Law and Citizenship
Legal Dimensions Series

This series stems from an annual legal and sociolegal research initiative sponsored by the Canadian Association of Law Teachers, the Canadian Law and Society Association, the Council of Canadian Law Deans, and the Law Commission of Canada. Volumes in this series examine various issues of law reform from a multidisciplinary perspective. The series seeks to advance our knowledge about law and society through the analysis of fundamental aspects of law.

The essays in this volume were selected by representatives from each partner association: Debra Parkes (Canadian Law and Society Association), Philip Girard (Canadian Association of Law Teachers), Harvey Secter (Council of Canadian Law Deans), and Dennis Cooley and Nathalie Des Rosiers (Law Commission of Canada).

1. Personal Relationships of Dependence and Interdependence in Law
2. New Perspectives on the Public-Private Divide
4. Law and Risk
5. Law and Citizenship
This book is dedicated to the memory of Kim Barry,
Furman Fellow at the New York University School of Law, who died tragically in November 2004. Kim’s intellect and warm personality were evident throughout her work with the Law Commission and with the other authors of this collection. She will be greatly missed by her family, friends, and colleagues, as well as for her immeasurable contributions to academia and social activism.
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Preface

The concept of citizenship has been at the heart of both notions of democracy and participation in governance; it is closely associated with full participation in a democratic society and has led to the development of public policies which aim to remove obstacles to full participation in governance and in civil society by all persons. The traditional legal notion of citizenship entails belonging to a state defined by a territorial border.

In Chapter 1, Jane Jenson indicates that, despite use of the terms “global citizens” or “citizens of the world,” citizenship continues to imply membership in a bordered community. She and many of the authors also note, however, that borders are shifting. As a result of our history and our cultural heritage, Canadians have ties with virtually every country in the world. Thanks to advances in communication and transportation, the ever-increasing flow of ideas, people, goods, and services seems to erase borders, both territorial and social. In other respects, however, globalization seems to reinforce familiar borders or construct new ones in reaction to perceived threats such as terrorism or disease. New borders are erected when groups seek to protect their customs, traditions, or identity, or when the millions without access to the necessary infrastructure are excluded from the virtual communities made possible by new information technologies. Legal and traditional notions of citizenship are failing to keep up with the realities of an increasingly globalized world.

It is precisely this notion of shifting borders and boundaries that has captured the attention of the Law Commission of Canada in its work on governance beyond borders. Globalization has changed the relationships between actors on the national and international stage and shifted the balance of power between them. Non-governmental actors as well as foreign countries and international organizations have great influence over laws and policies that were formerly within the control of national governments. As a result, there is a greater blurring between the international and the domestic, the public and the private. How are traditional notions of citizenship erecting
borders against those who are excluded? What are the impacts of changing notions of state, borders, and participation on concepts of citizenship? Within territorial borders, to what extent are citizens able to participate, given that the principles of accountability, transparency, and representativeness to which those with power and influence are held, remain ideals? These are some of the questions addressed in this collection.

There are numerous implications of the concept of citizenship for law and public policy in a number of different fields. International law, both private and public, poverty law, immigration law, constitutional law, history, political science, and sociology all reflect concepts of citizenship. Law reform, through the creation of mechanisms of governance to monitor, enforce public reporting, promote codes of conduct, and ensure participation in decision making, could enhance the legitimacy of institutions that already possess power and influence. Law reform can also facilitate linkages across borders by ensuring that the needs of people affected by laws and policies with domestic or extraterritorial impacts are taken into account. By responding to the broader and sometimes more nuanced notions of the concept of citizenship with civil, political, economic, and social elements, law reform can contribute to improving the representation and participation of those not often heard.
Acknowledgments

This collection is the result of a partnership between the Council of Canadian Law Deans, the Canadian Association of Law Teachers, the Canadian Law and Society Association, and the Law Commission of Canada (LCC). Through the Legal Dimensions initiative, we seek to stimulate critical thinking on emerging law and society issues. The themes chosen each year are intentionally broad in order to encourage papers on a variety of issues from diverse perspectives which will enrich our understanding of a topic.

The Law Commission wants to thank its partners, the authors of the chapters, the guest commentator Jane Jenson, the discussants Stephen Clarkson and Richard Janda, and the participants at the Legal Dimensions workshop held in Winnipeg in June 2004.

Audrey Macklin wishes to thank an anonymous reviewer for comments on an earlier draft, the Law Commission of Canada for its generous financial support, and, in particular, Lorraine Pelot, LCC senior research officer, for her editorial assistance and patience.

Michel Coutu would like to thank the Law Commission of Canada for the financial support it provided for his research. Thanks also to Guy Rocher, full professor at the Centre de recherche en droit public of Université de Montréal. Finally, thanks to Pierre Bosset for his help in revising the translation.

Richard Devlin and Dianne Pothier thank Alexandra Dobrowolsky and Sheila Wildeman for their encouragement and support in the writing of their chapter. They also express their gratitude to Devon Peavoy and Andrew Waugh for their research assistance.

Mary Condon and Lisa Philipps acknowledge with thanks the assistance of Zara Merali (BLG Fellow) in the preparation of their chapter, and Osgoode Hall Law School for awarding them the Borden Ladner Gervais Fellowship for summer 2004. They are also grateful to colleagues who commented on other versions of the chapter, including Ben Alarie, Stephen Clarkson, Engin Isin, Judy Fudge, Freya Kodar, Toni Williams, and Claire Young.
The chapters in this collection were written for the 2004 Legal Dimensions competition. The views expressed are those of the authors and do not necessarily reflect the views of the Law Commission of Canada or the other sponsors. The accuracy of the information contained in these chapters is the sole responsibility of the authors.
Law and Citizenship
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Introduction: Thinking about Citizenship and Law in an Era of Change

Jane Jenson

Long confined to the study of nationality laws, citizenship was not always considered a major concern of social scientists, including students of the law. What is now seen as a foundational document in the social sciences was published after the Second World War by T.H. Marshall and quickly sank into obscurity. Revived in the mid-1960s, it was republished as an important study in historical sociology, but even then it did not capture anything like the attention it now receives, including in the chapters of this book.¹

In recent decades, however, the concept of “citizenship” has achieved significant levels of interest, and therefore of intellectual debate, in a variety of academic contexts. Since the 1990s, there has been a clear revival of interest in citizenship, leading to what Will Kymlicka and Wayne Norman aptly termed the “return of the citizen.”² There are multiple reasons for this change in academic fashion. They come primarily from the “real world,” where there are nationalist movements in multinational states, including those of indigenous peoples; increasing rates of migration and of statelessness; challenges to the social rights described by T.H. Marshall after the Second World War; increasing attention to human rights that are not anchored by national borders; and since 11 September 2001 increasing suspicion of naturalized citizens from countries with large Islamic populations. In this book, prominent legal scholars catalogue such changes and, even more importantly, analyze their consequences for thinking about citizenship and the law. This introductory chapter first sets the scene for these detailed analyses, by providing a framework for thinking about challenges and changes in citizenship, before briefly presenting each of the chapters and its major themes.

Citizenship: Borders and Boundaries

For centuries, struggles over the borders and boundaries of citizenship have been at the centre of political controversy and actions.³ Modern citizenship
was forged and exists in the Westphalian international system composed of modern states with identifiable borders. Citizens have rights and responsibilities within the frontiers of their national state; non-citizens and denizens do not have the same. Currently, immigration and refugee flows associated with globalization, the movement of persons within areas of free trade and economic communities, and nationalist movements within national states housing several nations all raise fundamental issues about who is in and who is out, that is, about the meaning of national borders.

Broadly defined, citizenship identifies who has rights, and what those rights are. As such, it is an important state resource. By setting the boundaries of citizenship, the state establishes the conditions for full membership in the community, as well as limiting the rights and access of not only those who are foreigners but also those who are immigrants de l'intérieur, what Alan Cairns terms “domestic foreigners” or “fellow strangers.” By shifting boundaries, states expand or contract the space for citizenship and – perhaps even more importantly – for claims making about citizenship. Neo-liberal politics would contract those boundaries, while individuals and groups struggling for equality rights seek to expand them. The popularity of concepts such as social cohesion, as well as efforts to remake democratic practices, reknit social solidarity, and rethink the rights and responsibilities of citizens and denizens all suggest that states are engaged in redrawing the boundaries of citizenship, that is, of the rights and responsibilities of persons as well as the spaces for democratic participation. In doing so, they are also engaged in surveying and protecting the definition of national identity and belonging.

Struggles over boundaries are a way for groups representing excluded or unrecognized categories of the population to claim and perhaps gain inclusion as full citizens. Making claims to a wider citizenship involves calling for greater voice and better recognition, and delegitimating existing rationales for exclusion. They are efforts to alter the boundaries of citizenship within the borders of a particular state.

Citizenship involves recognition and protection of rights by the state. Despite a tendency in some circles to stretch the concept in several directions (for example, by speaking of “citizens of the world” or “global citizenship”), full citizenship status has always implied and still implies membership in a bordered community. It involves two elements: the status of members of the community with respect to a political authority, and the relationships of mutual support and solidarity that exist among such members.

Understood this way, as a relationship between the individual and the state, as well as among individuals, citizenship is a concrete expression of the principle of equality. Full citizenship is not simply about having some protections and some rights: it is about having equal rights and protections. For example, for Jean Bodin, who wrote about the republic in the sixteenth
century, as later for J.-J. Rousseau and the English liberals, “citizens are equal in all rights and prerogatives.”

Citizenship did not exist where feudal or patrimonial social relations still organized social life.

The French Revolution made a fundamental contribution to the principles of modern citizenship, with its promise of liberty, equality, and solidarity (fraternité). Commitments to these three ideals, expressed differently in various countries and achieved only slowly, distinguished the model of modern citizenship from earlier Greek versions or those developed among the bourgeois of European cities in the early modern period. By putting an end to feudal social, economic, and political forms, the French Revolution (and other moments of equally important social transformation elsewhere) legitimized the image of the individual as the bearer of equal rights – civil and ultimately political. As Reinhard Bendix put it,

Medieval political life depends on the link between hereditary or spiritual rank in society, control over land as the principal economic resource, and the exercise of public authority ... Rights and liberties are extended to groups, corporations, estates rather than to individual subjects; representation in judicial and legislative bodies is channelled through traditionally privileged estates. Within this framework, no immediate rights are accorded to subjects in positions of economic dependence, such as tenants, journeymen, workers and servants: at best they are classified under the household of their master and represented through him and his estate. This system is broken by the twin revolutions of the West – the political and the industrial – which lead to the eventual recognition of the rights of citizenship for all adults.

The notion of the free and equal individual was accompanied by the idea that citizens have an obligation to participate in their community. In France, for example, after 1789 the category of “active citizen” who enjoyed all rights was reserved for the wealthy and educated. Such persons were contrasted to “passive citizens,” that is, the mass of poor and uneducated French working men (no women here!). This distinction disappeared with the institution of universal manhood suffrage in 1848, when participation by all became a foundational principle of republican citizenship. Republican countries such as France, and constitutional monarchies such as Britain converged over time toward common institutional forms of self-government and the principle that democratic participation as well as the protections of civil rights transform subjects into citizens. Thus, full modern citizenship entails recognizing that individuals have freedom, achieved via a guarantee of protections against interference, and that they participate in an exchange of rights against obligations, such as bearing arms or children, voting, and in other ways behaving responsibly.
The French Revolution also innovated with the third pillar of citizenship, that of solidarity among members of the community. Indeed, the definition of the modern citizen, in contrast again to earlier versions, contains important principles about social solidarity and about the role of the state in organizing this. The British tradition as well as the French republican one contains this assumption. It is worth examining the logic of these positions in detail, if only because in contemporary politics the legitimacy of social rights and responsibilities is being assaulted where neo-liberalism is ascendant.

T.H. Marshall is an able representative of the British social liberal tradition. He defined citizenship as including social rights, these being the right to a modicum of economic welfare and security and the right to live the life of a civilized being. There was never any question for Marshall that the market economy and the capitalist system would not remain in place; he advocated “class abatement,” not a classless society. He located his analysis clearly in the tradition of social liberalism, a perspective which, along with Fabianism and labourism, profoundly shaped the actions of the first British Labour governments in the 1940s and 1950s. It also spilled over directly into Canada via the influential Marsh Report and social liberalism embedded in parts of the Liberal Party of Canada, as well as in the work of sociologists such as John Porter. As the great social liberal L.T. Hobhouse put it,

The function of the State is to secure conditions upon which its citizens are able to win by their own efforts all that is necessary to a full civic efficiency. It is not for the State to feed, house or clothe them. It is for the State to take care that the economic conditions are such that the normal man who is not defective in mind or body or will can by useful labour feed, house, and clothe himself and his family ... [In this sense the] “right to work” and the “right to a living wage” are just as valid as the rights of person or property.

It was the recognition that these were rights to be guaranteed by the state that began to lay the groundwork for a basic distinction between thinking about social rights in Britain and Canada as compared to in the United States. As Raymond Plant pointed out, “What Marshall meant by social rights was not that these would be individually enforceable but that the state had a general duty to provide collective services in the fields of health, education and welfare; he did not envisage that these would yield individual entitlements.” Whereas in the twentieth century, American courts were interpreting the right to work as a constitutional guarantee of a civil right that superseded any right to organize in a union, British and Canadian thinkers and policy makers (as well as those in many other countries) were coming to understand the limits of civil rights, important as they are. They “recognized that in a market economy many citizens will lack reason-
able access ... to certain vital resources. The state, on their view has a re-
sponsibility to ensure that all citizens do have reasonable access to these
resources.” In this way, in the British tradition the rights to work and to
earn a living wage were defined as social rights, as were certain social ser-
VICES. In addition, as John Harris reminds us, Marshall provided the optim-
istic summary “that state welfare provision had moved from being targeted
towards the ‘helpless and hopeless of the population’ ... and was now ex-
tended to all citizens” in the form of health services, public education, and
so on.

French political thought had another conceptualization of social citizen-
ship quite different from that of British social liberalism, and it too has influ-
enced ways of thinking about social citizenship. Over the nineteenth and
twentieth centuries, notions of fraternité (solidarity) came to mean that people
had a right, as citizens, to public support. Although quite minimalist, as-
sistance publique (as social assistance was and is called in France) was a social
right and an expression of collective ties, from the nineteenth century on.
This philosophical position, developed in opposition to Marxism, social de-
mocracy, and liberalism, also generated a second kind of social right. In this
case, social life was conceptualized in terms of risks to which anyone might
fall victim and for which the best protection was a social insurance pro-
gram. Thus, risks of ill-health, unemployment, maternity, and old age were
insured in occupationally based social security regimes managed by social
partners and financed by insurance contributions (eventually payroll contri-
butions) by workers and employers. Access to social protection came to de-
pend on having paid into one’s insurance, and benefits were scaled to one’s
previous earnings (as are Canada’s Employment Insurance payments and the
Canada/Quebec Pension Plans, for example). Therefore, in this vision of
social citizenship, work and rights are inseparable. Nor is there an issue of
responsibility: access depends upon having paid into the regime.

This history of modern citizenship, created in national states from the
eighteenth through the twentieth century, is one of continuous struggles
over the boundaries of citizenship, that is, over the rights that accrue to
those recognized as full members of community defined by the borders of a
national state. Currently, both borders and boundaries are being challenged
from several directions simultaneously. The citizenship regimes constructed
in the post-1945 years are under strain, with pressures coming from with-
out as well as within and from above as well as below.

Citizenship Regimes under Stress
The boundaries of citizenship go well beyond the matter of passports and
law, and well beyond borders. Citizenship is also – and has always been –
about nation building. It is about who belongs, about the borders that ex-
clude and the boundaries of rights and access that ensure full inclusion.
Canada was the first country in the Commonwealth to create a separate citizenship, and thereby to break with the alternative myth of the imperial subject as both a legal and subjective identity, with the 1947 *Citizenship Act*. The author of this act, Paul Martin Senior recalled that he became convinced of the need for such legislation after visiting a battlefield cemetery in France in 1945. He said, “Nothing has since epitomized the concept of our nation more poignantly for me than that cemetery. Of whatever origin, these men were all Canadian.”

Discussion of citizenship long predated 1947, of course. A half century before, John Millar, the deputy minister of education for Ontario, wrote a book for the new century, *Canadian Citizenship: A Treatise on Civil Government* (1899). It opened with the statement that “The end of all government is the cultivation of good citizenship.” His words might serve equally well for those at the beginning of the twenty-first century who are concerned about matters of social cohesion, social capital, and citizen engagement, not to mention civic education: “Good citizens are those who have mastered self, and the institutions of the state should aid in this object ... The cost of administration would be greatly lessened if people were at all times anxious to do right. If all citizens were law-abiding the large sums now expended to pay policemen and to erect and maintain prisons would be saved. The problem of government would be simple if the family and school were sufficiently powerful to form character to a high order, before people enter upon the active duties of life.”

Here we see two different but not unrelated ways of thinking about citizenship. For Paul Martin, it was a matter of recognition, of identity, and of status. Passports and nationality were important, but of even greater importance was the symbolic recognition of belonging, expressed in part through the sacrifices of war that forged Canadians out of men of many origins. For his part, John Millar described citizenship in terms of responsibilities and some rights. His notion of citizenship was of the ties that bind the society together, allowing it to function with basic levels of civility. Public institutions were important because they could aid in that functioning.

The concept of citizenship regime is useful in order to capture these quite legitimate differences in thinking about citizenship. By citizenship regime, we mean the institutional arrangements, rules, and understandings that guide and shape concurrent policy decisions and expenditures of states, problem definitions by states and citizens, and claims making by citizens. There are three elements in a citizenship regime:

- Through formal recognition of particular rights and responsibilities (civil, political, social, and cultural; individual and collective), a citizenship regime establishes the boundaries of inclusion and exclusion of a political community. In doing so, it identifies those entitled to full citizenship
status and those who, in effect, hold only second-class status, as well as those who are not citizens.

- A citizenship regime also prescribes the democratic rules of the game for a polity. Among these democratic rules, we include the institutional mechanisms giving access to the state, the modes of participation in civic life and public debates, and the legitimacy of specific types of claims making.

- Finally, a citizenship regime contributes to the definition of the nation, in both the narrow passport-holding sense of nationality and the more complicated notion of national identity and its geography. It thereby establishes the conditions for belonging.

A regime is never fixed once and for all in time. Government choices influence how people will live together, and governments continue to make significant and consequential choices about responsibility, community, governing, and inclusion in their actions every day. Only some of these choices fall within the boundaries of citizenship: sometimes states assign—or leave space for—significant decisions and outcomes to be determined by families or in markets and communities. The boundaries of citizenship will expand or contract in consequence of the space given to other locations for choice. More space for markets or families means less for democracy, and thus for citizenship. Therefore, the task of analyzing any citizenship regime is to identify the space for citizenship within the whole society.

Citizenship regimes are subject to redefinition and transformation in accordance with the ideas and ideologies of the times. For the last four centuries, disputes about the boundaries of citizenship have provoked political mobilization and action. From the Magna Carta to Meech Lake, from the English Bill of Rights of 1689 to the Charter of Rights and Freedoms, citizens have contested, debated, and redesigned the boundaries of their relationship to political authority and democratic decision making as well as disputed the meaning of national borders.

**Challenging Citizenship Regimes by Disputing Borders**

Several dimensions of any citizenship regime are involved in giving meaning to national borders; the first three chapters in this volume focus primarily on the ways in which such issues are playing out in contemporary citizenship regimes. One of the most obvious border questions is raised in Audrey Macklin’s chapter, “Exile on Main Street: Popular Discourse and Legal Manoeuvres around Citizenship.” Macklin seeks to rehabilitate attention to “legal citizenship,” by which she means “the juridical status of membership held by an individual in relation to a territorial nation-state,” which in international law is termed “nationality.” According to the traditions of international law, the rights of legal citizenship (whether obtained by naturalization
or birth) are quite limited, generally covering “the right to enter and remain in the country of citizenship, the national franchise, and access to certain public-service positions,” a set of seemingly thin rights (p. 23).29

Long neglected by everyone but legal scholars or historians concerned with naturalization practices and different models of acquisition of citizenship, such as by *jus soli* and *jus sanguinis*, the issue of legal citizenship has taken on new importance recently, and Macklin argues that this attention is fully merited. Ambiguities in legal citizenship still exist. It would therefore be a mistake, she rightly reminds us, to focus exclusively on “substantive citizenship” – that is, on the dimensions of rights, duties, feelings of belonging, participation, and so on that constitute the citizenship regime more broadly. We should not forget, Macklin reminds us, that legal citizenship ensures, as Hannah Arendt put it, “the right to have rights.” To the extent that legal citizenship is ambiguous or not respected, substantive citizenship becomes something of a hollow shell. As Macklin documents in her examination of the situation of the Khadr family (all of whom are Canadian citizens, most of them by birth), both popular and state recognition of legal citizenship may be threatened in the case of persons who are perceived to be “bad” citizens.

Audrey Macklin is particularly concerned about the ways in which legal citizenship can be undermined by what some might term moral panics. The treatment of – and more broadly the public debate about – the rights of the Khadr family provides her case study of the contingency of citizenship, and particularly the belonging dimension of the citizenship regime. In this instance, many Canadians became agitated by the very notion that a family with acknowledged ties to Osama bin Laden might “belong” in Canada, and they were willing to use a range of arguments, drawing on both substantive and legal conceptions of citizenship, to try to deny the Khadrs any right to membership.

In addition, this situation raises all sorts of questions, long left to the side but now much more pressing since 11 September 2001, about border crossing and the protection of borders for citizens and non-citizen residents. For example, as Macklin points out, the movements of various members of the Khadr family across borders have uncovered complexities and contradictions in the laws and regulations that relate to the right to exit as much as enter a country. This case study illuminates much more than the situation of a single family, of course. Theirs is only one of a growing number of situations in which existing nationality law and practices are put to the test. Detailed examination of this case study makes a convincing argument that legal citizenship still merits attention.

The third chapter raises the issues of borders, albeit in a different way. In “Home and Away: The Construction of Citizenship in an Emigration Con-
text,” Kim Barry documents the concrete steps taken by several countries with large emigrant populations to ensure not only that the emigrants maintain a sense of belonging to their “home country,” but that they actually retain rights of citizenship and access to participation. Included in some cases are the most basic of legal citizenship rights, such as the right to vote and hold office; electoral laws are being reformed to facilitate voting by absentee emigrants.

Considering citizenship broadly, Barry distinguishes between two aspects of it. First, it is a status protecting as well as providing what we would term the rights and access dimensions of any citizenship regime. She is also interested, however, in what she calls “practised identity,” or the belonging dimension of a citizenship regime. If states’ deployment of citizenship status has consequences, as Barry agrees it does, for feeling of belonging, then emigration states face a particular challenge. Because migration decouples citizenship and residence, such states face choices about how to address migrants. They may treat them as traitors, as Mexico did for many years. They may simply “let go” and express indifference, assuming that migrants will become citizens elsewhere, as most European countries such as Italy did in the twentieth century. Or they may seek to maintain a meaningful citizenship tie to emigrants. Barry documents practices in an era of rapid communication and easy travel in which the third option is gaining popularity. States are innovating in ways to maintain ties with their non-resident citizens. A goodly part of the motivation for doing so is the effect of remittances sent from abroad.

Emigrant states have formulated strategies not only for increasing remittances and investments but also for capturing funds for state coffers. Tax laws as well as exhortation are used to remind emigrants of their ongoing loyalty to the home country. However, just as early modern European states were willing to provide capitalists with army protection and participation in government in exchange for tax payments (a development connected by Charles Tilly with the emergence of citizenship), so too are emigration states offering a quid pro quo. Most common is the acceptance of dual nationality, which for certain states (such as Mexico, which Barry describes in some detail) has meant a major shift in conceptions of national identity as well as changes to legal citizenship. Some countries are engaged in reforming their electoral law in order to allow emigrants to retain political rights as well as financial responsibilities in the “home country.”

In his broad-brush and wide-ranging historical analysis, Charles Tilly documents the importance of changing processes over time, and the ways in which political institutions were redesigned in the face of new challenges linked to the economy and trade. In the current era of globalization, the emigration states described by Kim Barry are engaged in similar efforts to
adapt to new times, to situations in which traditional national borders no longer adequately incorporate the interests of governments, domestic populations, or emigrants. They too are redesigning the definition of the collective interest, reincorporating emigrants into the structures of their state. Whereas in the past, as Barry documents, their citizenship regimes made national borders the frontier for distribution of rights, access, and feelings of belonging, the new citizenship regimes are proposing arrangements in which borders have another and more porous meaning.

The third chapter that deals with borders, “Multinational Citizenship: Practical Implications of a Theoretical Model” by Siobhan Harty and Michael Murphy, considers situations in which the borders of a national state surround more than one nation. Harty and Murphy analyze “multinational states,” in Will Kymlicka’s language. Such situations raise issues of national identity, recognition of difference, and the willingness of states to accept a multinational underpinning for citizenship by providing differentiated rights and access. These practices will have significant consequences for the belonging dimension of any citizenship regime. As Harty and Murphy (p. 94) write, “In contrast to the conventional nation-state model of citizenship, that of a truly multinational state in our terms does not seek to impose on its component national groups a single uniform national identity to which the rights and entitlements of citizenship are exclusively attached.”

Situations in which state borders do not match national identities are particularly troubling in law as well as political theory. Much of international law, whether dealing with state sovereignty or human rights, works from the assumption of one nation per state, and this despite the empirical reality that “fewer than 200 states contain some 3,000 homelands.” Building on their theoretical model elaborated elsewhere, Harty and Murphy set themselves the goal of moving from theory to practice. They examine three routes to achieving a well-functioning multinational citizenship regime, one that respects the five norms of their theoretical model: recognition of national identity, democracy as the basis for collective choice, a combination of self-rule and shared rule via intergovernmentalism in shared territories, mutual recognition as equal nations, and trust.

They identify three interrelated legal strategies for managing conflicts and facilitating justice in the relations between majority and minority nations and in particular for implementing a vision of state sovereignty as divided and shared. The three are constitutional responses, statutory responses, and jurisprudential responses. In the complicated interplay of claims making about borders and national identity, each of these legal strategies has its place. Nonetheless, Siobhan Harty and Michael Murphy emphasize that the legal strategies cannot stand alone. Their successful implementation and their capacity to calm rather than agitate the troubled waters of debate about the borders of nationality depend on meaningful and respectful politi-
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cal debate about the key terms such as nation and state, citizenship and sovereignty (p. 111). Consultation and dialogue, not only with citizens but also across national groups, are the foundations out of which well-functioning multinational states, deploying visions of asymmetrical citizenship, can emerge and remain stable. Without them, discontent and even violence will fuel claims for full national autonomy and a separate state.

In each of these three chapters, we find different ways of examining the sometimes shifting and often unstable borders of citizenship, and the porosity of state frontiers. All three dimensions of the citizenship regime are affected. From the separate angle of each chapter, we can observe the ways in which the issues of citizenship remain exceedingly current, and this is, no doubt, a major reason for the “return of the citizen” in recent decades. Everything about borders is in play, from the meaning of legal citizenship to the connotations of citizens’ “presence” in and “absence” from the national territory for having rights, to the possibilities for asymmetrical citizenship in multinational states.

Reconfiguring the Boundaries of Citizenship Regimes

The boundaries established within citizenship regimes are as important as the borders that separate one regime from another. From earliest times, citizenship has been about setting rules for inclusion and exclusion. Over historical time, the lucky few gained full rights while many others, even living in the same territory, were excluded. Despite so-called universal suffrage, the citizenship regime of the United States excluded blacks and women well into the twentieth century. Aboriginal persons living in Canada could not vote until the 1960s. Even the country that first promulgated the Rights of Man and the Citizen in the eighteenth century did not give its female nationals the right to vote and run for office until 1944. It is not surprising, then, that history is replete with stories of claims making for full citizenship, whether coming from women, “racial” minorities, Aboriginal peoples, the disabled, or newcomers. In each case, disenfranchisement and lack of rights have been justified by the majority and sustained by the state on the grounds of the group or category’s apparent “difference” from the model citizen in the social imaginary. The final three chapters in this book address the question of the internal boundaries of the citizenship regime, again each in a slightly different way.

Michel Coutu’s chapter, “The Crisis of the Welfare State and the Demise of Social Citizenship? A Sociolegal Perspective,” directly addresses the internal boundaries of citizenship. Coutu examines both citizenship and social citizenship through the theoretical lens of European social theory. He focuses in particular on the scholarship of Dominique Schnapper, a French sociologist working in the Weberian tradition who is, he argues, too little known in the English-speaking world. Her concern, as that of much French
thought dealing with social citizenship, is with the threat of social exclusion and inequalities. Recognizing the limits of a liberal vision of the state, she proposes that the crisis of the welfare state follows from an absence of common values, a lack in part fostered by the welfare state’s current tendency to redraw the internal boundaries of citizenship. She describes a state (and she means in essence the French state) that has foregone universal programs focused on equality, replacing them with programs targeted to population categories identified in ethnic, gender, or other terms. She calls this the “ethnic welfare state.” As Coutu points out, she remains convinced that true citizenship is political rather than social; therefore, for Schnapper, the welfare state’s turn toward recognition of difference actually weakens it by undermining shared values. She “wonders if a society can maintain the tie between people when those people do not share the same values and do not express their view of the world in the same way” (p. 132). This concern is, of course, quite the opposite of the fears raised by Harty and Murphy about the dangers of insufficient willingness to accept difference within a citizenship regime.

In the corpus of her work, Schnapper provides both a reading of the history of the emergence of social citizenship and a reading – which is, as Coutu notes, one of several available – of the current crisis of the welfare state. These are, of course, matters that have been treated by others: we need think only of the much-cited view of the three worlds of welfare capitalism as proposed by Gösta Esping-Andersen and adopted by many others in Europe and North America. Coutu’s chapter presents a sociology that is an alternative to Esping-Andersen’s, one that he suggests merits our attention. He also usefully offers a set of comments and criticisms of Schnapper’s approach, assessing its utility for understanding the forms of citizenship and social citizenship that exist in North America, and particularly in Quebec.

A quite different understanding of the changing boundaries of citizenship is provided by the chapter entitled “Dis-citizenship.” There Richard Devlin and Dianne Pothier propose and then critically examine the notion of “dis-citizenship,” a concept originating in their work. In their chapter, they use it as an analytic tool to reveal the realities of exclusion and inequalities experienced by citizens with disabilities, that is, the boundaries that limit their access to full citizenship. Devlin and Pothier also intend the critique of dis-citizenship to be a useful political tool for empowering persons living with disabilities, helping them to forge an identity, to make claims for equality rather than “special rights,” and so on.

Devlin and Pothier provide a systematic and nuanced reading of the ways in which persons with disabilities have been treated as second-class or partial citizens, despite the formal equality guarantee in the Charter of Rights and Freedoms and other key texts. This treatment has generated what the authors call a “regime of dis-citizenship,” in which the citizen is imagined as
“competent abled.” For this imaginary to operate, the existence of a notion of the “incompetent disabled” is required; this distinction continues to organize and limit the citizenship rights of persons with disabilities. It serves as an effective boundary to full participation as well as to achieving substantive equality.

As Devlin and Pothier point out, the rhetoric of equal rights and full citizenship informs Canadian political discourse. The Charter is the most obvious location. But other manifestations are also important. For example, there is an explicit citizenship frame in the vision paper of the Government of Canada entitled *In Unison: A Canadian Approach to Disability Issues.* And yet, gaps remain – and within all of T.H. Marshall’s dimensions of citizenship rights.

Devlin and Pothier uncover and document the boundaries limiting the full inclusion of persons living with disabilities, whether physical or mental, visible or invisible. The chapter provides detailed analysis of each of Marshall’s three kinds of rights as well as human rights. Using both general analysis and detailed case studies, the authors document the ways in which a regime of dis-citizenship is maintained and reproduced. Civil rights are limited, for example, when professional associations screen prospective members for mental illness. Devlin and Pothier present, as one of their four case studies, the Nova Scotia Barristers’ Society, the gatekeeper of the legal profession in that province. The society’s questions about the mental-health background of membership candidates carry the “marks of dis-citizenship” (p. 151) because they cause candidates to fear that acknowledging a history of mental illness might impede their civil right to exercise their profession. Another case study of blockages to political rights deals with the Canadian government’s refusal to guarantee translation services for deaf citizens in their private meetings with civil servants. Such meetings are, of course, a key way to gain access to political authorities, a form of access usually considered essential to a fair and equal citizenship regime.

This chapter makes an important and original contribution to the long tradition of critical citizenship studies that has been undertaken frequently, albeit not exclusively, by feminists and those involved in disability studies. Such scholarship casts its critical gaze on the real workings of citizenship promises, providing detailed empirical analysis of institutional choices and arrangements that exclude, even when they may hide the boundary in the language of inclusion. Especially with respect to the rights and access dimensions of citizenship regimes, feminists have demonstrated the gendered and gendering effects of state choices about the boundaries of citizenship. If T.H. Marshall seemed unaware that he was recounting only a male history, numerous studies have since demonstrated the limits in terms of gender, “race,” ethnicity, and ability to his broad-brush story. Gaps between formal and substantive equality of women have been uncovered. The consequences
of representing the male breadwinner as the model citizen have been documented. Others have examined the results for social citizenship of different ways of thinking about gender, and, more recently, of thinking about it a lot less, with the rise of the “investing in children” frame for social citizenship. Attention to equality and inclusion of people with disabilities has not, however, been sufficiently addressed in many such critical analyses, even those most often cited. Hence the welcome contribution of this chapter to our understandings of the ways in which representations as well as practices of citizenship set and reset boundaries.

The third chapter that raises the issue of the boundaries of citizenship is “Connecting Economy, Gender, and Citizenship,” by Mary Condon and Lisa Philipps. The authors address the increasingly popular notion of “economic citizenship,” and in so doing ask a question that is rarely addressed to this concept: is there a progressive potential in the economic citizenship discourse? In particular, they are concerned to uncover the ways in which legal regulation and policy making shape the possibilities for creating claims as economic citizens.

Condon and Philipps work with a narrow definition of citizenship, limiting it to one dimension of the citizenship regime, that of access. Their premise is that one key dimension of citizenship is the idea of “people participating in some fashion in their own governance.” As they make clear, the notion of economic citizenship is a neo-liberal one, proffered as part of an ideological arsenal directed against state actions in the economic and social realms, and to discredit the earlier role played by many states. The notion of economic citizenship promotes the idea that markets can provide well-being better than any public program and that therefore states should retrench the boundaries of citizenship and allow markets to occupy as much space as possible. In this discourse there is a direct substitution of terms so as to alter the very language of citizenship. Governance replaces government as the mechanism for collective choices, and security is located in making market choices rather than in having rights in a social security regime. The concept de-emphasizes the importance of politics, defining membership in terms of participation in the governance of the private sector rather than as participation in democratic politics.

Deciding to “go with the flow” of the popularity of economic citizenship discourse, Condon and Philipps seek to determine if it can be made somewhat more progressive. Their research strategy is first to identify four key elements of economic citizenship discourse: economic liberty, or access to markets; economic security provided by market relations; responsibilities within economic citizenship; and participation in decision making. They then examine the principles, holding them up to their own standards, by looking at two areas: the governance of investment funds and the formation of tax law and budgeting.
In their case studies, however, they depart from the neo-liberal terms of economic citizenship. They return to a more Marshallian vision of the definition of citizenship, insisting that economic practices must be subject to public norms of equality and justice. Not surprisingly, then, it is more likely that norms of equality and justice will be achieved in the area which is a public policy – that is, budgeting and taxes – than in the market itself, that is, in investment funds. They are pessimistic, in other words, that returning to an eighteenth-century definition of citizenship rights can be made to conform to twenty-first-century definitions of social justice and equality.

Taken together, these three chapters present analyses of the shifting internal boundaries of citizenship, as well as of the ways in which these boundaries are being recalibrated. Michel Coutu addresses the boundary question by surveying legal sociology’s approach to citizenship and to the crisis of the welfare state. The claims making of persons with disabilities who strive to attain substantive equality in a citizenship regime which has promised equality but has delivered dis-citizenship is the focus of Devlin and Pothier’s chapter. And finally, the mobilization of the ideology of neo-liberalism to redraw the boundaries between public and private, between collective, democratic decision making and private choices, and between state and market is addressed by Condon and Philipps, who are skeptical of its capacity to attain citizenship without a significant role for democratic choice and public institutions.

Within the chapters of this volume, readers will find six timely and original contributions to scholarship regarding citizenship and the law. Students and researchers will recognize the originality of the application of social science concepts and of interventions in social debates by those trained in the law. In this case, interdisciplinary work has clearly advanced the borders of our knowledge. Policy communities will also find important messages. Some chapters challenge them to take general principles that have not yet achieved their promise and translate them into practices that will provide full citizenship for all. Other chapters warn them away from easy solutions that bypass political participation or that ignore the real challenges that exist. Non-Canadians will also find these analyses compelling. Acting for a multinational and pluriethnic country, the Canadian state has long faced a full range of challenges to existing practices for identifying the boundaries and borders of citizenship and has been innovative in its responses. Although much remains to be done to achieve all the promises made and to satisfy claims to full citizenship, this country’s experience may provide some perspective for others who are facing many of these issues for the first time.
Notes


4. Harty and Murphy (p. 91) in this volume list three developments that challenge assumptions about the borders of national community. They are international migration, regional and global integration, and presence of stateless nations within a number of national states.


7. Usually, claims are for wider boundaries, but Condon and Philips in this volume provide an example of claims making, by the proponents of “economic citizenship,” that seeks to shrink the boundaries of citizenship by reducing the role of the state.


12. In his chapter, Michel Coutu reviews some of this historical material; he also questions the status of citizenship – ideal-type or empirical reality – as a concept and does the same for social citizenship.


22. In nineteenth-century Britain, taking public assistance meant losing the status of citizenship. This was the legacy of the Elizabethan Poor Laws and their categories. In France in the
same decades of the late nineteenth century, assistance publique was being made available precisely because everyone was a citizen (or the mother of a future citizen). See Jacques Donzelot, L’Invention du social: Essai sur le déclin des passions publiques (Paris: Fayard, 1984).

23 As Kim Barry writes in her chapter (p. 58), citizenship law is “the necessary starting point,” defining “who the state considers a full member, how that membership is transmitted intergenerationally, and how it can be lost, gained, and reclaimed.” However, this starting point provides little information about the content of rights and protections, about participation, and about identity.

24 William Kaplan, ed., Belonging: The Meaning and Future of Canadian Citizenship (Montreal and Kingston: McGill-Queen’s University Press, 1993), 7. However, despite the hopes of many who originally proposed a new law, controversy surrounding the act resulted in the retention of the status of British subject for more than a generation.


29 For the definitive history of the creation of practices for controlling the movement of persons, see John Torpey, The Invention of the Passport: Surveillance, Citizenship, and the State (New York: Cambridge University Press, 2000).

30 Emigration states are defined by Barry (p. 55) as those which have a consistent net outflow of people. They are all in the global South and are sometimes called “labour-sending states.”

31 As a non-emigration state but one interested in maintaining ties with all its citizens, the United States requires all citizens (and resident aliens) to file an income tax return every year and to pay taxes as appropriate, even if their entire income for the year comes from sources outside the US. In exchange for this, the US was also one of the first countries to grant its non-resident citizens the right to vote from abroad, and this via absentee ballot.


33 Mexico is one of the countries trying to reform its electoral law. Legislation is in process but is experiencing tough going; the modalities of voting outside the country, and more specifically in the United States, remain to be worked out (“Enfranchising Mexicans Abroad,” Economist, 5-11 March 2005, 52).

34 Kymlicka makes the now classic distinction between multinational states – that is, states which include claimants for nationhood – and pluriethnic states, usually created by immigration and population mobility. See Will Kymlicka, Multicultural Citizenship: A Liberal Theory of Minority Rights (Oxford: Oxford University Press, 1995).

35 There has been a theoretical outpouring, documented in Harty and Murphy, of work on the concept of multinational citizenship since the publication of Kymlicka’s book.


37 Other legal scholars are, of course, skeptical that formal law should be called on in such cases. See, for example, Roderick A. Macdonald, “The Legal Mediation of Social Diversity,” in Conditions of Diversity, 85-111.
For a useful critique of this “republican” vision of identity and citizenship, see ibid., 87-98.


A citizenship frame for discussing disability is becoming more common within state institutions as well as civil society organizations. See, for example, both Britain’s Disability Rights Commission (http://www.drc.org.uk/citizenship/index.asp) and France’s États Généraux de la Citoyenneté des personnes handicapées (http://www.ladapt.net/etats_generaux/presentation.htm).

For a summary discussion of citizenship as a contested concept, see Barbara Hobson, Jane Lewis, and Birte Siim, eds., Contested Concepts in Gender and Social Politics (Cheltenham, UK: Edward Elgar, 2002). For other collections, see Lister, Citizenship: Feminist Perspectives, and John Andersen and Birte Siim, eds., The Politics of Inclusion and Empowerment: Gender, Class and Citizenship (Houndmills, Basingstoke, UK: Palgrave Macmillan, 2004).

On the consequences of neo-liberal positions on social citizenship for gender relations, see, for example, Sylvia Bashevkin, Women on the Defensive: Living through Conservative Times (Toronto: University of Toronto Press, 1998); for the consequences of shifting toward a vision of the “child as model citizen,” see Alexandra Dobrowolsky and Jane Jenson, “Shifting Representations of Citizenship: Canadian Politics of ‘Women’ and ‘Children,’” Social Politics 11, 2 (2004): 154-80.


Bibliography
Introduction


