Professor Sloss usefully highlights the complexity of treaty implementation issues, which continue to challenge those in the U.S. legal community concerned with ensuring fidelity to our international obligations. The "self-executing/non-self-executing" distinction remains confusing and contentious, yet it is a mistake to cast it as creating a stark binary choice (whether the treaty in question is binding/not binding, judicially enforceable/not enforceable, or law/not law). He is right to reject a constitutional interpretation that permits or encourages U.S. ratification of treaties under conditions that allow the states to frustrate national compliance. If, however, the only other option is to incorporate all treaties directly as preemptive federal law, we will then be disabled, legally and politically, from joining important multilateral regimes at the international level.

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At Home in Two Countries: The Past and Future of Dual Citizenship. By Peter J. Spiro. New York, New York: New York University Press, 2016. Pp. vii, 191. Index.
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The rules governing citizenship are among the most fundamental topics in international law and politics. This is, first and foremost, since the Westphalian concept of citizenship is essentially "an international filing system, a mechanism for allocating persons to states,"[1] and therefore it is a cornerstone of the current structure of international law.

In *At Home in Two Countries*, Peter Spiro—Charles R. Weiner Professor of Law at Temple University, Beasley School of Law—addresses one of the most challenging issues related to the institution of citizenship: the question whether dual citizenship should be protected by international law and perhaps even qualify as a "human right." Spiro is one of the leading experts writing on this topic and should be credited for being among the first scholars who observed the decline of citizenship and envisaged the global rise of dual citizenship.[2]

At Home in Two Countries is intellectually rich. It shows how dual citizenship, once a reprehensible institution, has become acceptable, and advocates the recognition of a human right to dual citizenship. The book is empirically grounded—the claim is well-documented and convincing—and normatively inspiring. Spiro writes in a way that is accessible to a general audience—deep but simple, specific yet not jargonish, legal but relevant to other disciplines (political theory, citizenship studies, migration, and transnationalism studies). The reader becomes familiar with the law of dual citizenship, but also with its theoretical foundation, historical development, and normative implications; the focus is on the United States yet the book is full of comparative observations. Spiro is a visionary—he dreams of a world which is more open and global—yet pragmatic; he understands well the political constraints that will prevent the realization of his vision in the near future. Whatever one's view on the topic is, Spiro invites us to think on the essence of citizenship and how the world could be different if alternative rules would be adopted. The book offers a timely analysis of a pressing global challenge.

The book is divided into eight chapters. Chapter 1 focuses on the feudal roots of the modern institution of citizenship. The common-law concept of subjecthood was based on feudal ties between subjects and the king. Subjects owed a duty of allegiance to the king—and it was absolute, perpetual, and indelible. Allegiance was a

Civil Aspects of International Child Abduction, Pub. L 113-150, Aug. 2, 2014, 128 Stat. 1809; that act also created a joint oversight mechanism by the executive branch and the Congress.

[1] ROGERS BRUBAKER, CITIZENSHIP AND NATIONHOOD IN FRANCE AND GERMANY 31 (1992).

[2] Peter J. Spiro, *Dual Nationality and the Meaning of Citizenship*, 46 EMORY L.J. 1411 (1997).

matter of natural law due from all people born within the king's dominions. Perpetual allegiance meant that a person could not be naturalized in another country or dissolve the bond of allegiance; "once a subject, always a subject."[3] England even brought to justice people who became naturalized Americans for being "saddled with allegiance to more than one sovereign" (p. 13). And yet, the theory of perpetual allegiance gradually lost validity. The American Revolution grounded the duty of allegiance in contract law theory, which is defined by law and terminated by law, rather than in natural law. The industrial revolution, growing population movements, and the rapid diffusion of Lockean theories of social contract challenged the concept of perpetual allegiance; eventually, it "could not survive modernity" (p. 21). In 1870, Britain recognized a right to expatriation and allowed people to change their citizenship status and transfer their allegiance to a new sovereign.

The recognition of the right to expatriation[4] in Britain and the United States was not followed by the legal option to hold dual citizenship. States demanded exclusiveness; people could not be loyal to more than one sovereign at the same time and had to choose their master ("no man can serve two masters" (p. 23)). Chapter 2 brings the story of "jealous nations" that insisted on exclusive allegiance. In the United States, allegiance could be transformed, but not divided. There were two central mechanisms to prevent dual citizenship. First, naturalization in another country implied the loss of citizenship in the country of origin; "[m]ost states came to terminate the nationality of individuals who naturalized elsewhere" (p. 27) or took an oath of allegiance in a foreign country (p. 33). In addition, children born and raised outside the United States had to record "their intention to become residents and remain citizens of the United States" at the age of majority (p. 34). Second, individuals who were born as dual citizens had to choose between their two statuses (p. 23). Dual citizenship was perceived as a "threat to the stability of international relations" and, consequently, "[s]tates moved aggressively to root out the status" (*id.*).

Dual citizenship was particularly seen as a threat to international stability in time of war. Chapter 3 documents how the U.S. government considered dual citizens as "fifth column" during the World Wars and the Cold War. In 1940, Congress passed a law according to which Americans could lose their citizenship "for entering into the armed forces of a foreign state where an individual possessed the nationality of that state" (p. 42). Other grounds for losing citizenship were "accepting government employment in a foreign state for which only nationals of such state were eligible" and voting in a foreign election (p. 43). The U.S. Supreme Court largely backed up Congress. In *Perez v. Brownell*, which dealt with the issue of voting in a foreign country, Justice Felix Frankfurter held: "no man should be permitted deliberately to place himself in a position where his services may be claimed by more than one government and his allegiance be due to more than one."[5] Between 1949 and 1964, "[m]ore than 25,000 individuals lost their citizenship on the voting ground alone" (p. 49). On the other side of the ocean, the German Federal Constitutional Court ruled in 1974 that "dual or multiple nationality is regarded . . . as an evil that should be avoided or eliminated."[6] States made a great effort to limit dual citizenship—"[o]ne had to pick sides or those sides would be picked for you" (p. 55).

Chapter 4 explains the turning point toward the toleration of dual citizenship in the United States. In 1967, less than a decade after the *Perez* decision, the U.S. Supreme Court reversed its ruling and signaled a wider acceptance of dual

[3] William Blackstone characterized it by holding that an obligation to one's sovereign represented "a debt of gratitude, which cannot be forfeited, canceled, or altered, by any change of time place or circumstances." *See* WILLIAM BLACKSTONE, COMMENTARIES ON THE LAW OF ENGLAND 1765, at 369–70 (1979).

[4] The right to expatriation is currently recognized by the Universal Declaration of Human Rights, Art. 15(2), GA Res. 217A (III), UN Doc. A/810 (1948).

[5] Perez v. Brownell, 356 U.S. 44, 50 (1958).

[6] Judgement of May 21, 1974, 37 BVerfGE 217, 254–55.

citizenship.[7] Other states followed a similar track —"France amended its nationality regime in 1973 to allow retention of French nationality upon naturalization in another state, as did Canada in 1976" (p. 70). By 2000, dual citizenship became accepted in a large number of countries. Mexico allowed dual citizenship in 1998, as did Italy, Turkey, Ireland, Israel, and the Philippines. According to Spiro, in the 1990s, "[n]ineteen out of the top twenty source states for immigrants to the United States either accept dual citizenship or do nothing to police against it" (*id.*). States, he finds, "have largely given up the fight" over dual nationality and gradually accepted it, either *de jure* or *de facto* (p. 72).[8]

Chapter 5 shows that, in the past twenty years, dual citizenship has not only been tolerated but also encouraged. It turned from a condemned status to "one that is proudly or casually advertised" (p. 74). Spiro brings three reasons for this transformation. The first reason relates to the cost of dual citizenship for states, which, in the contemporary world, has become trivial. According to Spiro, there is no longer a security risk in holding a dual citizenship, if there ever was one. The second reason relates to legal changes. Chapter 5 details how legal barriers, created by the U.S. Supreme Court, made it hard to revoke citizenship. In order to remove citizenship, the government must prove the involvement of a person in hostilities against the United States as well as an intent of that person to expatriate, that is, to relinquish citizenship. Spiro concludes that, under these restrictions, "the standard for undertaking a drone strike is lower than for expatriation" (pp. 78–79). The third reason relates to a change in the role of individuals in international law—"[c]itizens are no longer pliable pawns" (p. 82). Individuals are no longer seen as representative of their country of origin, a piece of sovereignty in their new country. Instead, dual citizens are considered nowadays as a valuable "political resource" in the host country (p. 83). All in all, Spiro concludes that "[d]ual citizenship is good for America" (p. 86).

Chapter 6 makes a case for dual citizenship. It is not only good for individuals (human rights) and receiving-countries (inclusion), but also beneficial for sending-countries. The chapter shows the shift in countries of emigration, which once saw emigrants as "traitors" (p. 88) and today considers them "economic footholds in developed economies" that send remittance supporting "family members left behind" (p. 89). The sending-countries discovered the economic value of their diaspora. As a result, countries of emigration have amended their constitution to allow dual citizenship—Brazil, Costa Rica, Dominican Republic, Ecuador, Columbia, Mexico, South Korea, and Turkey—while other countries, such as China, stopped enforcing the law against dual citizenship. The acceptance of dual citizenship has also provided political rights for non-resident dual citizens—"[m]ost states now afford full voting rights to external citizens in national elections," either by mail (the United States, Spain, or Italy) or at the consulates abroad (Poland, France, or Sweden) (p. 95). In some countries, non-resident communities even have representation in national legislatures (e.g., Italy, France, or Columbia).

Chapter 7 is the core of the book—it advocates the recognition of a human right to dual citizenship. Spiro does not specify whether the global acceptance of dual citizenship has reached the point where it can be seen as a "right" based on customary international law. Rather, he finds the justifications for such a right in three sources. First, freedom of association: Spiro sees membership in another state as a form of political association that can only be deprived when it is necessary for protecting national security, public safety, and individual freedoms. Second, liberal autonomy: Spiro claims that forcing a child to choose between countries undermines the

[7] Afroyim v. Rusk, 387 U.S. 253 (1967).

[8] On the growing global legal acceptance of dual citizenship, see Yossi Harpaz & Pablo Mateos, *Strategic Citizenship: Negotiating Membership in the Age of Dual Nationality*, J. ETHNIC & MIGRATION STUD. (Mar. 20, 2018), *available at* https://www.tandfonline.com/doi/pdf/10.1080/1369183X.2018.1440482?needAccess=true; Global Expatriate Dual Citizenship Dataset, Maastricht Center for Citizenship, Migration and Development, Maastricht University, *at* https://macimide.maastrichtuniversity.nl/dual-cit-database.

autonomy to have a home in two countries. Third, political rights: dual citizenship allows a person to exercise political rights both at the country of residency, where the person has an interest to influence the public life, and the country of origin, where he/she has a political interest due to property rights, social benefits, and cultural ties. The recognition of a right to dual citizenship, à la Spiro, "would bar states from requiring new citizens to renounce their original citizenship, terminating the citizenship of those who naturalize elsewhere, or forcing those born with dual citizens to choose one at majority" (p. 8). He admits that such a right "is not an immediate prospect," but hopes that reality will foster it.

Chapter 8 discusses how the rise of dual citizenship is connected with the decline of citizenship in general. This chapter has three powerful points. First, the acceptance of dual citizenship is a symptom for the devaluing of citizenship. In the past, naturalization "reflected a reprioritization of identity" yet, today, it is often instrumental—it can occur "even in the absence of any love for a state of residence" (pp. 134–35); it is a matter of convenience ("passports will be more like credit cards" (p. 150)). Citizenship has become instrumental also for states, which offer it for sale. Second, dual citizenship redefines political boundaries and decouples citizenship from territory and political communities—it blurs the distinction between "us" and "them" to the point that it becomes "impossible to say where one community leaves off and another takes on" (p. 140). Third, dual citizenship is mostly available for few privileged people. Spiro briefly discusses the nexus between dual citizenship and global injustice. He recognizes the problem, but dismisses it. For him, dual citizenship is not the source for global injustice—"dual citizenship isn't the problem, citizenship is" (p. 149).

The book provides an insightful contribution concerning three issues. The first relates to the *institution of citizenship*. Spiro urges the reader to reflect not only on the rules of dual citizenship, but also on the institution of citizenship. Citizenship is an artifact, a creature of government, and no moral values or human rights follow from this concept in and of itself. But citizenship is far from being an ideal social construct. The last century has been characterized by fierce debates on citizenship regimes—whether the rules to gain or lose the status of citizenship are just, whether the status of citizenship should be central in securing human rights, and whether the possession of citizenship requires a confirmation of identity. How empirically grounded are the propositions underlying the contemporary institution of citizenship? What costs and benefits does it generate on the global level? Who are/should be the main players in designing the rules of citizenship? What should be the criteria for regulating citizenship? And will an author of a citizenship book in 2120 perceive existing rules the way we see the common-law rule of perpetual allegiance? *At Home in Two Countries* reminds us how even relatively small changes in exiting citizenship rules can significantly influence the life of millions of people.

The second issue relates to the *politics of citizenship*—designing rules in order to serve national, rather than individual interests. The common-law rule of perpetual allegiance was feudalist in nature—"[s]ubjects were useful as instruments . . . [and] were to be put to work as resources[;] . . . expatriation represented an intolerable loss of strength to the birth sovereign" (p. 15). Similarly, the backlash against perpetual allegiance in the United States was aimed at political interests of the new country. At the infancy of the nation, "[t]he United States was thirsty for immigrants" and had to adopt rules encouraging newcomers to move in (p. 16). Not surprisingly, as "the United States grew stronger, it had to consider how unrestrained expatriation by its own citizens might undermine U.S. interests" and, indeed, it "later prohibited expatriation by U.S. citizens" and "at points it limited the right of Americans to expatriate" (p. 17). In modern history, individuals were instruments for political interests and the rules of citizenship were thereby shaped; "individual interests in the status were ignored" (p. 114).

The third issue relates to the *international law of citizenship*. Traditionally, international law does not regulate citizenship; it defers to state

authority in setting up citizenship rules. Spiro shows how thin the international law of citizenship is. At the beginning of the twentieth century, the attempt to regulate citizenship led to the adoption of The Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws. The Hague Convention provided that "[i]t is for each State to determine under its own law who are its nationals"[9] and, while recognizing a right to expatriation, did not acknowledge a right to dual citizenship. Spiro indicates some developments toward an international law of citizenship.[10] Yet, in spite of the legalization, citizenship is not explicitly a branch of international law. International law accepts dual citizenship as a social reality, yet attempts "to minimize the ways in which it disrupted the international system" (p. 61). Dual citizenship is protected, but states can require a "genuine connection" between an individual and a state.[11] Spiro's book, and his scholarship more broadly, is a plea for an international citizenship law, "the last bastion of sovereign discretion."[12] The drafts of the Global Compact on Refugees (March 9, 2018) and the Global Compact for Safe, Orderly and Regular Migration (February 5, 2018) say nothing on dual citizenship, but call to "[e]nable political participation and engagement of migrants in their countries of origin . . . in elections and political reforms, by establishing voting registries for citizens abroad, and by parliamentary representation."[13] Should international law regulate citizenship? What can be the theoretical justifications and normative principles for it? These questions will engage legal scholars in the years to come and Spiro's writings will be their first source for inspiration.

Having said that, I have three points of disagreement with Spiro. The first point touches upon his statement on the *value of citizenship*. Spiro rightly observes that, generally, citizenship is declining and its value is less central than in the past decades. Citizenship is less exclusive (not a single source of identity, rights, and duties), less supreme (subduing all sources of identities), and less central (for community cohesion). Dual citizenship is just another symptom of a general trend of liberalization of citizenship.[14] But recent years have shown a backlash—a restrictive turn. In some senses, citizenship is more central today than one hundred years ago and there are more transnational regimes and limitations that depend on it. Thus, the exercise of freedom of movement outside the state is perhaps connected with citizenship today more than in the last centuries. The most visible expression of the restrictive turn is the rise of "cultural defense laws"—policies aimed at protecting different expressions of the national culture.[15] In Europe, this has resulted in attempts to enforce cultural integration through citizenship tests, loyalty oaths, integration pacts, language demands, and attachment requirements.[16] True, citizenship has become instrumental, but there is a strong backlash against it, which, I believe, Spiro underestimates. One can reasonably argue that the more citizenship decreases in value, the more central the debate over migration becomes. In the current age, the status of citizenship does not have much value and non-citizen residents are indeed entitled to welfare benefits, free education, and social stipends; but *precisely* because of these reasons, nation-states are more insistent on border control and on keeping the gates closed.

[9] Convention on Certain Questions Relating to the Conflict of Nationality Laws, Art. 1, April 12, 1930, 179 LNTS 89.

[10] The European Convention on Nationality, Arts. 14, 16, Strasbourg, 6.XI.1997.

[11] Nottebohm Case (Liech. v. Guat.), Judgment, 1955 ICJ Rep. 4, 23 (Apr. 6).

[12] Peter J. Spiro, *A New International Law of Citizenship*, 105 AJIL 694 (2011).

[13] Global Compact for Safe, Orderly and Regular Migration 21 (Zero Draft, Feb. 5, 2018), *available at* https://refugeesmigrants.un.org/intergovernmental-negotiations.

[14] Christian Joppke, Citizenship and Immigration 31 (2010).

[15] Liav Orgad, The Cultural Defense of Nations: A Liberal Theory of Majority Rights 85–114 (2015).

[16] One can argue that access to the status of citizenship is becoming more liberal in one sense (who has access?), but less liberal in another sense (under which conditions?).

The second point is related to the *human right to dual citizenship*. Spiro provides convincing justifications for such a right, yet says little on the conditions that must be fulfilled for its realization and the possible consequences for global justice. Even readers who agree with his normative direction may insist that the status of citizenship must not be regarded as purely instrumental; rather, some "genuine links" between a person and a state must be established, a doctrine that is still good law.[17] Spiro's personal story emphasizes this point. Spiro is an American citizen who became a naturalized German in 2013. He does not speak German, knows little about German history, politics, and culture, and rarely visits Germany.[18] He is a German citizen in title, rather than in practice ("I can hardly call myself a German in any real way. . . . I would never identify myself as German, or even as German American" (p. 3)). Getting German citizenship was a matter of convenience, for having better prices in museums and shorter lines at airports. In summer 2008, he visited Rome where he found that "Museums in Italy can be expensive, and there is no discount for children—at least not for non-EU-citizen children. Never again was I going to dig so deeply into my wallet with my German-passport-toting son and daughter" (p. 2). So, he admits, "my motivation was instrumental" (*id.*), in part "to avoid lines at European ports of entry and to exploit EU-only discounts at continent museums" (p. 131). One does not need to adopt a romantic conception of citizenship—e.g., love for a country—to object to the idea that international law should encourage citizenship distribution for purely instrumental reasons.[19] Spiro sees no problem with that; after all, his story proves his thesis that citizenship is becoming less of an issue ("Naturalizing as German took on an analytical element, an exercise I could use to prove the rectitude of my scholarly theorizing" (p. 2)). But Spiro's story also shows the opposite. Unlike the title of the book, *At Home in Two Countries*, Spiro considers only one country as a "home" (the United States) and sees the other country (Germany) more as a "hotel."[20]

The third point relates to the *assumptions underlying international citizenship law*. Spiro's endorsement of dual nationality is based upon some hypotheses. One of them relates to its possible cost, which, according to him, does not exist. There is no evidence, he says, that "foreign countries have tried to exploit dual nationals to their national advantage" (p. 82). Even in times of war, dual citizens "were not much of a problem" and, in any event, such a threat is "far-fetched" today and just "implausible" (pp. 76–77). Spiro, I believe, underestimates the challenge. There is a wide literature on states' exploitation of dual citizens for national advantages,[21] and the recent case in which the Turkish President Erdoğan considered German citizens with Turkish passports as his constituency is a reminder for the possible threat to international order. Perhaps more acute is Spiro's underestimation of the nexus between dual citizenship to global (in)equality and (in)justice. Dual citizenship generates global inequality; those who are likely to have it are those who can economically afford it.[22] An international

[17] In a recent article, Rainer Bauböck demonstrates how international law can keep both open citizenship, which is easier to acquire, and the "genuine links" doctrine. *See* Rainer Bauböck, *Genuine Links and Useful Passports: Evaluating Strategic Uses of Citizenship*, J. ETHNIC & MIGRATION STUD. (Mar. 20, 2018), *available at* https://www.tandfonline.com/doi/full/10.1080/1369183X.2018.1440495.

[18] Spiro's case is special—his father was a German who fled Germany before the Nazis took over—but the point is one of principal.

[19] Ayelet Shachar, *Dangerous Liaisons: Money and Citizenship*, *in* SHOULD CITIZENSHIP BE FOR SALE? 3 (Ayelet Shachar & Rainer Bauböck eds., EUI Working Paper RSCAS 2014/01, European University Institute, 2014).

[20] For a distinction between a country as a "country house," a "hotel," and a "home," see JONATHAN SACKS, THE HOME WE BUILD TOGETHER: RECREATING SOCIETY 13–23 (2007).

[21] *See*, *e.g.*, Myron Weiner, *Security, Stability, and International Migration*, 17 INT'L SECURITY 91 (1992–1993); Fiona B. Adamson, *Crossing Borders: International Migration and National Security*, 31 INT'L SECURITY 165 (2006).

[22] Spiro discusses this topic in a different place. *See* Peter J. Spiro, *The Equality Paradox of Dual Citizenship*, J. ETHNIC & MIGRATION STUD. (Mar.

law of citizenship must consider the consequences of dual citizenship and ways of mitigating global inequality, perhaps in the form of a "privilege levy/tax," an extra fee for the status entitlement that will be contributed to global causes, as suggested by Ayelet Shachar in a different context.[23]

Spiro's book is rich and inspiring. It indicates how arbitrary citizenship rules are and stimulates a debate on the future of citizenship. It is time for considering the propositions underlying the law of citizenship at the international level and the norms governing it. Spiro's scholarship could be—and would be—a cornerstone in this reshaping of international law.

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Is International Law International? By Anthea Roberts. New York, New York: Oxford University Press, 2017. Pp. xvi, 406. Index.
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In her masterful work, *Is International Law International?*, Anthea Roberts convincingly shatters our illusions about international law's universality, and makes the case for comparison in international law. Having already won the American Society of International Law's prestigious Certificate of Merit, the book needs no further praise. Instead, the real question is whether she will succeed in transforming the field, by persuading countless international lawyers focused primarily on our own domestic traditions to study other jurisdictions' methods and doctrines. In this review, I argue that it would be a great loss if we did not take her up on this challenge, and explain why we must all dabble in comparative law.

Roberts's book is not a polemic—it is first and foremost a cartography. Indeed, it could be criticized as an exercise in description, even though it offers much more. Because Roberts is subtle, I get to be forceful, and to develop the full consequences for the field if we remain comfortable in our parochialism.

As we begin to explore uncharted territory, a few words on our guide. Roberts, now at the School of Regulation and Global Governance at the Australian National University, is unusually well-placed to map out the world of comparative international law. She has taught for years at prominent institutions in three countries, including at the London School of Economics and Columbia Law School. She has also served as arbitrator, counsel, and expert in international disputes.

Roberts starts by carefully mapping out distinct traditions in international law—and focusing on those of the permanent five UN Security Council members. This choice is a wise one: not only are these countries' interpretations of international law particularly consequential, but their traditions reveal surprising differences. These differences, even among powerful states, go far beyond the traditional dichotomy separating the West from the rest. Through her mapping, Roberts persuades readers that the myth of a single international legal tradition is not just fraying at the edges, but is instead entirely unsustainable in an increasingly multipolar world.

Some first statistics regarding the study of international law assist in priming the reader for the size of the differences she uncovers. It turns out that when we are first taught international law, we are given very different materials to study (Figure 15, p. 167). For example, 70 percent of foreign judgments in Argentine casebooks are from the Spanish national courts, whereas over 80 percent of foreign cases in Cameroon or Senegal are from France. In contrast, it is U.S. cases that are most commonly taught to budding lawyers in the UK, but also in Japan, France, Germany, Brazil, and Russia. And the influence of the UK is even more pervasive—as UK cases

20, 2018), *available at* https://www.tandfonline.com/doi/full/10.1080/1369183X.2018.1440485.

[23] AYELET SHACHAR, THE BIRTH RIGHT LOTTERY: CITIZENSHIP AND GLOBAL INEQUALITY (2009).