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CHAPTER SIX

Transpolitical Citizenship

It is an intriguing fact that at a time when political citizenship in advanced industrial democracies seems to be under threat with falling voter turnouts at elections, declining membership of political parties and generalized distrust of politicians (Stoker 2006), forms of *transpolitical* membership appear to be proliferating as political rights (as well as electoral campaigns and fund raising) are increasingly expanding beyond territory and national membership (Baubock 2005) as well as, at least in the case of the EU, across levels of governance (Shaw 2007). How should we account for, or evaluate, this phenomenon? What is its political significance? In this chapter, we'll get to grips with this topic by mapping the terrain, conceptually and empirically, focusing on the major form of transpolitical citizenship, namely, *transnational* citizenship, addressing the causes of its increasing prevalence before discussing its normative character; on the basis of this discussion, we'll turn finally to consider the other major contemporary innovation in transpolitical citizenship, namely, EU citizenship, before concluding with some reflections on the future research on transpolitical citizenship.¹

Mapping the Terrain

Let's begin with some preliminary specification of terms. By 'transpolitical citizenship', we refer to the general phenomenon of overlapping membership of two or more polities, where a 'polity' refers to a political community with some (non-trivial) powers of self-government.

This definition allows us to distinguish two general modes of transpolitical citizenship: *nested*, in which membership of one polity mandates membership of the other(s), and *non-nested*, in which there is no such relationship.

While EU citizenship offers the most spectacular contemporary example of nested transpolitical citizenship, this mode is also exhibited by federal systems of governance more generally and has been a prominent feature of the accommodation of national minorities in countries such as Canada, Spain and the UK. The most politically significant contemporary form of non-nested transpolitical citizenship is *transnational citizenship*² which comes, from a legal standpoint, in three main varieties:

- *Dual (or plural) nationals* who are legally recognized as citizens by two or more independent polities.
- *(Non-stateless) denizens* who, as long-term resident foreign nationals in one polity, enjoy 'most of the civil liberties and social welfare rights of resident citizens, often including rights to family reunification, some protection from deportation, and voting rights in local elections, as well as quasi-entitlements to naturalization' and, as long-term non-resident citizens of another polity, enjoy external citizenship rights (i.e. the right to return and the right to diplomatic protection) and may retain some voting rights.
- *Ethnizens* who are citizens of one polity, are 'ethnically' linked to the membership of another polity and, despite being neither citizens nor residents of that polity, are granted an 'external quasi-citizenship' which entitles them to such benefits as 'financial support for maintaining a minority culture and language, privileged admission to the territory or labour market of the kin state, and, in some cases, facilitated naturalization'. (Baubock 2007a: 2395–6)

Since there is not yet (to our knowledge) a case of *ethnizens* enjoying political rights in relation to the polity that grants them this external quasi-citizenship status (Baubock 2007b), we'll leave this undoubtedly significant phenomenon aside in order to summarize briefly the three trends that have done most to facilitate the development of transnational citizenship in its core political meaning.

The first trend is the rapidly increasing acceptance – or at least, tolerance – of dual nationality. More than 100 states now accept or tolerate dual nationality and the trend towards allowing this status has accelerated significantly over the past twenty years. Thus, in 1996, approximately forty states officially allowed dual nationality, by 1998 it was fifty-five, and by 2001 ninety-three (Kivisto and Faist 2007) to which – drawing on the work of Sejersen (2008) – we may now add at least another ten states.

The second is the similarly widespread recourse of states to the political incorporation of emigrants by way of expatriate voting rights.³ Moreover, as in the case of dual nationality, there is no clear correlation between granting such rights and the social, economic or political make-up of the state as Table 6.1 demonstrates.

The third trend is considerably less spectacular, and marks the gradual development of, typically, local electoral rights for resident non-citizens. The current position is summarized in Table 6.2.

Table 6.1 States with expatriate voting rights

Region	Polity
Africa (24)	Algeria, Angola, Benin, Botswana, Cape Verde, Central African Republic, Chad, Djibouti, Equatorial Guinea, Gabon, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Mali, Mozambique, Namibia, Niger, Rwanda, Sao Tome and Principe, Senegal, Sudan, Togo, Tunisia
Americas (16)	Argentina, Bolivia, Brazil, Canada, Columbia, Dominican Republic, Ecuador, Falkland Islands, Guyana, Honduras, Mexico, Nicaragua, Panama, Peru, United States, Venezuela
Asia (16)	Afghanistan, India, Indonesia, Iran, Iraq, Israel, Japan, Kazakhstan, Kyrgyzstan, Oman, Philippines, Syria, Tajikistan, Thailand, Uzbekistan, Yemen
Europe (40)	Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Gibraltar, Greece, Guernsey, Hungary, Iceland, Isle of Man, Italy, Jersey, Latvia, Liechtenstein, Lithuania, Luxembourg, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom
Pacific (10)	Australia, Cook Islands, Fiji, Marshall Islands, Micronesia, Nauru, New Zealand, Palau, Pitcairn Islands, Vanuatu
Total 106	

Source: Adapted from IDEA (2007, Tables 1.2 and 1.4).

All of these trends are marked by considerable internal diversity. In the case of dual nationality, the main axes of differentiation concern: (a) whether states officially permit the practice of dual nationality (e.g. the UK) or simply tolerate the existence of dual nationality in a range of cases (e.g. Germany); and (b) the rather different legal criteria and administrative regulations they deploy in relation to dual nationality (Faist and Kivisto 2007). In the instance of expatriate voting, there is marked variation concerning the electoral rights to which expatriates are entitled, the voting methods, practices of representation and criteria

Table 6.2 States with resident non-citizen voting rights

National Regional or local		Australia Barbados Belize Guyana Ireland St Lucia St Vincent and Grenadines Trinidad and Tobago UK	New Zealand Malawi
		Portugal	Chile
			Uruguay
	Switzerland	European Union (25 Member States)	Ireland
			Denmark Finland Iceland Norway Sweden
			Belgium Luxembourg Netherlands
			Estonia Hungary Lithuania Slovakia Slovenia
			Belize Venezuela (Bolivia) (Columbia)
	United States		
	Canada Israel		
In part of polity	For particular nationalities	Universal	

Source: This table is drawn from Baubock (2005: 684) which is itself an updated and adapted version of Earnest (2004: 27).

of selectivity involved. Thus, while the majority of polities which have such rights allow their exercise in legislative elections, there are widely varying positions on whether such rights are restricted to legislative elections (thirty-one) or also include presidential elections (twenty) and referenda (eleven) and subnational elections (six), while twenty-one countries do not allow expatriate voting in legislative elections, restricting them to presidential elections only (fourteen) or presidential elections

and referenda (seven). Similarly, while the majority of states that allow expatriate voting adopt a single method of voting which varies between personal voting at, for example, embassies or other designated sites (fifty-four), postal voting (twenty-five) and proxy voting (four), about one-quarter of such states now support a plurality of voting methods (IDEA 2007). Furthermore, while most states fold the expatriate vote into the overall vote, a limited number of states (e.g. Columbia, Croatia, Italy, Portugal) have adopted a policy of special representation via reserved seats for the emigrant vote. Finally, states also adopt different selectivity criteria with some placing time-limits on the period that a citizen can reside abroad before losing their voting rights; for example, New Zealand grants its expatriates voting rights for only three years and Canada for five, while the UK currently offers fifteen years and Germany twenty-five years (IDEA 2007). In relation to the third trend, voting rights for resident non-citizens, a primary set of variations concern what electoral rights are available, whether in part or the whole of a polity, whether to all non-resident citizens or only those from particular states, and under what type of residency requirement. Thus, for example, in Switzerland only certain cantons offer voting rights for foreign residents, while by contrast the UK allows local voting rights to all non-resident citizens after three years of legal residence but grants national voting rights only to non-resident citizens from the Commonwealth and the Irish Republic. In a different vein, Portugal, Spain and the Czech Republic have adopted reciprocity criteria that allow local voting rights (and sometimes eligibility for public office) on the basis of bilateral treaties with other states, while, more radically, New Zealand has chosen to grant full voting rights to all resident non-citizens after one year of lawful residence. Many of the reasons for these variations relate to the particular histories and civic traditions of the states concerned as well as factors such as their membership of alliances (the Nordic Council, the Commonwealth) or confederations (the EU) of states and the specific political circumstances under which such rights were introduced (e.g. the Conservative Party in the UK introduced expatriate voting and extended eligibility criteria from a five-year limit to a twenty-five-year limit in the hope, as it turned out unfulfilled, of significant electoral advantage). However, the more generally pertinent question raised by such developments is this: What factors have led to the re-orientation of the membership policies of increasingly large numbers of democratic states in terms of the incorporation of *both* immigrants and emigrants into the polity?

Accounting for the Rise of Transnational Citizenship

One response to this question points to the increasing salience of human rights norms in global politics and, noting that civil and social rights are increasingly specified in terms of personhood rather than citizenship, suggests that there is a trend towards 'postnational' membership regimes in which personhood is the dominant criterion (Soysal 1994; Spiro 2007). However, there is little evidence to support this claim in relation to either the spread of dual nationality (Bloemraad 2004; Faist 2006; Faist and Kivisto 2007) or the extension of emigrant (Baubock 2007a) and immigrant (Waldrauch 2003; Earnest 2006) voting rights. This is not to deny the influence of human rights norms within this process but the position is rather more complex than the advocates of postnationalism suggest. In order to try to get a grip on these changes, we'll sketch briefly the background against which the changes occurred before focusing on the reasons that states may have to incorporate, first, emigrants and, second, immigrants into the polity.

We can begin by attending to the issue of dual nationality – an issue which arises because, as a matter of their jealously guarded *domaine réservé*, states are entitled to determine their own nationality laws and, for a range of reasons, states adopt different rules or combinations of rules. More specifically, the late eighteenth and nineteenth century saw the adoption by different states of the principles of *jus soli* (nationality in virtue of birth on the territory of the state) and/or *jus sanguinis* (nationality in virtue of birth to one or more parents of that nationality) as well as the possibility of *jus domicilii* (naturalization through residence) which, alongside *jus soli*, was significant for the (so-called) 'settler' states of the Americas and Oceania. Notably, while the adoption of specific principles by particular states was influenced by whether their legal systems were based on Roman law or common law and by where they stood in the sequence of European state-formation, it was in large measure also a function of how they stood with respect to migration:

Countries that formed through immigration – such as the United States, Canada, the Latin American countries and Australia – tended to base nationality on *jus soli* because it permits more rapid assimilation of immigrants. Countries that experienced great out-migration – such as Germany, the Scandinavian countries, and Italy – tended to base nationality on *jus sanguinis* because it encourages emigrants to retain their nationality and pass it on to their children so as to facilitate – for

both emigrants and their descendants – closer ties with and the return to their homeland. (Kosłowski 2000: 79)

The major exception to this rule was Great Britain, which maintained the principle of *jus soli* despite high rates of emigration, but this is explained by the fact that Britain supplemented this principle with the common law doctrine of *perpetual allegiance* ‘whereby those born as subjects of the crown remained subjects, regardless of emigration or even naturalization’ (Kosłowski 2000: 79). From this situation, three main routes to dual nationality emerge (Hammar 1994):

1. Birth to parents whose nationality involves *jus sanguinis* transmission (which today is, as far as we can discern, all states) on the territory of a state with relevant *jus soli* elements in its nationality law.
2. Birth to parents who hold distinct nationalities.
3. The acquisition of a nationality through naturalization without the relinquishment of one’s prior nationality.

The relationship of these developments to the emergence of an international norm of singular nationality arose in the first instance in relation to the issue of the military obligations of dual nationals:

Great Britain considered naturalised American sailors born in Great Britain to be subjects of the British crown and pressed them into military service, thereby triggering the War of 1812. ... France, Spain, Prussia and other German states routinely drafted naturalised Americans when they visited their homelands. (Kosłowski 2000: 75)

In this context, the United States of America engaged in constructing a series of bilateral treaties aimed at negotiating this problem, the Bancroft Treaties, which ‘accumulated into a set of norms against dual nationality in customary international law’ (Kosłowski 2000: 76). These norms were entrenched under the League of Nations and were central to its treatment of political membership in the various successor states to the Austro–Hungarian empire (Jackson Preece 1998: 74) before being formally codified in the 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws, which stated that ‘it is in the interest of the international community to secure that all members should recognize that every person should have a nationality and should have one nationality only’ (cited in Kosłowski 2000: 76). While in the aftermath of the Second World War, the

flip side of dual nationality, namely, statelessness has come to increased prominence, the view of dual nationality expressed in the Hague Convention maintained sway through further international instruments culminating in the Council of Europe's 1963 Convention on the Reduction of Cases of Multiple Nationality which 'aims to reduce as far as possible the number of cases of multiple nationality' (cited in Howard 2005: 701). While the issue of the potentially conflicting allegiances and obligations (particularly of military service and taxation) of dual nationals remain as objections in the immediate post-war period, dual nationality is also held to be objectionable on the further grounds that it may impede the integration of immigrants into a host state and that it is inequitable because dual nationals may enjoy a larger range of rights and opportunities than singular nationals (Kraler 2006: 59).

To explain the changes to this situation, it is worth distinguishing two background shifts affecting the numbers of potential dual nationals and the weakening of some of the conditions from which standard objections to dual nationality have derived much of their force. The first concerns causes of the increasing prominence of the issue of dual nationality, where the primary causes can be identified as: (a) increasing levels of migration in the post-1945 period which have led to greater levels of resident non-nationals in states as well as an increase in transnational marriages; (b) the development of international norms of gender equality which allowed women to retain their nationality on marriage to a national of a state other than their own, and allowed the children of such marriages to qualify for the nationality of both parents; and (c) the breakdown of colonial empires (most recently, the Soviet Union) in which members of the colonizing empire-state who have settled in a colonized state were allowed, post-independence, to retain the nationality of the empire-state (Kivisto and Faist 2007; Sejersen 2008). The second addresses the weakening of traditional grounds of objection to dual nationality where we can note that the decline of the 'warfare' state and the movement from conscripted to professional armies alongside related international security factors such as post-war European integration, the role of NATO and, most recently, the end of the Cold War have ameliorated the force of the dual allegiance and conflicting obligations objection, while the development of an international human rights regime has arguably made the issue of diplomatic protection for non-resident nationals less pressing a concern (Faist and Kivisto 2007; Kivisto and Faist 2007).

Although the enfranchisement of resident non-citizens was a variably widespread feature of the first 150 years of the political history of the

United States,⁴ it is notable that the codification of the norm of singular nationality in the 1930 Hague Convention postdates by only a few years the end of resident non-citizen voting in the United States which had, at local levels, persisted in at least some states from the pre-revolutionary period until 1926 and has only reappeared recently in very limited forms (Hayduck 2006). This practice was not generally widespread among states (although the Neuchatel canton in Switzerland has practised it since 1849) and the decline of 'alien suffrage' in the United States from the late nineteenth to early twentieth century occurs in the context of the rise of 'nativist' (i.e. nationalist) movements and the broader shifts in US immigration policy directed against Asian and East European migrants that were formalized in the 1924 Johnson-Reed Act. The return of this practice in the aftermath of the Second World War in Australia (1947, for British citizens only), the UK (1948, for Commonwealth citizens only), Israel (1950, for Jews only) and Uruguay (1952, for anyone resident for fifteen years) concerned either colonial ties (Australia and Britain) or special reasons for the incorporation of foreign nationals who did not wish to surrender their current nationality (Israel and Uruguay). The more recent spread of the practice since 1960 has been primarily driven by reciprocal agreements between states with significant historical links and/or migration flows (Portugal–Brazil, for example) or by alliances (Nordic Council) or confederation (the EU) between states, although a concern with immigrant integration has also played a role in this process.

Expatriate voting rights have a shorter modern history than dual nationality and resident non-citizen voting and have been introduced for a variety of reasons. Thus, commenting on the history of voting from abroad, Ellis notes that such rights have been introduced for a range of reasons:

[In] several countries the introduction of the right to vote for overseas citizens was an acknowledgment of their active participation in World War I or World War II. In Spain, the introduction of external voting in 1978 has a symbolic character insofar as its inclusion in the democratic constitution meant the *ex post facto* acknowledgment of the republican emigration after the Civil War. In Argentina (1993) it reflected the government's political/pragmatic intention to maintain or strengthen the ties between emigrants and the mother country. In Austria, the introduction of external voting (in 1990) followed a resolution of the Constitutional Court. The United States provides an example of those

rare cases where external voting was finally enacted in response to the demands of citizens residing overseas (in 1975). (IDEA 2007: 43–4):

Against the background of these three developments, let us return to the question of why states increasingly seek to incorporate emigrants and immigrants into the polity.

Why should states seek to incorporate emigrants into the polity via dual nationality⁵ and/or expatriate voting rights? Recalling that in the nineteenth century many states of emigration adopted *jus sanguinis* nationality laws as a way of maintaining links with their emigrant citizens, we should perhaps not be surprised that states persist in their commitment to such ‘bonding’ mechanisms in the context of contemporary levels of global inequality and competition for resources (including human capital). The emigrant citizen has become a crucial potential resource for developing states and, albeit to a lesser extent, for developed states in two different respects. The first is as an economic resource. In the case of developing states, sustaining the affiliation of emigrants supports the continuing flow of remittances to the national economy. As Chander notes:

The financial success of the diaspora has led to its increasing importance to the homeland. Remittances from abroad to family at home in developing countries exceed official development aid by many times. ... In 2003 remittances to developing countries totalled \$91 billion. The World Bank, by contrast, provided \$20 billion in new loans in its fiscal year ..., while the United States provided \$16.3 billion in net overseas development assistance in 2003, including its World Bank contributions. (Chandler 2006: 63)

While for all states, the role of entrepreneurial emigrants in facilitating trade links, capital and technology transfers between ‘home’ and ‘away’ states offers significant potential benefits:

Remittances are only part of the story. Investments and information networks between the diaspora and homeland have helped drive economic development in many parts of the world. (Chander 2006: 63)

More specifically, dual nationality eases the movement of emigrants between their state of origin and state of residence and facilitates transnational activities as well as the potential return of emigrants; while expatriate voting

rights – even when not exercised – offer the emigrant testimony to the state's valuing of their contribution and give official recognition to their experience of having a stake in the well-being of their 'home' state. The second respect in which emigrants are valuable concerns their role as a source of political influence on their state of residence on behalf of their state of origin. Notably, this role is facilitated if emigrants naturalize in their state of residence while retaining their original nationality. This turn to the figure of the emigrant as a contributing, even heroic, citizen of the 'home' state (Barry 2006) is not only supported through dual nationality and expatriate voting rights; as Chander (2006) details, a range of other 'bonding' mechanisms have been developed by states including special long-term multi-trip 'diaspora visas' for its non-citizen diaspora (e.g. India), 'diaspora membership documents' which entitle the holder to a range of civic benefits (e.g. Turkey and India), 'diaspora bonds' (e.g. Israel – \$23.9 billion raised since 1951), 'direct support for development programmes' (e.g. Mexico attracts specific locally targeted development funds from its diaspora with promises of matching government funding), 'foreign direct investment' (e.g. China's reliance on overseas Chinese investment to support its growth), 'encouraging return' (e.g. China has actively recruited highly skilled overseas Chinese), 'pension transfers' (e.g. Mexico is seeking agreement that contributions by Mexicans to the US Social Security system can be collected if they retire to Mexico) as well as mechanisms for granting 'civic recognition' to non-resident citizens. The inventive variety of such 'bonding' mechanisms supports the general thesis that states – and particularly states in the developing world – have come to acknowledge the value of emigrants as citizens. More analytically, we can follow Gamlen (2008) in distinguishing two types of diaspora mechanism that comprise the 'emigration state'. 'Diaspora building' mechanisms cultivate new diaspora communities and recognize pre-existing ones often through governmental techniques designed to encourage expatriates (and their descendants) to identify with the imagined national communities such as Philippines 'Month of the Expatriate', and by providing dedicated bureaucratic structures such as consular services: Mexico's fifty consular offices in the United States comprise such a resource for expatriates (2008: 843–4). 'Diaspora integration' mechanisms are designed to draw resident and non-resident citizens into a way of rights and obligations by extending political rights and making social security rights 'portable' as well as extracting obligations by targeting expatriate investment (2008: 843).

What, though, of immigrant incorporation via dual nationality *or* resident non-citizen voting? What are the benefits of immigrant incorporation?

Some benefits are simply the flip side of economic arguments concerning trade links and foreign direct investment. However, perhaps the primary motivation for the changing attitudes of major receiving democratic states to dual nationality has been a concern with social cohesion based on the (empirically supported) view that immigrants are more likely to integrate and become citizens if they are not required to surrender their existing nationality (Faist 2006). This, in turn, involves at least the tacit acknowledgement of the fact that many migrants support and inhabit transnational social networks that are intrinsically characterized by dual affiliations. While a comparison of the trends for these two mechanisms suggests that states have a strong preference for immigrants to become (dual) nationals and so to maintain the symbolic link between national voting rights and national citizenship, it may also be the case that local voting rights for habitually resident immigrants support local integration, while also giving expression to (and helping to sustain) transnational (the Commonwealth, the Nordic Union), international (Spain and Norway) or supranational (the EU) solidarities.

In sum, states increasingly have compelling economic and political reasons to incorporate both emigrants and immigrants into the polity, although these reasons will have differential force with respect to developing and developed states, and the trends we have been examining are, in part, a reflection of the recognition by states of this fact, although a range of diverse state-specific factors also play key roles in determining whether, when, in what form and with what constraints, they have expanded the polity.

The Normative View

How should we reflect on these developments from a normative point of view?

In what follows, we will begin by focusing on the question of political rights by way of appeal to the democratic argument that all subjected to the collectively binding decision of the polity should be entitled to political membership of the polity; reflection on the limitations of this argument as a normative basis for the evaluation of transnational citizenship will provide the basis for consideration of the *all-affected interests* principle and the *stakeholder* principle as alternative criteria for evaluating transnational citizenship.

To start reflecting on this topic, we can begin by considering the widespread view that habitual legal residence in a polity is a sufficient condition for access to membership of the demos. To my knowledge, this view was first

articulated with respect to resident non-citizen voting rights in the case of *Spragins v. Houghton* (1840) which allowed the Illinois Supreme Court to make clear:

a general constitutional preference for democratic inclusion where the simple facts of habitation, residence and common social membership establish a political relationship 'between the governed and [the] governing'. According to the Court, the Illinois Constitution: '[I]ntended to extend the right of suffrage to those who, having by habitation and residence identified their interests and feelings with the citizen, are upon the just principle of reciprocity between the governed and the governing, entitled to a voice in the choice of the officers of the government, although they may be neither native nor adopted citizens.' (Raskin 1993: 1405)

We may reformulate the general political argument of the Court in contemporary terms as Dahl's 'principle of full inclusion': 'The demos must include all adult members of the association except transients and persons proved to be mentally defective' (1989: 129), where 'adult members of the association' refers to 'all adults subject to the binding collective decisions of the association' (1989: 120). As Lopez-Guerra helpfully notes, Dahl's specification of criteria of democracy can be summarized thus:

(1) governments must give equal consideration to the good and interests of every person bound by their laws (principle of intrinsic equality); (2) unless there is compelling evidence to the contrary, every person should be considered to be the best judge of his or her own good and interests (presumption of personal autonomy); therefore (3) all adults [who are not merely transients (1) and are not shown to be mentally defective (2)] should be assumed to be sufficiently well-qualified to participate in the collective decision-making processes of the polity (strong principle of equality). (2005: 219, my insertion)

In the context of a democratic polity characterized in part by authority over a territorial jurisdiction, Dahl's account implies that any competent adult who is habitually resident within the territory of the polity and, hence, *subject to* the laws and policies of its government is entitled to full inclusion within the *demos*.⁶ Such an argument can be taken to underwrite Walzer's claim that the denial of full political rights to legally admitted

habitual residents amounts to *citizen tyranny* (Walzer 1983: 55).⁷ It also plays a central role in the *social membership* argument advanced by Rubio-Marín (2000) and Carens (1989, 2005) which asserts the principle that ‘people have a moral right to be citizens of any society of which they are members’ (Carens 1989: 32). The basis of this claim is twofold. First, the general social fact that living in a society makes one a member of a society since one forges connections and attachments, and one’s interests become interlinked with those of other members of the society (Rubio-Marín 2000: 21, 31–4; Carens 2005: 33, 39). Second, in living in a given society, one is subject to the political authority of the state and, consequently, on democratic grounds, should have access to full political rights within the political community of that state (Rubio-Marín 2000: 28–30; Carens 2005: 39).

These arguments are, I think, compelling. Moreover, and fairly naturally, they give rise to the claim – implied by Walzer (1983), advanced by Rubio-Marín (2000) and now accepted by Carens (2005) – that neither the conferral (on the part of the state) nor the acquisition (on the part of the immigrant) of such rights should be optional. The former element rules out selective practices such as citizenship tests on the grounds that while a society can legitimately entertain the reasonable expectation that immigrants will acquire its language and knowledge of its political institutions, it is unreasonable to make acquisition of civic rights conditional on meeting what can only be reasonable expectations given, for example, the differential linguistic abilities of persons.⁸ The latter element rules out the possibility of choosing not to acquire such rights on the grounds that such a choice represents voluntary subjection to a condition of political servitude and, hence, is incompatible with the autonomy-valuing character of liberal democratic states.⁹

Given this argument that habitually resident immigrants should be incorporated into the political community of a state, should such incorporation take the form of automatic mandatory *naturalization*? Much here depends on whether or not the practice of dual or plural nationality is tolerated, a topic on which neither the democratic argument from subjection nor the social membership argument provide guidance, but if we assume for the time being that dual nationality is normatively defensible, then there might seem to be little objection to such a view. Yet there are also good sociological reasons for thinking that it is important for social and political integration that immigrants make a public, voluntary commitment to naturalize and, thereby, ‘visibly link their own future with that of the country of settlement’ (Baubock 2007a: 2419). How can we negotiate this tension?

One way is to note that neither the democratic all-subjected argument nor the social membership argument strictly entail naturalization as the route to political membership; they simply entail mandatory political membership – and there is a non-trivial distinction between *political membership* and *national citizenship* since the latter, but not the former, automatically includes the ‘external rights’ of diplomatic protection and automatic right of re-entry to the state as well as the automatic entitlement to pass nationality on to their children via the *jus sanguinis* provisions that states have almost universally and justifiably adopted as part of their nationality laws. Consequently, we may hold that there is a compelling argument for the mandated acquisition of full political rights or *political membership* and that this may reasonably give rise to an automatic entitlement to the acquisition of the status of *national citizenship*, but also that the acquisition of national citizenship itself should involve a voluntary act on the part of the immigrant. The additional features of national citizenship fit the rationale for a voluntary act since their value is intrinsically related to the valuing of one’s relationship to the state which is expressed in a public, voluntary commitment to naturalize which visibly links one’s own future with that of the state, and is not given expression (though it may be present) if one’s naturalization is mandated.

If habitually resident non-citizens should be enfranchised, what of habitually non-resident citizens? Lopez-Guerra (2005) has argued that the same grounds that support political rights for resident non-citizens also rule out voting rights for long-term expatriates. His argument is that Dahl’s formulation of the principle of full inclusion is a comprehensive principle for determining membership of the political community and, consequently, ‘the demos of a democratic polity must exclude all individuals who are not subject to the laws, together with transients and persons proved incapable of taking part in the decision-making process’ (2005: 225). He continues:

Notice that this statement involves two propositions. On the one hand, it *justifies* the exclusion of individuals who live beyond the borders of the state [or polity]. In other words, it shows that non-residents lack a rightful claim to the franchise. But on the other hand, it also seems to *forbid* their inclusion, even against the will of the demos. What this latter point suggests is that democratic principles ban the extension of voting rights to permanent residents of other states [or polities], regardless of any opinion to the contrary by rightfully enfranchised individuals. (2005: 225–6, my insertion)

Although Lopez-Guerra's 'official' line is that he will be focusing on the former, in fact he continually slips between the two propositions and, indeed, if his argument is cogent, it would support the conclusion that he draws:

Debates so far have focused only on the necessity of granting political rights to all residents. They have ignored the implication that this *requires* the exclusion of long-term expatriates. (2005: 234, my emphasis)

However, while it is certainly true that, on Dahl's criteria, being a habitual resident of a polity is a *sufficient* condition for being subject to binding collective decisions, it is less clear that it is a *necessary* condition. Two distinct arguments support the view that it is not.

First, consider the example of states as a form of polity which combine authoritative rules that depend on residency, rules that depend on non-residency and rules that are independent of one's residential status. Thus, for example, the relationship between a state and its national citizens involves some rights and obligations that are necessarily dependent on residence (i.e. those arising from any law that pertains to actions involving the physical presence of the person within the state), some that are necessarily dependent on non-residence (i.e. the right to re-entry and to diplomatic protection) and some that are residence-indifferent (e.g. paying tax on property owned in the state). One of the political choices that a state can make with respect to issues that are not conceptually tied either to presence on, or absence from, the territory of the state is whether or not to treat them as residence-indifferent. Ironically, just this point is illustrated by the example with which Lopez-Guerra is concerned: thus, suppose that a state decides to have a referendum on whether to institute or abolish expatriate voting. Whatever the result of such a referendum, all citizens – both residents and expatriates – are subject to the authority of the collectively binding decision taken. The same is true of any proposal concerning an issue that can be practically treated as residence-indifferent which supports or rejects the differential treatment of resident and non-resident citizens. Thus it follows that being a resident is not a necessary condition of being subject to the authority of the collectively binding decisions of the state. For the second argument, we may merely note that national citizenship is (in part) a juridical status whose content is defined by the constitutional structure of the state. It follows that any change to the constitution is a change to the terms of political association that specify the content of national citizenship and all citizens are subject to the binding collective authority of such constitutional changes irrespective

of their place of residence – it changes what, politically, they are. (If the UK were to have a referendum on withdrawal from the EU, the decision would be binding on all UK citizens and, with respect to those resident in other EU states, have very significant practical consequences.) In this respect, the all-subjected principle – properly understood – would support the view that constitutional referenda should include *all* citizens, resident or non-resident, and need not entail the rejection of expatriate voting rights more generally.

It is notable that both Rubio-Marin (2006) and Baubock (2007a) reject Lopez-Guerra's strong claim and are willing to allow that '... under certain circumstances, a country may democratically decide to allow for absentee voting for the 1st generation, thereby including expatriates in the political process' on the grounds that it is easy to remain informed about home state politics today and that many emigrants live between two countries (Rubio-Marin 2006: 134, cf. also Baubock 2007a).

At this stage, however, we must return to the point already touched on in considering immigrant incorporation, namely, that whilst the all-subjected principle and the social membership argument provide reasonable responses to the question of who should be enfranchised, neither provides adequate guidance with respect to the question of who should be entitled to access to membership in the first place.

An initially tempting response to this demand is to turn to the all-affected principle. Typically, the all-affected principle is expressed in terms of the *all actually affected interests* principle, namely, that everyone whose interests are actually affected by a decision should have the right to a political voice in the making of that decision. However, it has recently been proposed by Goodin that this principle is incoherent:

Notice first that whose interests are 'affected' by any actual decision depends on what the decision actually turns out to be. Notice second that what the decision actually turns out to be depends, in turn, upon who actually makes the decision. Hence the 'all actually affected interests' principle ... is unable to tell us who is entitled to vote on a decision until after that very decision has been decided. (2007: 52)

There are several responses available to Goodin's argument; the most economical for current purposes is to note that in relation to any decision, there is a *decision-space* which is constituted by the options on the table at a given time between which the decision takers are to choose. Thus, for example, in a decision context in which there are three mutually exclusive

options – A, B and C – those actually affected would include all whose interests would be affected by the choice of A rather than B or C, B rather than A or C, and C rather than A or B. Although it is the case that how the interests of those who will be affected are actually affected depends on what the decision turns out to be, that their interests will be affected in one way or another can be specified in advance of whatever the actual decision turns out to be. Hence the incoherence identified by Goodin is dissolved. Yet even on such a construal of the all-affected principle, it remains somewhat mysterious why the fact that one's interest will be affected by the decision of a polity should entitle one to membership of that polity with respect to the decision making in question. One might hold, as Baubock does, that the principle 'builds on the plausible idea that democratic decisions have to be justified towards all those who are affected by them, but implausibly derives from such a duty of justification a criterion of participation and representation in the decision-making itself' (2009b: 15). On Goodin's own argument, the all-affected interests principle points to the importance of the intermeshed interests of persons, arguing that 'common reciprocal interests in one another's action and choices are what makes these groups [e.g. territorial, historical, national] appropriate units for collective decision-making' (Goodin 2007: 48). In other words, this view entails that having an interest in membership of a polity or structure of governance is not predicated on one's interests being affected by some (possible or actual) decision of *that* polity but, rather, on one's interests being intermeshed with the interests of others such that one has a common interest with these others of being a member of a legal and/or political community that regulates the relations between the members of this community. Notice though that this is a *recursive* principle in the sense that while persons whose interests are affected by a decision made by a given polity do not thereby have an interest in membership of that polity, in virtue of having an interest affected by a decision of that polity they do have a common interest with all other persons affected by that decision in membership of a legal and/or political community that has powers to regulate the decision made by the interest-affecting polity. It is important to register the fact that the argument concerns a *legal and/or political community*, that is it does not entail the existence of a second-order polity which encompasses the initial interest-affecting polity. This can be shown by simply noting that for the kinds of basic interests expressed in the idea of human rights, what is important is not the existence of a global polity that can regulate the decision of states – for example the decision to engage in torture – but an effective system of

international human rights law. Thus, while discussions of the all-affected principle are right to highlight the significance of intermeshed interests, the politically indiscriminate nature of the principle cannot do what is necessary for a consideration of the fundamental question of entitlement to political membership, namely, specify the type of interests whose intermeshing generates a claim to membership of a political community. Put another way:

the 'all affected interests' principle substantiates ethical duties for democratic legislators to take externally affected interests into account, to seek agreements with the representatives of externally affected polities and to transfer some decisions on global problems to international institutions, but ... it cannot provide a criterion for determining claims to citizenship and political participation. (Baubock 2009b: 18)

Given this limitation of the all-affected interests principle in conjunction with the limitations of the all-subjected principle, what is needed for normative reflection on transnational citizenship is a principle that acknowledges the strengths of these principles but overcomes their weaknesses.

The most developed attempt at providing such a principle is the *stakeholder* principle proposed by Baubock:

The basic idea is that all those and only those individuals have a claim to membership in a particular polity who can be seen as stakeholders because their individual flourishing is linked to the future of that polity. Individuals hold a stake if the polity is collectively responsible for securing the political conditions for their well-being and enjoyment of basic rights and liberties. This is what we could call the 'dependency' criterion. And such stakeholders can be seen as sharing an interest in maintaining the continuity and stability of democratic self-government in this polity. (2009b: 21)

This principle combines the view that being subject to the rule of a polity is a sufficient condition of entitlement to membership with an acknowledgment that interests of well-being arising from biographically rooted affiliations also have normative salience in determining entitlement to membership of a polity insofar as these interests of well-being are intrinsically tied to the flourishing or common good of that polity. Rather more than the all-subjected or all-affected principles, this criterion has the right kind of shape to perform

the role of allocating entitlement to membership. What implications follow from it for transnational citizenship?

We can notice first that since 'first generation migrants are generally stakeholders in both their countries of origin and of settlement' this principle lends itself to support of dual nationality. Given the role of family in socialization, it is plausible to argue that second generation migrants are also stakeholders but that by the third generation, this claim is harder to sustain independent of actions on the part of the third generation migrant (such as going to live in the state of their grandparent's origin) to sustain the relationship. Thus, in addition to supporting dual nationality, the stakeholder principle would limit the automatic *jus sanguinis* transmission of citizenship to second generation migrants (Baubock 2007a).

In terms of political rights, the stakeholder principle supports entitlement to citizenship for habitually resident non-citizens although, as noted above in the discussion of the social membership argument, Baubock does not support mandated naturalization (Baubock 2007a). In our view, this leaves his argument open to the citizen tyranny objection and conflicts with the centrality of autonomy within the stakeholder principle. It was suggested in the earlier discussion, and can be reiterated here, that this problem may be negotiated by distinguishing between the mandated acquisition of political membership and the optional acquisition of national citizenship.

In respect of expatriate voting rights, the stakeholder principle is compatible with such rights in that it does not take such rights to be required or forbidden by justice, and also acknowledges the normative salience of existing state practices of expatriate enfranchisement as having constructed reasonable expectations which it would be unjust to frustrate given the normative permissibility of the practice. Overall, the stakeholder principle broadly supports a presumption in favour of such rights for first generation migrants but acknowledges that this presumption can be either supported or defeated by a wide range of factors relating to the specific circumstances of the polity (Baubock 2007a). Thus, for example, the presumption would be strongly supported in the Spanish case in which the introduction of expatriate voting sought to acknowledge the interest of Republican exiles in the return to democracy following the end of Franco's rule, but might be defeated in cases in which large expatriate communities exhibit entrenched political divisions that would exacerbate conflicts within the state (e.g. Eire).

It would be overstating the case to claim that the stakeholder principle offers a fully developed normative basis for reflecting on transnational

citizenship, but its strength is to integrate justice-based reasons for membership with reasons based on the good of citizenship to provide at least the basis of an adequate normative account.

Nested Transpolitical Citizenship: The Case of the EU

How should these empirical and normative reflections on transnational citizenship inform our understanding of the most important current case of nested transpolitical citizenship, namely, the EU? There are a number of membership issues confronting the EU as a polity (Shaw 2007), however, we will focus only on the two most immediate of such issues. The first relates to third country nationals who are (a) subject to the political rule of the EU but are not currently entitled to membership of the EU since such membership is only acquired in virtue of being a national citizen of a member state of the EU; and (b) subject to arbitrariness insofar as rules for the acquisition of nationality vary from member state to member state (thus two third country nationals whose situations are identical in all respects other than EU country of residence can give rise to one acquiring the option and national and, hence, EU citizenship, while the other does not have this opportunity). The second concerns the national voting rights of EU citizens who do not live in their home state or who are dual national of EU member states.

In the case of third country nationals, it is hard to see why their subjection to the political rule of the EU should not entitle them to political membership of the EU. It is worth noting, moreover, that nested polities such as the EU sharpen the argument for the mandatory political membership for long-time resident aliens since such nesting entails that residents may be *multiply* subject to citizen tyranny across different levels of governance. However, it is important to notice that although we can again draw a distinction between political membership and citizenship, this has a different character in relation to the EU than to states in that the relevant notion of political membership would include EU political rights that could be exercised in the state of residence (hence addressing the issue of subjection) including voting rights in EU elections and rights to petition the EU Parliament, but would not automatically include the right to freedom of movement within the EU enjoyed by EU citizens or the limited additional external citizenship rights of diplomatic protection enjoyed by such citizens.¹⁰

If we turn to consider the issue of EU citizens, there are two main issues, each of which relates to the fact that, excepting certain human rights-based requirements, the scope of national franchises is left to the discretion of

member states. The first issue concerns EU citizens who are also dual nationals of EU member states and where the state in which they are not resident allows expatriate voting in national elections. Whereas the case of dual nationals who vote in the national elections of two states that are not part of a larger polity does not breach the 'one person, one vote' rule, two votes in distinct EU state national elections would breach this rule since the outcomes of such elections determine the composition of the European Council. On this basis, such dual voting should be prohibited. The second issue concerns the fact that although all EU citizens can stand as candidates and vote in municipal and EU elections of whichever member state they are resident in, the same is not true of national elections. Indeed, whether an EU citizen who is not resident in an EU state of which they are a national can vote in any national election is a contingent product of the conjunction of the laws adopted by their home state and state of residence. Yet since freedom of movement is a basic principle of EU citizenship, it is highly problematic that EU citizens who exercise this right can, even in principle, find themselves disenfranchised with respect to national elections. Here, however, we confront the point that such EU citizens are stakeholders in both their state of residence and their home state but, as EU citizens, cannot be entitled to the concurrent exercise of national voting rights in both states. But then in which state should they vote? Notice that the stakeholder principle doesn't provide determinate guidance on this issue – and one may take this either as a limitation of this principle or as expressing the judgement that it is appropriate to allow EU citizens the choice of whether to vote in the national elections of their home state or state of residence. If the latter, it would be necessary to address the objection that choosing to vote in their home state would leave them in the position of being subject to citizen tyranny in their state of residence. In response to this, it could be argued that the standing of such persons as EU citizens protects them from such a condition since not only does the EU protect their human rights but also much of the legislation to which they are subject arises from the EU or must be consistent with EU-based legislation. These are important points and we should acknowledge that different traditions of citizenship within the EU member states may lend themselves different views on this question. Despite this, our own view is that at the core of the idea of political membership is a concern with non-domination that is expressed in the citizen tyranny objection and, hence, there should be at least a strong presumption in favour of national voting rights being granted and exercised in the state of residence.

Future Research Agendas

This chapter has been concerned with sketching the main features of, and normative issues raised by, the transformation of contemporary political membership regimes and the rise of transpolitical citizenship in its nested and non-nested forms. Perhaps the most general research agenda that arises from it is the need for the development of a comparative politics, and political theory, of citizenship policies and membership regimes. The predominance of qualitative case studies and legalistic analysis in this area, valuable though these are, illustrates the point that while there has been some important quantitative work on testing the explanatory power of nationalist, transnationalist and postnationalist hypotheses concerning contemporary developments in membership regimes (Bloemraad 2004), there is a general lack of large-scale quantitative and qualitative comparisons (although for exceptions see Earnest 2008; Gamlen 2008). Thus, while states are developing 'bonding' or 'recognition' mechanisms with respect to their expatriate populations, we currently lack knowledge of the degree to which recognition mechanisms such as dual nationality are taken up and how effective such mechanisms are from the standpoint of either citizen or state.

In the context of normative political theory, and with the notable exception of Rainer Baubock, work in this area has been thoroughly biased towards a concern with immigrants in liberal democratic states and, consequently, has failed to address both more basic questions concerning the normative character of citizenship and the diversity of membership-related issues that arise in the context of our changing membership regimes. In this respect, the stakeholder principle represents a good starting point for normative reflection but the relationship of this principle to more fundamental debates concerning the 'justice' and 'good-of-citizenship' accounts of citizenship and, thus, to wider issues in normative political theory remains to be developed.