CARDOZO L. REV. 957, 967–72 (1996).

77. See generally Kenneth W. Abbott & Duncan Snidal, *Strengthening International Regulation Through Transnational New Governance: Overcoming the Orchestration Deficit*, 42 VAND. J. TRANSNAT’L L. 501 (2009) (systematizing participation of non-state actors in global governance).

78. See, e.g., Peter J. Spiro, *Constraining Global Corporate Power: A Very Short Introduction*, 46 VAND. J. TRANAT’L L. 1104 (2013); Nat’l Intel. Council, Memorandum, NON-STATE ACTORS PLAYING GREATER ROLES IN GOVERNANCE AND INTERNATIONAL AFFAIRS (July 5, 2023), [https://www.dni.gov/files/ODNI/documents/assessments/NICM-Non-State-Actors\\_23-01637\\_05-18-24\\_.pdf](https://www.dni.gov/files/ODNI/documents/assessments/NICM-Non-State-Actors_23-01637_05-18-24_.pdf) [<https://perma.cc/47G9-8S8A>].

79. See, e.g., Steven Bernstein & Benjamin Cashore, *Can Non-State Global Governance Be Legitimate? An Analytical Framework*, 1 REG. & GOVERNANCE 347, 363–64 (2007); Peter J. Spiro, *Accounting for NGOs*, 3 CHI. J. INT’L L. 161, 161–62 (2002).

80. See Bederman, *supra* note 72, at 177–81.

exclusive or adequate platform by which to advance a broad agenda. Interesting and novel as these channels may be, they remain too constricted to supply a foundation for citizenship on par with citizenship in the state.

Similar observations may be made respecting collective identity at the transnational level. Cross-border identity is undoubtedly more developed than it was at the end of the Cold War. The rise of human rights and transnational political activity have organically facilitated various solidarities across state lines.<sup>81</sup> Non-state identities are no longer understood to be submerged by nationality.<sup>82</sup> In any number of pairings, transnational identities clearly supersede national ones. A New Yorker who votes Democratic will now almost always have more in common with her progressive counterparts in other democracies than she will with a Trump voter from Arkansas. But these commonalities are not yet deep enough to systematically rival the state. It would be overclaiming to characterize transnational identities as establishing citizenship beyond the state.

Status, finally, is hard to put to work in establishing transnational citizenship. As non-state entities accumulate autonomous authority, their members have benefited from the association.<sup>83</sup> A calling card as a top executive of a large multinational or the head of a top human rights organization can be worth more than a passport. This is true not only as a matter of entrée and political influence but also as a matter of protection.<sup>84</sup> I would rather be an employee of Google than a U.S. citizen if I were facing mistreatment by a foreign government. That is also the case when it comes to extraction from unstable situations. Even lowly students of U.S. educational institutions enjoy speedy evacuation (via International SOS) from global trouble spots where consular assistance is balky.<sup>85</sup> But these associational advantages go only so far. As a formal matter, recognition of non-state status remains anomalous.<sup>86</sup> Membership in these collectivities will not get you anywhere—literally—without a passport; immigration inspectors at JFK airport are not accepting your Harvard student or Google work identification, much less your Greenpeace membership card. As a formal matter, they do not get

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81. See, e.g., Weissbrodt & Meili, *supra* note 17, at 37–47; Abbott & Snidal, *supra* note 77, at 554–58.

82. See SPIRO, *supra* note 6, at 150–52.

83. See Spiro, *supra* note 76, at 957.

84. See SPIRO, *supra* note 6, at 102–03.

85. See, e.g., *Students Evacuated Following the Assassination of Haiti's President*, INT'L SOS, <https://www.internationalsos.com/case-studies/students-evacuated-following-the-assassination-of-haitis-president> [<https://perma.cc/TN4W-8VNY>] (last visited Jan. 8, 2026).

86. See Spiro, *supra* note 67, at 1024–26.

you much as a matter of international law, either: consider the example of Jamal Khashoggi.<sup>87</sup>

While none of Bosniak's four dimensions works to demonstrate that transnational citizenship can stand on its own, each has contributed to the erosion of citizenship in the state. The movement of citizenship orientations is more than a mirage. Unsurprisingly, in the wake of various material strands of globalization, citizenship-like activity has followed.<sup>88</sup> That seepage has undermined citizenship in the state.<sup>89</sup> But it does not comprise a substitute. Perhaps over the long run, these transnational currents will sustain something that can shoulder the "citizenship" label. More likely they will resemble a kind of neo-medievalism, a decentered constellation of asymmetric affiliations, one of which will continue to be citizenship in the state.<sup>90</sup>

In the meantime, we are left bereft. A sanctified citizenship in the state moves to tatters, and there is nothing to replace it. For all its failings, citizenship and the state supplied a platform for progress. The state and "society," composed of citizens, created a space in which moral arcs bent in the right direction, at least over the long run. Citizenship's end is leaving us without institutional boundaries. It becomes hard to know where to turn one's attention.

#### IV. CONCLUSION

Those of us who, like Linda Bosniak, are nearing the end of our academic careers did not know how good we had it. Academic engagement requires some degree of institutional stability. It requires a defined playing field within which to frame and elaborate arguments. It requires the stability that allows other actors to pause and listen. During great disruptions, constructive academic voices will be lost in the din. Our rooted, moderated, judicious perspectives seem increasingly marginal. Of course we can fight the fight. That will take some courage, and I am not sure how much distinctive value we add as scholars. One

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87. The *Washington Post* pressed for an investigation of the Khashoggi murder, which resulted in a UN special rapporteur report on the episode. See, e.g., Carol Morello & Kareem Fahim, *U.N. Investigator Calls For Probe of Saudi Officials in Khashoggi Killing*, WASH. POST (June 19, 2019), [https://www.washingtonpost.com/world/national-security/un-investigator-calls-for-probing-saudi-officials-in-khashoggi-killing/2019/06/19/cf5ee594-91f3-11e9-aadb-74e6b2b46f6a\\_story.html?utm\\_term=.0354500fba88](https://www.washingtonpost.com/world/national-security/un-investigator-calls-for-probing-saudi-officials-in-khashoggi-killing/2019/06/19/cf5ee594-91f3-11e9-aadb-74e6b2b46f6a_story.html?utm_term=.0354500fba88) [https://perma.cc/2CL3-584Y]. But the *Post*, as a non-state actor, had no standing to press anything like a diplomatic claim for the killing of its columnist.

88. See Abbott & Snidal, *supra* note 77, at 554–58.

89. See SPIRO, *supra* note 6, at 137–49.

90. See Bederman, *supra* note 72, at 183–87; Jessica T. Mathews, *Power Shift*, 76 FOREIGN AFF. 50, 66–67 (1997).

supposes that specious arguments on the other side must be answered (see the current historical debates about birthright citizenship)<sup>91</sup> to add some friction to the debates and to supply some rallying points for the opposition, though it is not clear how much difference this kind of activity actually makes. Meanwhile, the parallel play of academic jousting and maneuvering for professional perks will start to look trivial and possibly compromising, especially to the extent universities submit to extraordinary governmental intrusions.

Perhaps this reflects the kind of nostalgia that every generation feels at its sunset, the cognitive tendency to think that one lives in special times. That tendency must be wrong most of the time, of course. I would be glad to be wrong. But I fear I am not. It feels like we are living in a special time, in the sense of accelerated, foundational, social and political change that, in the short and medium terms at least, is going to be extremely destabilizing and for which no happy endings are guaranteed. This change will not be speedy enough for most or maybe any of us to experience a new settlement, though I suppose we can attempt some early sketches.

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91. See, e.g., Anthony Michael Kreis et al., *Birthright Citizenship and the Dunning School of Unoriginal Meanings*, 111 CORNELL L. REV. ONLINE 1, 4–6 (2025) (refuting novel ahistorical interpretations of Fourteenth Amendment to exclude children of undocumented immigrants from coverage of territorial birthright citizenship). As Bosniak eloquently observes, “aspirational struggles for freedom and justice and recognition will continue, and they need to be chronicled, analyzed and supported.” Bosniak, *supra* note 1, at 385.