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Reexamining the Concept of Citizenship in Today's World, 52 UIC J. Marshall L. Rev. 357 (2019)

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REEXAMINING THE CONCEPT OF CITIZENSHIP IN TODAY'S WORLD

MICHAEL P. SENG¹

I. THERE IS NO COMMON DEFINITION OF CITIZENSHIP	357
II. WHAT DOES CITIZENSHIP ENTAIL? WHO IS A CITIZEN? .	357
III. REFUGEES ARE PERHAPS THE MOST VULNERABLE PERSONS ON THIS EARTH.	359
IV. EUROPE HAS STRUGGLED WITH THE QUESTION OF CITIZENSHIP	361
V. THE EXPERIENCE OF THE UNITED STATES HAS BEEN INTERESTING	362
VI. REFUGEES THUS HAVE AN UNCERTAIN STATUS UNDER AMERICAN LAW, AS WELL AS UNDER THE LAWS OF MANY COUNTRIES.....	365
VII. WE NEED A WORLDWIDE CONSENSUS ON THE DEFINITION OF CITIZENSHIP	366
VIII. WE ARE ONE SOCIETY. WE ARE ONE WORLD. WE ARE ONE HUMANITY.....	366

I. THERE IS NO COMMON DEFINITION OF CITIZENSHIP

Who is a citizen and what are the rights of a citizen are fundamental questions, especially in considering the refugee problem that we face today and how these questions are likely to become even more important in the coming years.

Throughout human history people migrated freely largely due to economic or social conditions. Economic migration was one of the major ways that persons in the lower economic and social classes were able to better themselves. Most of the immigrants to the United States fit into this category, including my own ancestors. Political refugees, while they have always existed, took front stage in the late nineteenth and twentieth centuries. The Armenian Genocide in Turkey, the wide displacement of Jews and other minority groups under the Nazis, and political persecution in Communist countries all produced mass migrations of persons. The wars of the late twentieth and early twenty-first centuries have increased this trend, whether it be Asia, Africa, the Middle East, or Latin America.

II. WHAT DOES CITIZENSHIP ENTAIL? WHO IS A CITIZEN?

Perhaps the most important aspect of citizenship is that of belonging. Each of us wants to be part of a larger community, and today that community is most often the nation state. Citizenship defines our roots. Where is our home? Where do we feel safe? As

1. Professor of Law, UIC John Marshall Law School, Chicago, Illinois. This essay is based on a lecture delivered at Masaryk University, Brno, Czech Republic on October 17, 2018 upon the conferring of the degree Doctor Honoris Causa in Law upon the author. The essay has been only lightly edited.

Simone Weil stated:

To be rooted is perhaps the most important and least recognized need of the human soul. It is one of the hardest to define. A human being has roots by virtue of his real, active, and natural participation in the life of a community, which preserves in living shape certain particular treasures of the past and certain particular expectations for the future.²

Because our participation in community is determined by many factors – “place, conditions of birth, profession, and social surroundings,” – Weil reminds us that “every human being needs to have multiple roots.”³ She continues: “Unrootedness occurs whenever there is a military conquest, and in this sense conquest is nearly always an evil.”⁴

Weil also identified money as a major contributor to uprootedness.⁵ What Weil states about the causes of uprootedness is equally true today as it was in the 1930s and 40s. War has produced vast dislocations. It uproots persons from their nations, from their neighborhoods, and from their families. We see this today with Syria, Somalia, and Central America. Money likewise produces dislocations. We see this specifically in Central America, where war and civil disorder forces parents to migrate in order to feed their starving children. Corporate greed displaces persons around the world from their farms, their homes, and their jobs.

Citizenship gives one access to certain rights and the availability of remedies for the violation of these rights. Frederick Cooper describes citizenship as “a claim-making concept.”⁶ Citizenship allows us to seek protection from the state. Traditionally this protection has been in the form of physical protection from lawless and exploitive activity. But today it may be protection in the form of the necessities of life, as in the form of laws regulating labor or social welfare programs.

Scholars have divided liberties between negative and positive liberties.⁷ Negative liberties are those most famously articulated in the American Bill of Rights: freedom from government interference with speech, privacy, religion, and other fundamental rights. Positive liberties are those that attach to the modern welfare state – the rights to adequate food, shelter, clothing, education, and medical care.⁸

2. SIMONE WEIL, *THE NEED FOR ROOTS* 43 (1952).

3. *Id.*

4. *Id.*

5. *Id.* at 44.

6. FREDERICK COOPER, *CITIZENSHIP, INEQUALITY, AND DIFFERENCE* 144 (2018).

7. The division can be traced to ERICH FROMM, *THE FEAR OF FREEDOM* (1941); ISAIAH BERLIN, *THE TWO CONCEPTS OF LIBERTY* (1969).

8. The United Nations’ Declaration of Human Rights enumerates both positive and negative liberties. However, the United States Supreme Court has

Citizenship also protects certain political and civil rights. Political rights include the right to vote, the right to hold public office, and, in the United States, the right to sit on a jury. Civil rights include the right of individuals to earn a living and to be free from discrimination. Both of these rights depend largely upon one's citizenship for enforcement. It is true that international law today protects basic human rights that apply to all persons regardless of citizenship, but the means of enforcement is often absent. The Bill of Rights and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution protect persons and not just citizens.⁹ But, as Cooper generalizes: "Citizenship both enables and limits the possibilities people have for claiming social and economic justice with the currently constituted structure of states, and leaves those who fall outside of that structure in a perilous limbo."¹⁰

III. REFUGEES ARE PERHAPS THE MOST VULNERABLE PERSONS ON THIS EARTH.

Refugees have nowhere to go – nowhere where they can feel safe and fully protected by the laws. This is true of both political refugees and economic refugees. Political refugees seek asylum where they can live safely. The problems facing political refugees are fixable. We can find better ways to prevent human rights abuses. Nonetheless, we have been singularly unsuccessful in doing so. Perhaps the biggest impediment in assisting political refugees is

refused to extend the United States Constitution to encompass many of the positive liberties enumerated in the UN Declaration. *See* *Dandridge v. Williams*, 397 U.S. 471 (1970) (holding that welfare is not a fundamental right under the United States Constitution); *Lindsey v. Normet*, 405 U.S. 56 (1972) (holding that housing is not a fundamental right under the United States Constitution); *San Antonio v. Rodriguez*, 411 U.S. 1 (1973) (holding that there is no general fundamental right to an education under the United States Constitution).

9. *See, e.g.*, *Plyler v. Doe*, 457 U.S. 202 (1982) (holding that the children of undocumented immigrants have a right to an equal education under the Fourteenth Amendment Equal Protection Clause); *Citizens United v. Fed. Elections Comm'n*, 130 S. Ct. 876 (2010) (holding that corporations are persons who have free speech rights under the First Amendment); *Boumediene v. Bush*, 553 U.S. 723 (2008) (holding that non-citizens imprisoned by the United States at the Guantanamo naval base in Cuba have a right to be free from illegal detention, and to a fair hearing). Rights are protected against state action through statutes like 42 U.S.C. § 1983 (2012), and against federal officials through common law remedies articulated in *Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). However, the liberties protected in the Bill of Rights and the Fourteenth Amendment are not as broad as the liberties enumerated in the Universal Declaration of Human Rights. For instance, the rights to food, shelter, clothing, and education are protected by the Universal Declaration, but not by the United States Constitution. *See* sources cited *supra* note 8.

10. COOPER, *supra* note 6, at 149.

the concept of state sovereignty and its underlying predicate of sovereign immunity. Although international law recognizes the rights of political refugees,¹¹ forcing states to recognize the status of refugees and providing them with sanctuary is exceedingly difficult. The reaction of the United States under the Trump Administration to the influx of refugees from Central America and the reaction of many European countries to the influx of refugees from the Middle East and North Africa are examples.

When the abuses to human rights reach a breaking point, our better angels sometimes take over and produce more sensitive policies. However, unaddressed injustices lead to civil disobedience. They also breed resentments that produce violence and terrorism. The result may be regime change, preferably by peaceful but sometimes by extra-legal means. While the aim of regime change is to correct injustice, the end is often injustice of a different scope. Revolutions are unpredictable and inevitably devour their children. We see all of this playing out in the world today.

The problems posed by economic or environmental refugees are perhaps even harder to solve because of the disparities in the world's resources. At this time, international law does not recognize economic refugees.¹² If a favored elite is appropriating or hoarding a country's resources, the problem can be solved by reform measures and, when all else fails, by overthrowing the elite. However, this is not so easy to fix in a country where there is a total lack of resources, as in the case of Bangladesh. Nor is it easy to fix when people do not possess a defined territory, as is the case with the Kurds or Palestinians. The problem becomes virtually impossible to fix where natural disasters take land and resources, as is predicted by the rising oceans that face many Pacific atolls. Prophets, such as the late Tony deBrum from the Marshall Islands, have been voices crying in the wilderness on this issue.¹³

Furthermore, the distinction between political and economic refugees is not always well defined. Political refugees quickly become economic refugees and vice versa. Starvation is often a political tool used to eliminate sectors of society.¹⁴

11. Convention Relating to the Status of Refugees, Jan. 31, 1967, T.I.A.S. No. 6577, 19 U.S.T. 6223 [hereinafter United Nations Convention].

12. *Id.*

13. Dan Zak, *He Saw a Nuclear Blast at 9, Then Spent His Life Opposing Nuclear War and Climate Change*, WASH. POST (Aug. 24, 2017), www.washingtonpost.com/local/he-saw-a-nuclear-blast-at-9-then-spent-his-life-opposing-nuclear-war-and-climate-change/2017/08/24/5b6d10e6-882e-11e7-a94f-3139abce39f5_story.html?utm_term=.7e0e886d435f.

14. See TIMOTHY D. SNYDER, *BLOOD LANDS – EUROPE BETWEEN HITLER AND STALIN* (2010). For example, Snyder states in his *Preface: Europe* that:

Mass killing in Europe is usually associated with the Holocaust, and the Holocaust with rapid industrial killing. The image is too simple and clean. At the German and Soviet killing sites, the methods of murder were rather primitive. Of the fourteen million civilians and prisoners of

Everyone needs a home, a place to belong. However, more and more, we have whole groups of people who have nowhere to go or who possess no genuine citizenship in any state that will give them refuge and protection. How we define and implement citizenship can, thus, literally mean the survival or destruction of many persons and communities.

IV. EUROPE HAS STRUGGLED WITH THE QUESTION OF CITIZENSHIP

Citizenship in Ancient Greece turned on the rights of free males to participate in the politics of the City State.¹⁵ Citizenship in Ancient Rome meant something broader. Roman citizenship tied everyone together into a vast empire. However, Roman citizenship did not necessarily confer full political rights as the rights of citizenship differed with the person.¹⁶

Modern Europe has had its own problems defining citizenship.¹⁷ Post-1789 France attempted a comprehensive approach, but that broke down when France became an overseas empire.¹⁸ Germany¹⁹ and Britain²⁰ struggled with the relationship of persons from the mother country with persons from diverse continents and cultures. The former Austro-Hungarian²¹ and the Ottoman²² Empires experimented with various forms of political

war killed in the bloodlands [Central and Eastern Europe] between 1933 and 1945, more than half died because they were denied food. Europeans deliberately starved Europeans in horrific numbers in the middle of the twentieth century. The two largest mass killing actions after the Holocaust—Stalin’s directed famines of the early 1930s and Hitler’s starvation of Soviet prisoners of war in the early 1940s—involved this method of killing. Starvation was foremost not only in reality but in imagination. In a Hunger Plan, the Nazi regime projected the death by starvation of tens of millions of Slavs and Jews in the winter of 1941-1942.

Id. at xiv.

15. COOPER, *supra* note 6, at 27-28.

16. *See id.* at 30. Cooper cites the different “gradations among Romans and among Latins...There were different levels of assemblies and different qualifications in terms of wealth and property for various offices.” *Id.* at 37. Cooper recognizes that status distinctions between citizens continued even when citizenship was extended during the Empire. *Id.*

17. Cooper cites post-1789 France, Germany, Britain, Austria, and Turkey as examples. *Infra* notes 18–22.

18. COOPER, *supra* note 6, at 66-75.

19. *Id.* at 75-78 (describing Germany’s struggle with “Germanness”).

20. *Id.* at 75-78 (comparing British Imperial citizenship to the inequalities of Roman citizenship).

21. *Id.* at 79; *see* PIETER M. JUDSON, *THE HABSBURG EMPIRE* (2016) (discounting the popular notion that the Habsburg Empire was a dysfunctional assemblage of squabbling nationalities).

22. COOPER, *supra* note 6, at 81 (describing how under the Ottoman Empire, “[p]eople were bound to the state not as equivalent individuals but as members

representation, but the experiments were casualties of World War I. The artificial relationships created in the nineteenth century emphasizing national identity undercut any attempt to define a humanistic approach to the problem.

V. THE EXPERIENCE OF THE UNITED STATES HAS BEEN INTERESTING

The original Constitution did not define who was a citizen. It gave Congress the power of naturalization,²³ but it said nothing about those persons already in the United States. The attempt by the Supreme Court to solve the problem in *Dred Scott v. Sanford*²⁴ left African Americans in a no-man's land with no rights whatsoever. The slave trade had severed their relationship to Africa. The Supreme Court stated that in America, African Americans were not citizens and had no rights that the white man was bound to respect.²⁵ The Court further held that Congress had no power to naturalize African Americans or give them any rights under the American Constitution.²⁶ The individual states could grant African Americans rights, but even these rights received no recognition nationally.²⁷

The Thirteenth Amendment, which passed in 1865, freed the slaves and gave Congress the power to eliminate the badges and incidents of slavery.²⁸ Congress passed the Civil Rights Act of 1866 to implement the Thirteenth Amendment.²⁹ The 1866 Act stated that anyone born or naturalized in the United States is a U.S. citizen.³⁰ The Act further defined the privileges and immunities of American citizenship by giving everyone equal rights to make contracts, own property, and sue in the courts free from racial discrimination.³¹ But, the constitutionality of the Act was called into question by the veto of President Andrew Johnson.³² Although Congress reenacted the law over the veto,³³ its constitutionality was

of a mosaic of collectivities, each with its political hierarchy”).

23. U.S. CONST. art. I, § 8, cl. 4.

24. *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

25. *Id.* at 407.

26. *Id.* at 420.

27. *Id.* at 405-06.

28. U.S. CONST. amend. XIII; *The Civil Rights Cases*, 109 U.S. 3, 20 (1883); *Jones v. Alfred H. Mayer, Co.*, 392 U.S. 409, 439-42 (1968).

29. Act of April 9, 1866, ch. 31, § 1, 114 Stat. 27 (1866), re-enacted by § 18 of the Enforcement Act of 1870, ch. 114, § 18, 16 Stat. 140, 144 (1870). The provisions are codified today in 42 U.S.C. §§ 1981-1982 (2012) [hereinafter Enforcement Act of 1870].

30. *Id.*

31. *Id.*

32. See *Jones*, 392 U.S. at 422-37 (outlining the history of the Civil Rights Act of 1866 and the subsequent Enforcement Act).

33. Enforcement Act of 1870, *supra* note 29.

left undetermined until 1968, when the Supreme Court finally declared that the Thirteenth Amendment provided a basis for this most important civil rights law.³⁴

The Fourteenth Amendment was adopted in 1868 primarily to constitutionalize the 1866 Civil Rights Act.³⁵ The Fourteenth Amendment defined citizenship and broadly proclaimed that states could not take away the privileges and immunities of United States citizenship or deny to any person due process or the equal protection of the laws.³⁶ While the Fourteenth Amendment defined who was an American citizen, the Supreme Court later narrowly defined the privileges and immunities of United States citizenship.³⁷ Defining and protecting most political rights, beyond the right not to lose one's citizenship,³⁸ was left to the states.³⁹ Even today, many American citizens do not have the right to vote, run for political office, or sit as jurors.⁴⁰ The Supreme Court early proclaimed that American Indians, although born in the United States, were not

34. *Jones*, 392 U.S. at 422-37.

35. *Id.* at 436; *Hurd v. Hodge*, 334 U.S. 24, 32-33 (1948).

36. U.S. CONST. amend. XIV.

37. *Slaughter-House Cases*, 83 U.S. 36, 74-80 (1873). The Supreme Court declined an explicit invitation to overrule *The Slaughter-House Cases* and extend the privileges and immunities of United States citizenship in *McDonald v. City of Chicago*, 561 U.S. 742, 758-59 (2010).

38. *United States v. Wong Kim Ark*, 169 U.S. 649 (1898) (holding that persons born in the United States were American citizens even if their parents were not citizens). Citizens have the right to reenter the country once they have left. *Id.*; *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963) (holding that Congress cannot expatriate a citizen who departed and remained outside the United States to avoid military service even in time of war or national emergency); *Harisiades v. Shaughnessy*, 342 U.S. 580, 586-87 (1952) (holding that aliens, unlike citizens, have no right to remain in the United States as a matter of right); *Flemming v. Nester*, 363 U.S. 603 (1960) (holding that an alien who was a former communist could be deported and deprived of his social security benefits). One can renounce one's citizenship, and the government can prove renunciation by a preponderance of the evidence and not by the stricter "clear and convincing" standard required in cases involving important rights. *Vance v. Terrazas*, 444 U.S. 252, 267 (1980). One can also lose one's citizenship if it is shown by clear and convincing evidence that it was procured by fraud or deceit. *Fedorenko v. United States*, 449 U.S. 490, 505 (1981) (holding that a person who lied on his application to enter the United States could be denaturalized even though he claimed that his service as a concentration camp guard was involuntary).

39. *United States v. Cruikshank*, 92 U.S. 542, 554-55 (1875) (holding that the federal authorities could not protect the right of citizens to vote in state elections under the Fourteenth Amendment). *Cf. The Civil Rights Cases*, 109 U.S. at 11 (holding that Congress could not protect the civil right of persons to use public accommodations free from racial discrimination under the Fourteenth Amendment); *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 196 (1989) (holding that a state has no duty under the Fourteenth Amendment to protect individuals from private violence).

40. *See, e.g., Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181 (2008) (holding that right to vote is contingent on presenting valid government photo identification).

American citizens.⁴¹ Congress finally naturalized them in 1924.⁴²

The Supreme Court also held that citizenship did not automatically confer certain political rights. For instance, women were citizens, but the Constitution did not give them the right to vote.⁴³ Women were given the right to vote nationally only in 1920, when the Nineteenth Amendment to the American Constitution was ratified.⁴⁴

The Fourteenth Amendment rights to life, liberty, and property and the right to equal protection of the laws extend to all persons and not just citizens. Thus, non-citizens, even undocumented immigrants, have the right to freedom of speech, to a fair trial, to privacy in their homes, and to be free from cruel and unusual punishment.⁴⁵ This logic does not apply to public benefits. Public benefits such as welfare, health care, and public housing can be limited by Congress, but not by the states.⁴⁶ Thus, Congress and the states can exclude new immigrants, no matter how needy, from public welfare programs and this does not violate the equal protection component of the Due Process Clause of the Fifth Amendment.⁴⁷ Positively, the Supreme Court has held that the

41. *Elk v. Wilkins*, 112 U.S. 94, 109 (1884).

42. Indian Citizenship Act, Pub. L. No. 68-175, 43 Stat. 253 (1924).

43. *Minor v. Happersett*, 88 U.S. 162, 171 (1875) (holding that the right of suffrage is not one of the privileges and immunities of United States citizenship).

44. U.S. CONST. amend. XIX.

45. *See Plyler*, 457 U.S. at 210 (holding that the Fourteenth Amendment due process and equal protection clauses apply to persons, including undocumented aliens, and not only to citizens).

46. *See Mathews v. Diaz*, 426 U.S. 67 (1976) (holding that Congress can limit the ability of aliens to collect welfare benefits and Medicare, even though such action taken by a state would be unconstitutional). This case is based on Congress' plenary power over immigration. *Id.* Congress substantially restricted access by aliens to federally subsidized housing in the Housing & Community Development Act of 1980. 42 U.S.C. § 1436(a) (2012). Similarly, in 1996 Congress passed the Personal Responsibility & Work Opportunity Reconciliation Act, more popularly known as the Welfare Reform Act, Pub. L. No. 104-193, 110 Stat. 2105 (1996). The Act disqualifies a large number of aliens from a number of "federal public benefit" programs. 8 U.S.C. § 1611(c)(1)(B) (2012). On their own, states may not exclude aliens from public benefit programs. *Graham v. Richardson*, 403 U.S. 365 (1971). The Welfare Reform Act provides that a state may make determinations concerning eligibility of qualified aliens for defined public assistance programs and the state shall be deemed "to have chosen the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy." 8 U.S.C. § 1601(7) (2012). Whether this provision is constitutional has not been decided. *Cf. Hampton v. Mow Sun Wong*, 426 U.S. 88 (1976) (refusing to give deference to a regulation of the federal Civil Service Commission disqualifying aliens from most civil service jobs because it had not been expressly mandated by Congress or the President).

47. *Mathews*, 426 U.S. at 87 (upholding a federal statute that conditioned participation in a federal medical insurance program on five years continuous residence in the United States).

children of undocumented aliens have a right to attend public schools on the same basis as all other children.⁴⁸ Most importantly, non-citizens in the United States have no legal right to remain in the United States and can be deported – something that cannot be done to a citizen.⁴⁹

VI. REFUGEES THUS HAVE AN UNCERTAIN STATUS UNDER AMERICAN LAW, AS WELL AS UNDER THE LAWS OF MANY COUNTRIES

Both international and American law give refugees a right to asylum.⁵⁰ But what does this mean? Can refugees be required to establish their status before entering the country or can they enter the country without documentation and then claim refugee status? Are refugees merely temporary residents or do they have rights that ripen over time? International law recognizes political refugees.⁵¹ What about economic refugees or environmental refugees who have no land to go to because it has literally disappeared because of natural disasters or rising oceans?

The emphasis in the last half of the twentieth century and the

48. *Plyler*, 457 U.S. at 230 (invalidating a Texas law that authorized a school district to exclude children who were not “legally admitted” to the United States).

49. *Compare Harisiades*, 342 U.S. at 586-87 (holding that the government may deport non-citizens), *with Kennedy*, 372 U.S. 144 (holding that the government may not expatriate a citizen who avoided military service).

50. United Nations Convention, *supra* note 11. Article 33.1 of the Convention provides: “No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” 189 U.N.T.S. 150, 178 (1954); 19 U.S.T. 6259, 6278, T.I.A.S. No. 6577 (1968). *See also* United Nations, *Office of the United Nations High Commission for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status* CH. II, B(2)(a) (1979) (analyzing what is meant by a “well grounded fear of being persecuted”).

The United States Congress provided in the Refugee Act of 1980 that aliens be granted political asylum in the United States if they are unable or unwilling to return to their country “because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion...” 8 U.S.C. §§ 1101(a)(42)(A) and 1158(a) (2012). In *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436-41 (1987), the United States Supreme Court held that Congress intended to conform the definition of “refugee” and United States asylum law to the United Nations Protocol. *Id.* However, in *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992), the Supreme Court held that a petitioner bears a heavy burden of proof in showing that one is being persecuted *because of* one’s political beliefs and not simply because one disobeyed the law. *Id.*

51. *See* United Nations Convention, *supra* note 11 (providing that “no Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”).

first decades of the twenty-first century has been on human rights. This is important because human rights apply to all persons, including non-citizens and refugees. However, human rights do not address the problem of statelessness. What is the value of a human right if a person has no place to remain? Ultimately, the focus has to be on citizenship – what it means to belong to a community of persons. Human rights focus on the individual; citizenship focuses on the individual’s relationship to the community. Community matters.

VII. WE NEED A WORLDWIDE CONSENSUS ON THE DEFINITION OF CITIZENSHIP

There is, at present, no international standard defining citizenship or the right to attain citizenship. State sovereignty needs to be limited. I believe that we can preserve our culture and traditions without unduly restricting immigration. The United States provides a powerful example of a country that has prospered because of broad immigration policies.

Today the peoples of the world are grossly unequal. This cuts two ways. It breeds protectionism and xenophobia. But it also tells us that if we are to be a truly just society, we must consider not just ourselves but the entire earth – quoting Pope Paul VI, “If you want Peace, work for Justice[.]”⁵²

VIII. WE ARE ONE SOCIETY. WE ARE ONE WORLD. WE ARE ONE HUMANITY.

Our present nation-state system where “the great majority are conscious of a common identity and share the same culture” is largely the result of nationalist movements in the nineteenth century, receiving its biggest push from the post-World War I principle of national self-determination.⁵³ Erecting artificial barriers violates the most basic rights of human beings – the right to freedom of movement and the right to seek a better life.

We need to think of new ways to confront the injustices and inequalities perpetrated by the present nation-state system. We need a common definition of citizenship and the rights of citizenship. This is crucial to the rule of law in the world today. Though controversial among conservatives in the United States, citizenship by birth is an easy test to apply. This test combined with a rule allowing children to adopt the citizenship of their parents is

52. Pope Paul VI, *Message for the Celebration of the Day of Peace*, THE HOLY SEE (Jan. 1, 1972), w2.vatican.va/content/paul-vi/en/messages/peace/documents/hf_p-vi_mes_19711208_v-world-day-for-peace.html.

53. NORMAN DAVIES, *EUROPE: A HISTORY* 812-13 (1996); HANS KOHN, *PROPHETS AND PEOPLES* 11-13 (1946).

one way that the world could define citizenship. Citizenship should also automatically confer essential political rights and equal civil rights under the law. No state should deny its citizens the political rights to vote, as is currently the law in many American states.

How we achieve this consensus is one of our most important challenges today. I suggest we turn to restorative justice techniques that will enable us to engage all parties in a face-to-face discussion of the interests and possibilities involved.⁵⁴ Restorative justice considers the rights of the individual, the interests of the community, and works out a balance that respects the interests of everyone. In a restorative justice session, all parties, including refugees or their representatives, are at the table and are given the opportunity to be heard. We know that there are no easy answers. We must talk through a solution and reach a common consensus.

I am not advocating tearing down borders. I recognize that there are legitimate national security concerns in favor of regulating immigration. However, national security concerns are often over-inflated. I advocate that we discuss these issues rationally and with the common interests of humanity at the forefront.

We cannot allow ignorance and hate to rule, as it does in so many countries of the world today. We cannot hide our head in the sand to the real injustices that are taking place around us. We need to take a hard-edged look at what is in our best interest and decide that building walls does not best serve this interest.

I advocate the enactment of just laws that recognize the legitimate human rights at stake and that are enforced equally and fairly without discrimination based on race, color, national origin, ancestry, sex, sexual orientation, religion, class, or disability. I quoted Pope Paul VI earlier, that “If you want Peace, work for Justice[.]”⁵⁵ The immigration problem and the problems confronting refugees speaks eloquently of the truth of this admonition.

54. SHEILA M. MURPHY & MICHAEL P. SENG, *RESTORATIVE JUSTICE IN PRACTICE – A HOLISTIC APPROACH* (2015).

55. Pope Paul VI, *supra* note 52.

