

University of Minnesota Law School
Scholarship Repository

Minnesota Law Review: Headnotes

2010

**Beyond Exclusion: A Review of Peter J. Spiro's "Beyond
Citizenship"**

Jeffrey A. Redding

Follow this and additional works at: <https://scholarship.law.umn.edu/headnotes>



Part of the [Law Commons](#)

Recommended Citation

Redding, Jeffrey A., "Beyond Exclusion: A Review of Peter J. Spiro's "Beyond Citizenship"" (2010).
Minnesota Law Review: Headnotes. 10.
<https://scholarship.law.umn.edu/headnotes/10>

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Minnesota Law Review: Headnotes collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.

Book Review

Beyond Exclusion: A Review of Peter J. Spiro's "Beyond Citizenship"

Jeffrey A. Redding[†]

BEYOND CITIZENSHIP: AMERICAN IDENTITY AFTER
GLOBALIZATION

By Peter J. Spiro. * New York, N.Y.: Oxford University
Press, 2008. Pp. 163. \$27.50.

INTRODUCTION: AMERICA THE EXCLUSIVE?

Few people would have predicted the precipitous decline in power and prestige that the twenty-first century has dealt the United States. Humbled by the surprise attacks on 9/11, humiliated by its poor performance in both the Afghanistan and Iraq wars, and now hobbled by a staggering financial crisis, the United States has suffered through its most devastating decade since the Civil War. A once-admired nation seems to have gone off the tracks, and many people have now decided it is best to keep their distance—politically, physically, and otherwise.¹

[†] Assistant Professor, Saint Louis University School of Law. For helpful comments and discussion on earlier versions of this Review, I would like to thank Adrienne Davis, Rohit De, Chad Flanders, Clark Gard, Doni Gewirtzman, and Karen Petroski. Dallin Merrill and Robbie Hinz both provided very helpful research assistance for this Review. Of course, all errors of fact and judgment remain mine alone. This Review is dedicated to Strand Bookstore for providing shelter from Manhattan monsoons, both celestial and human. Copyright © 2010 by Jeffrey A. Redding.

* Charles R. Weiner Professor of Law, Temple University–Beasley School of Law; B.A., 1982, Harvard College; J.D., 1987, University of Virginia.

1. See generally PEW GLOBAL ATTITUDES PROJECT, AMERICA'S IMAGE SLIPS, BUT ALLIES SHARE U.S. CONCERNS OVER IRAN, HAMAS (2006), available at <http://pewglobal.org/reports/display.php?ReportID=252> (discussing how international perceptions of the United States have declined); see also generally PEW GLOBAL ATTITUDES PROJECT, MUSLIM DISAPPOINTMENT: OBAMA MORE POPULAR ABROAD THAN AT HOME, GLOBAL IMAGE OF U.S. CONTINUES TO BENEFIT 1–10 (2010), available at <http://pewglobal.org/2010/06/17/obama-more-popular-abroad-than-at-home/> (demonstrating that while favorable views of the United States have increased in many parts of the world after

How quickly things seem to have changed since 1996, when it appeared that the entire world wanted a piece of the American super pie. Just over a dozen years ago, Congress passed draconian legislation severely cutting back on the numerous benefits and rights that noncitizen immigrants (including resident aliens) had previously enjoyed. These cuts came in response to popular anxiety about “uncontrolled” immigration and its allegedly deleterious effects on the nation.² At the time, it seemed to many people that the United States was a place of too much opportunity and hope, and the object of desire for too many people.

Enter the new millennium. In a disorienting world where many non-Americans (and Americans) no longer recognize or identify with the United States, Peter J. Spiro’s *Beyond Citizenship: American Identity After Globalization* intervenes with a timely and provocative discussion of the issues, problems, and dilemmas that accompany twenty-first century American identity, and its articulation in U.S. citizenship law. Spiro justifies his focus on citizenship law as a metric for national identity from the outset. He argues, “*Before one asks what it means to be an American, one must ask who is an American. . . . [N]othing is more constitutive of the community than its membership practices.*”³ (p. 4).

In 163 pages of learned but accessible text, Spiro’s rich and erudite work describes the history and future trajectory of key aspects of U.S. citizenship law, American national identity, and their interaction. Spiro’s work is particularly interested in giving a descriptive account of citizenship law’s contributions to the “eroding foundation of the national community” (p. 10). And while most of the broad themes that Spiro engages with in his book are intriguing, he makes a number of particular arguments in his work concerning the similarities between religious and national community that are especially provocative.

As I will argue in this Review, however, Spiro’s arguments about religious and national communities’ shared need to ex-

Obama’s election, negative views of the United States persist or have increased in other parts of the world).

2. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 402, 110 Stat. 2105, 2262–65 (codified at 42 U.S.C. §§ 601–617 (2006)). This federal law followed an even harsher 1994 California initiative, Proposition 187, which denied undocumented immigrants crucial welfare benefits, going so far as to exclude even the children of these immigrants from public schools.

3. Emphasis in original.

clude outsiders and also insist upon internal conformity in order to become “meaningful” communities are often quite simplistic. This is especially so where Spiro premises his arguments on unsupportable generalizations about religion writ large, and under-theorizes the foundational ideas of “community” and “meaningfulness.” Indeed, when critically examined, these problems undermine his linked accounts concerning national community, including his account of how an overinclusive U.S. citizenship regime has seriously diluted American national identity.

Part I of this Review outlines the six chapters of Spiro’s book, identifying his central assumptions and claims.

Part II then highlights and critiques two important assumptions about the nature of religion that Spiro utilizes to illustrate and give color to his claims about exclusive citizenship as a prerequisite for meaningful national community. In particular, this Part argues that Spiro’s claims that meaningful religious communities must be hostile to outsiders and must have conformity among its insiders ignore countervailing real-world religious experience. This Part discusses examples drawn from the religious and political experiences of Hindu, Muslim, and Christian communities.

When critically unraveled, Spiro’s discussion of religion starts to undermine many of his larger arguments about the necessity of a vigilant U.S. national citizenship regime to sustain a meaningful American national identity. Part III problematizes these larger claims by connecting Part II’s discussion of religious community to *national* community, and demonstrates, *contra* Spiro, that vibrant *national* community does not depend on internal conformity. As I conclude in this Part, Spiro ultimately undermines his ambitious and thought-provoking argument connecting religious and national communities by relying on a narrow and inaccurate account of what counts as a real or meaningful “religion” or “nation” in the first place.

I. SPIRO’S PROJECT

Beyond Citizenship self-consciously presents itself as a descriptive and fatalistic project. It is possible to read the book as a lament over the loss of America’s “former glories” (p. 36) when it was “at the top of the heap of human history” (p. 162). But Spiro insists that his work “is not intended to kindle correctives[,] . . . [rather] a major theme [is] the *irreversibility* of

citizenship's decline"⁴ (p. 162). Emphasizing his work's non-normative, descriptive orientation, Spiro argues the "political unpalatability of [his] thesis across the ideological spectrum" (p. 6), thereby distancing his project from extant political agendas from the outset.

What could be so explosive a diagnosis of the contemporary American situation that few American politicians or policy-makers, of whatever mainstream stripe, would endorse it? For one thing, Spiro argues that U.S. citizenship has become easily obtainable and, as a result of its nonexclusivity, has become largely *meaningless* in today's world. According to Spiro, such a proposition about citizenship's actual irrelevance is anathema to both conservatives and liberals in the United States, since both are invested in a continuing role for the state (i.e. the U.S. government). "Conservatives transparently center the state as the keeper of social order and national security," and "most American progressives are also nationalists, seeing the state as the guardian of liberty and a primary agent of redistribution" (p. 6). As a result, both conservatives and liberals believe the rules that govern state membership are "paramount institutional virtues" (p. 6), which is why both conservatives and liberals continue to fight over the laws that define citizenship.

In contrast, Spiro argues that this conservative/liberal obsession with the legal prerequisites of citizenship, and also citizenship itself, is outdated and naive. For Spiro, U.S. citizenship, to the extent that it is supposed to serve as a formal marker of devotion to the national project, has become (in particular) overinclusive. This overinclusiveness muddies and dilutes the meaning of American national identity and community, taking away from their "sentimental" (p. 30), "meaningful" (p. 33), and "real" (p. 36) possibilities. Belying his purely descriptive ambitions, this represents an incredible loss for Spiro, as the United States not only "has offered the best that the nation-state can offer" (p. 162), but has also been "at the top of the heap of human history" (p. 162). Thus, according to Spiro, "[t]here is much to grieve in America's dissipation" (p. 162).

Spiro never fleshes out with sufficient detail what makes an identity or community "real" or "meaningful." He nonetheless links the meaningfulness of a community (identity) to the maintenance of high and thick boundaries between the community and others, repeatedly reciting truisms like "[e]xclusion

4. Emphasis added.

is a premise to community,” and “inclusion dilutes identity” (p. 157). And, with respect to the United States in particular, “[t]he more inclusive America becomes as a community, the less special it becomes as a location of identity, of differentness” (p. 157). Ultimately, Spiro’s thoughts on all this can be summed up in his maxim: “*Once everyone is an American, no one is an American.*”⁵ (p. 52).

This loss of a distinct “American-ness,” according to Spiro, makes U.S. citizenship a less attractive option to potential recipients.⁶ Furthermore, the erosion of meaningful national “communal bonds” (p. 31) makes U.S. citizenship more legalistic (p. 31) and less significant for *existing* citizens. As a result, it is easier and emotionally cheaper for these citizens to hand this citizenship out to those who are not yet citizens. The liberal distribution of citizenship that results reinforces the dissipating-of-meaningfulness effect that led to this easy handing-out in the first place (p. 31). Consequently, U.S. citizenship and American identity have experienced—and will *inevitably* continue to experience—a mutually reinforcing decline in importance. Again, this is regrettable for Spiro, as “America’s dissipation” (p. 162) means the dissipation of great strides in “security, economic and social innovation, and . . . individual dignity” (p. 162).

The first four chapters of Spiro’s work are devoted to a detailed demonstration of the increasing legal, material, social, and psychological irrelevance of modern-day U.S. citizenship. In Chapter 1, “Born American,” Spiro demonstrates how transnational mobility and the historical liberalization of territorial birthright citizenship rules has led to a situation where a person’s physical presence in the United States no longer tightly corresponds to that person’s being or feeling like an “American.” As a result, there are nowadays many people who are what Spiro terms “happenstance Americans” (p. 19). This group includes people who have been born in the United States, but, utilizing advances in travel and communication technologies, “subsequently move to [and settle in] their parents’ [non-U.S.] homeland” (p. 23). It also includes those who remain within the territorial boundaries of the United States, but “pursue their

5. Emphasis in original.

6. Spiro argues that modern-day U.S. citizenship *qua* citizenship is no longer something that many people care deeply about: “The real prize is legal residency, not citizenship. It’s all about the green card, not the naturalization certificate.” (p. 159).

entire lives within their diasporic communities” (p. 23). This “happenstance” group also includes those “lucky enough to be born during [foreign] Mommy’s three-year stint in California” (p. 23), or those who have been born to an American parent abroad and who have chosen to remain settled overseas (assuming that the citizen parent had spent at least five years resident in the United States before their child’s birth) (p. 26).

Chapter 1 ends on the fatalistic note that sounds throughout the book, namely that the lack of a tight correspondence between those who possess U.S. citizenship papers and those who possess “sentimental” (p. 30) ties to the U.S. has led to an erosion of the meaning and consequences of citizenship. As citizenship becomes more of a license-like “status” (p. 27) than an emotional or existential bond to a shared national way-of-being, existing citizens find themselves with fewer and fewer reasons to refuse endowing others with this status. This, in turn, leads to more and more legalistic citizens, weaker and weaker bonds between citizens, and so forth, to the point where “no [policy] fix is available” (p. 32).

In Chapter 2, “Made American,” Spiro explains how U.S. naturalization rules have become overinclusive. The result is “a citizenry that no longer coincides with any organic association” (p. 34), thereby diminishing “meaningful community” (p. 35). The present naturalization regime requires, for most persons, five years of (legal) residence as a permanent resident alien, only half of which must be satisfied by actual physical presence.⁷ Furthermore, Spiro notes that this territorially-premised regime is based on the questionable assumption that “by being present, one will become a member of the national community as a matter of fact and assimilate whatever characteristics makes up the national identity” (p. 37). Conversely, Spiro diagnoses here an increasing prevalence of ethnic enclaves and global diasporic connections, both of which lead him to wonder whether the people situated in these enclaves and diasporas actually participate in “[mainstream] contacts of employment, civic association, education, and the media, [and thereby] understand the American identity and become a part of it” (p. 38).

In Chapter 3, “Not Only American,” Spiro traces the history of legal prohibitions against dual (or plural) citizenship in American legal history and the eventual collapse of these prohibitions. As Spiro cleverly puts it, “If America can be reduced

7. 8 U.S.C. § 1427(a) (2006). In addition, citizenship requires a passing familiarity with American history and the English language.

to a punctuation mark, the hyphen is being replaced by the ampersand. It is no longer unusual or problematic to hold more than one citizenship.” (p. 67). In this chapter, notably, Spiro makes (somewhat) clear what troubles him about modern citizenship and its detachment from meaningful community—even if nothing can be done about it.⁸ Here we find some (yet not enough) fleshing out of what Spiro considers to be *real* citizenship and *real* community, though mostly only in the negative. Spiro declares that real citizenship does *not* include “citizenship[s] of convenience” (p. 76) where, for example, citizenship is obtained merely “for the purpose of securing access to faster passport inspection lines at airports” (p. 76) or European Union employment opportunities (p. 69).⁹ More affirmatively, though abstractly, Spiro contends that real citizenship seems to carry duties and obligations, not just rights (p. 76). These affirmative obligations contribute to something Spiro calls a “meaningful locus of community” (p. 73).¹⁰

In Chapter 4, “Take It or Leave It American,” Spiro concludes his discussion of historical and contemporary aspects of U.S. citizenship law with one of his most important claims, namely that U.S. citizenship *qua* citizenship brings little extra added value in today’s world, at least in comparison to the proverbial “green card” (p. 159).¹¹

8. According to Spiro, “America was once in a position to offer naturalization on a take-it-or-leave-it basis.” (p. 74). In today’s more competitive world, however, “[t]he United States may no longer dictate the terms of admission, or do so only at the peril of deterring a significant population of permanent residents from becoming full members of the polity and corroding the representative democratic process as a result” (p. 74).

9. Perhaps tying the “meaningfulness” of a community to its members’ willingness to sacrifice for each other, Spiro writes, “A citizenship that denotes nothing more than place of birth or parental status will not bear the burdens of redistributive sacrifice. I will not fight for someone who shares membership merely because his parents were passing through when he was born, nor will I be inclined to share my paycheck with him.” (p. 31). If that is what Spiro is doing in this passage, however, one might wonder whether violence and cash *should* be the metrics by which one measures meaningfulness. Elsewhere, Spiro engages in further (albeit vague) discussion about the inability of contemporary U.S. citizenship to “extract” anything from citizens (p. 82).

10. In this chapter, Spiro highlights how countries, acting in their economic self-interest, extend citizenship to members of their diasporas (p. 71). It is not clear, however, whether Spiro thinks this is inconsistent with “meaningful” citizenship.

11. Spiro goes so far as to argue here that, with respect to that most-heralded right—the right to vote—there are many other avenues (e.g. financial donations, membership in civil society and labor organizations, and the votes of their citizen relatives) through which noncitizens can influence the

In Chapters 5 (“American Defined”) and 6 (“Beyond American”), Spiro moves into a more theoretical and future-oriented discussion of U.S. citizenship and state-premised citizenship. Spiro dismisses the possibility of a future “global super-state,” but predicts continuing globalization and “demotion [of the state] in the scheme of human organization.” He then poses the question: “What becomes of citizenship after the state?”¹² (p. 110). In this respect, Spiro explores how nonstate entities, such as religious communities and corporations, are increasingly performing functions for their “citizens” that states once claimed a monopoly over. These include the provision of security, education, family law, and social welfare. Given this migration of functions and powers from the state to the nonstate,¹³ Spiro here thinks through some of the “new citizenship” issues which are emerging in the twenty-first century.

As to these issues, Spiro notes that the citizenship rights and norms that one typically expects states to abide by may not be totally applicable when thinking about citizenship in religions, tribes, and other “nonstate”¹⁴ membership organizations. He writes, for example,

“[I]n the U.S. context, we have seen that nationality will never be terminated against an individual’s will. As a background norm, [that] seems a useful guide to community conduct. One can easily pose situations in which [religious] *excommunication* raises serious justice concerns. But our intuition leads us to accept termination in some cases, as when the individual acts against core [religious] community interests.” (p. 154) (emphasis added).

Additionally, while “[w]e have seen the trends towards the acceptance of plural citizenship . . . [t]hat may work for some

political process. Indeed, while “it is not hard to construct an account in which [noncitizens] lack a political voice,” according to Spiro this account would only “fetishize[] the ballot” (p. 91). Ultimately, then, “[f]or those who don’t otherwise identify with the American community, it may not be worth compromising their identity,” while “[f]or others, it simply isn’t worth the bureaucratic hassle” (p. 81). This is the case even though, as Spiro also discusses, modern-day U.S. citizenship itself brings no *obligations* with it, other than jury service, that noncitizen, territorially-present residents do not also bear.

12. Alternatively, and less dramatically, Spiro also asks what might replace citizenship in “the transition to an order in which the state is not supreme” (p. 138).

13. This includes, importantly, the potential for justice and injustice (p. 148).

14. I will challenge this characterization of religions, tribes, etc., and demonstrate how Spiro’s use of this characterization allows him to make unhelpful generalizations about the internal coherence of both religious and national communities. See *infra* Parts II–III.

nonstate entities but not for others. Religion obviously doesn't allow for multiple affiliations" (p. 155).

Spiro here is less interested in making specific recommendations as to which state-premised citizenship norms should apply to nonstate entities like religious communities (or vice-versa), than he is in merely highlighting these emerging and important citizenship/membership questions. For Spiro, these questions are unavoidable and must be confronted in a world where liberal entry and exit citizenship rules have made American national identity largely meaningless. Indeed, given the thinness of contemporary American national identity, Spiro believes Americans will inevitably look for meaningful community elsewhere (p. 157). That place will most likely be in privatized communities, such as religious ones, which maintain strict membership norms. "[R]ules . . . that set high, sometimes insuperable, barriers to community entry are a part of what makes . . . communities strong. . . . Exclusion is a premise to community." (p. 157). Spiro thus ends his book on the foundational assumptions about community, whether national or religious, with which he began.

The next Part demonstrates how Spiro's beliefs about what makes communities meaningful are faulty when it comes to contemporary *religious* communities, especially to the extent that they rely on simplistic generalizations about religion writ large.

II. HOLY CITIZENSHIP

One of the great strengths of Spiro's work is his willingness to cross disciplinary borders. In this way Spiro is akin to the modern-day, citizenship-collecting, global migrant that he describes in his work. In a legal academy where disciplinary super-specialization is often rewarded, it is refreshing to find an author willing to take on family law, sexuality studies, religion, ethnicity, and economics in a work devoted to citizenship law. For example, when discussing dual citizenship in Chapter 2, Spiro begins by noting that "[d]ual citizenship was once thought an offense against nature, a strain on a person's character, an immoral status akin to bigamy" (p. 59). He readily engages with this and other provocative interdisciplinary analogies throughout his work.

Yet if the modern-day migrant can be criticized for having few significant attachments or grounded insights as to any of the places where she has citizenship, Spiro's particular inter-

disciplinary methodology is subject to the same criticism. While wide-ranging, Spiro incompletely engages many of the analogies and parallels he uses to illustrate his central claims about the nature of community and contemporary American identity. This is particularly true with respect to Spiro's use of examples concerning religion and religious communities. This Part focuses on this important weakness of Spiro's work.

Two aspects of Spiro's analogies to religious community in support of his view of "meaningful" communities are particularly problematic. First, Spiro's conceptualization of the *exclusive* nature of meaningful religious communities and religious identification ignores a great deal of countervailing evidence of robust, *inclusive* religious communities. Second, and relatedly, Spiro's focus on intercommunal borders works to obscure the disagreement and debate that often exists *within* healthy religious communities. Both of these critiques are important because they go to the foundation of Spiro's parallels between national and religious identifications. Spiro's lamentation of the erosion of a readily-identifiable American (national) identity is premised on a misapprehension of how thriving religious communities often function. Linking both aspects of Spiro's discussion, then, is a troublesome gloss over the pluralistic nature of "community," religious and otherwise. Unfortunately, this gloss leads Spiro to make a number of arguments about the detrimental impact of U.S. citizenship law on American national identity and community that are not as helpful as they otherwise could be.

In what follows, I draw from the religious and political experiences of Hindu, Muslim, and Christian "communities." Each of the communities I discuss has an identifiable political, legal, and social salience in its own context. While the examples of religious community I use are not small-scale, privatized entities, this does not make them any less "religious" or less like a "community." This is true whether one examines how members of these groups often understand and describe themselves, or whether one relies on Spiro's undertheorized and expansive use of these terms.

A. RELIGIOUS EXCLUSIVITY?

Spiro's discussion in Chapter 2 of the parallels between bigamy and dual citizenship does not stop with an exposition of

the closed-mindedness that underlies both legal restrictions.¹⁵ This discussion is only a stepping stone to a larger argument about how all sorts of “real” relationships and communities are marked by exclusivity and a strict policing of intercommunal borders. Thus, while noting that dual (or plural) citizenship is here to stay in the contemporary world, Spiro is actually somewhat sympathetic towards the historical argument linking concerns about dual citizenship with the “problem” of bigamy. He describes the “logic” of this panicky pairing by saying, “Singular affiliations inherently have greater meaning than nonexclusive relationships. . . . The contexts of marriage and religion present ready examples; because (for the most part) those affiliations are exclusive, the resulting bond—the ‘community,’ if you will—looms larger on the individual’s horizon.” (p. 59). Elsewhere, arguing for the link between a community’s exclusivity and its meaningfulness, Spiro writes, “A world in which the ‘us’ and the ‘them’ are rigidly separated is one in which both will loom larger. . . . Think sports teams and religions, and other institutions that demand exclusive loyalties.” (p. 77).

Other writers have quite ably contested Spiro’s (and others’) simplistic understanding of the meaning and importance of polyamory (including bigamy) in peoples’ lives,¹⁶ so here I will focus on Spiro’s simplistic account of the necessarily exclusive nature of “meaningful” religion and religious communities.

In this respect, the first thing that should be noted is that religions are a diverse bunch. Indeed, each religious community that this Part discusses has different internal structures (or lack thereof) and different ways of enforcing (or not enforcing) membership rules. This diversity highlights an important shortcoming in Spiro’s work. His definition and description of “community” are undertheorized, and most likely circular and underinclusive. Indeed, when Spiro writes that “[e]xclusion is a premise to community” (p. 157), he appears to be using “com-

15. Spiro writes, with respect to this apparent closed-mindedness:

The disfavor provoked by dual nationality became embedded to the point that it was reflexive. One did not need to explain what exactly was unacceptable about the status; *it simply was*. . . . Dual nationality was not merely unacceptable. It was an abomination. As the prominent American diplomat George Bancroft wrote to Lord Palmerston in 1849, states should “as soon tolerate a man with two wives as a man with two countries. . . .” (p. 61) (emphasis added).

16. See, e.g., Elizabeth F. Emens, *Monogamy’s Law: Compulsory Monogamy and Polyamorous Existence*, 29 N.Y.U. REV. L. & SOC. CHANGE 277, 320–30 (2004) (listing and discussing principles contemporary polys espouse in favor of polyamory).

munity” to mean only those organized or hierarchical entities which actually do the exclusionary work that he ascribes to the category of community writ large.

Yet, at the same time, Spiro writes broadly when speaking of communities, including “religious” communities in his discussion of how meaningful communities behave. “Communities must be able to define themselves if they are to qualify as communities. . . . Religion obviously doesn’t allow for multiple affiliations. . . . Most other nonstate affiliations are not so jealous.” (pp. 154–55). This section highlights the major religious communities that do not conform to Spiro’s understanding of “religion” as a necessarily exclusionary phenomenon.

For example, a popular contemporary notion of Indian Hinduism stresses an incredible open-endedness of what it means to be a “Hindu.” Critically describing this nationalistic form of Hinduism, Pratap Bhanu Mehta writes how “being Indian means essentially possessing a common ethnicity, which [is] name[d] Hindutva. That is what all [Indians supposedly] have in common, *including Muslims and Christians*.”¹⁷

While seemingly open minded, pancommunal, and progressive, Indian political organizations and parties that would be characterized as “right-wing” in the American political lexicon and experience are the ones that have taken up and popularized this particular articulation of Hinduism. For example, the Rashtriya Swayamsevak Sangh (RSS), the Vishwa Hindu Parishad (VHP) and the politically influential Bharatiya Janata Party (BJP)—all major (and interrelated) right-wing Hindu organizations—have contributed to the development of this “tolerant” Hindu nationalist agenda.¹⁸ They do so in order to count as many people as possible as Hindu, in the process constructing a demographically Hindu-majority India. As Christophe Jaffrelot summarizes:

The logic of these efforts at [Hindu] unity [relies on the notion that] Hinduism was . . . facing a threat from the proselytizing religions, which lacked its ‘tolerance’ and imperiled its majority status. The situation demanded the eradication of untouchability—an important incentive to conversion—and the unification of Hinduism in a coherent

17. Pratap Bhanu Mehta, *Secularism and the Identity Trap*, in WILL SECULAR INDIA SURVIVE? 72, 80 (Mushirul Hasan ed., 2004) (emphasis added).

18. See generally CHRISTOPHE JAFFRELOT, THE HINDU NATIONALIST MOVEMENT IN INDIA (1993) (discussing, *inter alia*, how the Hindutva nationalist movement is associated with hard-line conservative groups in India).

whole. These two remedies were . . . proposed in reaction to the cultural characteristics of the [Christian and Muslim] ‘aggressors.’¹⁹

As Mehta and Jaffrelot’s combined analyses suggest, Hindu nationalists’ tolerance is an uncertain weapon. On the one hand, this tolerance attempts to erase certain social divisions. On the other hand, the ultimate goal of this kind of tolerance is to endow the Hindu community with a strength by which it can enforce other social divisions and hierarchies. Thus, it is common to find Hindu nationalists criticizing and taking action (violent and otherwise) against those communities that are “communal” (i.e. disagreeable) enough to cast their lot outside of the capacious, all-loving, and “tolerant” Hindu community.

Secularism is also part of this Hindu nationalist tolerance project. In contemporary India, “communal” is a buzzword for “Muslim,” and Hindu nationalists’ understanding and endorsement of a countervailing “secularism” allows them to be, as they are elsewhere, simultaneously progressive *and* Islamophobic.²⁰ For example, the BJP continually asserts in its electoral campaigns that it is the only party that has the will to enact a “Uniform Civil Code,” thereby replacing the extant practice of enforcing different family laws for each of India’s different religious communities with the practice of administering one secular family law code for all of India’s citizens, no matter what their religion. While seemingly progressive in its elimination of “separate but equal” family law codes, Rina Verma Williams describes the flip side to this Hindu nationalist promise: “In the 1980s, religious identity for the Muslim community became virtually coterminous with the preservation of their personal law. For some Hindus, in turn, Indian national identity became virtually coterminous with forcing the Muslim community to give up their personal law.”²¹ More to the point, Brenda Cossman and Ratna Kapur describe this double-edged articulation of “Indian” national identity in the following manner: “At best, it is a call to assimilate [religious] minorities into the ostensibly more tolerant fabric of Hinduism; and at its more extreme, it is a call simply to destroy them.”²²

19. *Id.* at 347.

20. *See id.* at 105 (citing an address to the Indian Congress pleading that congressional candidates represent a “noncommunal and secular State” in opposition to “communal bodies which have an entirely different approach”).

21. RINA VERMA WILLIAMS, POSTCOLONIAL POLITICS AND PERSONAL LAWS: COLONIAL LEGAL LEGACIES AND THE INDIAN STATE 127 (2006).

22. BRENDA COSSMAN & RATNA KAPUR, SECULARISM’S LAST SIGH? HINDUTVA AND THE (MIS)RULE OF LAW 47 (1999).

To be fair, many people in India, whether Hindu or non-Hindu, find the Hindu nationalist conflation of Hinduism, tolerance, and secularism simplistic and offensive.²³ Nevertheless, it is difficult to conclude, as Spiro would, that the frighteningly *inclusive* (if ironic) “love will conquer all” strategy pursued by right-wing Hindu organizations has *weakened* Hindu sentiment and community in India. While the BJP has certainly suffered political setbacks recently, it would be incredibly premature to predict its demise or the demise of other right-wing Hindu organizations.

To the extent that one is worried about hegemonic forms of Hinduism, one can emphasize either their communal underpinnings and implications or, alternatively, offer examples of the inclusive “secularity” of their adversaries, including Islam itself. Here, I will follow the latter strategy, particularly because Islam offers many examples of religious thought and practice that challenge the idea that religion requires a sharply-defined “us” and “them” to provide a meaningful experience.

In contrast to the popular Western view of Islam that stresses its atavistic hostility to nonbelievers, at many moments in its history, Islam has been crucially inclusive. For instance, in the mid-twentieth century, many leading Muslim theologians in South Asia resisted the movement for a global “Muslim homeland” in Pakistan because they wished to see a postcolonial, *multireligious* India thrive. Among these religious thinkers was Maulana Husain Ahmad Madani, the principal of the religious seminary at Deoband (India), a place which has received much attention after September 11th for its alleged role in fostering “extremist” Islam around the world. Concerning Islam’s tolerance of members of other religious faiths, and the ability of Muslims and non-Muslims to join together in the larger enterprise of *qaum* (nation), Madani famously wrote:

Islam comprises the principles that underlie the rectitude of doctrinal, practical, and moral matters. . . . We must now consider whether Islam . . . allows, on the basis of shared residence, race, color, and

23. That being said, this conflation has become so insidiously widespread that one finds it receiving expression even in arenas (including judicial opinions) which operate at some distance from the direct purview of Hindu nationalist politics. See, e.g., *Ganpat v. Presiding Officer*, A.I.R. 1975 S.C. 420, 423–24 (India) (“Hinduism is a very broad based religion . . . Hinduism is so tolerant and Hindu religious practices so varied and eclectic that one would find it difficult to say whether one is practicing or professing Hindu religion or not.”). For a fuller discussion of this case, see Jeffrey A. Redding, *Human Rights and Homo-sectuals: The International Politics of Sexuality, Religion, and Law*, 4 NW. U. J. INT’L HUM. RTS. 436, 463 n.104 (2006).

language, a shared nationalism with non-Muslims. . . . To the extent that I can understand its laws, [Islam] can live together with non-Muslims in the same country; it can be at peace with them; it can enter into treaties with them. . . . [Muslims] can interact with [non-Muslims], participate in matters of joy and grief, and dine with them. . . . There are countless laws and principles governing social order in Islam that reveal its consideration for and tolerance of others and that are not found in other religions. . . . But this flexibility does not imply weakness.²⁴

Madani's impassioned and influential vision of a religiously-grounded, *inclusive* nation is important not only in itself, but also for the vigorous and hostile reactions it elicited from other prominent Islamic thinkers of the time. Notably, Syed Abul Ala Maududi²⁵ characterized Madani's views as "sin," and argued that Muslims constituted a nation separate from India's other religious communities.²⁶ Not surprisingly, Maududi also famously argued for the creation of an Islamic state in South Asia, where Allah would be "Ruler, Dictator (*āmir*) and Legislator."²⁷ As undesirable and unlikely as the creation of such a separate Islamic state seemed to many Indians—including Madani—a version of such a state came to pass when Pakistan was carved out of British-colonial India in 1947. Madani was not successful in preventing the establishment of Pakistan, and he remained in India after 1947.²⁸ Maududi, in contrast, moved to Pakistan two weeks after the partition of British-colonial India in 1947.

Madani and Maududi's disagreements over the meaning and implications of nation (*qaum*) clearly affected their decisions where to reside in postpartition South Asia. In this re-

24. MUHAMMAD QASIM ZAMAN, *THE ULAMA IN CONTEMPORARY ISLAM* 34 (2002) (translating and quoting HUSAIN AHMAD MADANI, *MUTTAHIDA QAWMIYYAT AUR ISLAM* (1938)).

25. Both Maududi and Muhammad Iqbal, the noted poet-philosopher and advocate of Pakistan, severely criticized Madani's views on *qaum*. Iqbal went so far as to accuse Madani of engaging in innovative, heretical thinking akin to that of the Ahmadis, an extremely controversial Muslim sect that came into being in the nineteenth century. *Id.* at 35. This sect's contentiousness stems from its nineteenth-century founder's characterization of himself as something like a post-Muhammad (Muslim) "prophet."

26. See IRFAN AHMAD, *ISLAMISM AND DEMOCRACY IN INDIA: THE TRANSFORMATION OF JAMAAT-E-ISLAMI* 60–61 (2009).

27. *Id.* at 65 (translating and quoting Maududi).

28. For more information on Madani's life and thought, see generally Barbara Metcalf, *Observant Muslims, Secular Indians: The Political Vision of Maulana Husain Ahmad Madani, 1938–1957*, in *FROM THE COLONIAL TO THE POSTCOLONIAL: INDIA AND PAKISTAN IN TRANSITION* 96 (Dipesh Chakrabarty et al. eds., 2007).

spect, it is difficult to dissociate each thinker's views on the "nation" from their thoughts on the "state" or, alternatively, the "nation-state."²⁹

This, in turn, raises the question of how notions and practices of "the Islamic state" square with Spiro's views as to the necessarily inclusive nature of "meaningful" religious communities. Considering the Islamic state is important to assessing Spiro's work for two reasons. First, given Spiro's ambitious (if under-theorized) use of the term "community," it would seem that any contemporary religious state could be considered a type of (religious) community. Second, even if one contemplates the possibility that Spiro intends only an organized, hierarchical entity when he writes of "community,"³⁰ the contemporary Islamic state may be the most organized and hierarchical entity available for analysis within the Muslim tradition. Indeed, neglecting to consider the modern-day Islamic state leaves one otherwise with a notoriously nonhierarchical Islam and an Islam which incorporates an incredible diversity of belief and practice within itself. With these two considerations in mind then, to not examine the Islamic states of today's world, and how they do or *do not* exclude non-Muslims, would likely exclude Islam from any critical analysis of Spiro's ideas as to the antecedents of meaningful community. I believe that this would be unwise.

With respect to contemporary Islamic states, Pakistan is particularly instructive because of its historical *raison d'être* as

29. In this respect, Madani's views as to "*Islāmiyat*" or "the domain of religion where Islam was supreme" impacted his views as to "*hindustāniyat*"—the domain where "worldly affairs . . . reigned high." AHMAD, *supra* note 26, at 21. As a result, for Madani, "Muslims *qua* Muslims could flourish under a secular state." *Id.* While Madani's ideas here sound something like an endorsement of American-style "separation of church and state," one should avoid the temptation to view his intentions vis-à-vis *qaum* as belonging purely to the secular realm. Indeed, from Madani's writing, while it is clear that he attached Islamic religio-legal significance to the idea of *milla*, or religion-specific community (e.g. the Muslim community, the Hindu community), he also attached a similar significance to the pan-faith *qaum* (or "nation"). For Madani, while the idea of *qaum* had a political role and significance that was different than that of *milla*, both categories of community were important Islamic religio-legal concepts. As Muhammad Qasim Zaman explains, "[t]hat Hindus and Muslims could not form a single nation was to [Madani] as insidious a notion as the idea that the Muslims of India were separate from the global Muslim community." ZAMAN, *supra* note 24, at 33.

30. Spiro suggests this in the religious context by observing that "[a]dherents of religions do not get to vote on doctrine, although democratic-type procedures may prevail at some levels, as when cardinals select a pontiff" (p. 147). The Catholic premise of these observations seems clear here.

a Muslim homeland and its contemporary importance and prominence. Many observers have noted Pakistan's shoddy treatment of religious minorities, including Hindus, Christians, and Ahmadis.³¹ In addition, many commentators have argued that this poor treatment is no surprise given that Pakistan is, at least in some important respects, an *Islamic* state.³² Indeed, more generally, the claim seems to be that *all* confessional states—whether they be Sunni Muslim (e.g. Saudi Arabia), Shi'a Muslim (Iran), Jewish (Israel), or Hindu (e.g. pre-2008 Nepal)—present, by definition, serious problems for the equitable treatment of religious nonconformists.³³ Echoing Spiro, the argument seems to be that modern-day religious states necessarily erect barriers to nonbelievers while also making it uncomfortable for the unfaithful to remain.

One distinct possibility overlooked by this sort of argument, however, is that any contemporary confessional state's poor treatment of religious minorities may be more the consequence of each confessional entity's status as a *modern-day state* than it is a consequence of the *religion* with which each is associated. In this respect, it is perhaps no coincidence that the two South Asian religious organizations which have historically attracted the most Western commentary and fearful concern—the (Muslim) Jamaat-e-Islami and the (Hindu) Bharatiya Janata Party—have often (con)fuscated their religious ambitions with

31. See, e.g., *Pakistan: Massacre of Minority Ahmadis: Attack on Hospital Treating Victims Shows How State Inaction Emboldens Extremists*, HUM. R. WATCH, June 1, 2010, <http://www.hrw.org/en/news/2010/05/31/Pakistan-massacre-minority-ahmadis>.

32. See, e.g., AMNESTY INTERNATIONAL, PAKISTAN: USE AND ABUSE OF THE BLASPHEMY LAWS 1 (1994) (linking Pakistan's misuse of laws criminalizing blasphemy to the Islamization of Pakistan's legal infrastructure).

33. For example, see Ofrit Liviati's description of how

[u]pon its establishment, Israel was proclaimed a "Jewish" and a "Democratic" state. As subsequent political compromises led to a growing convergence of state and religious affairs, this aspiring duality became highly contested, generating deep and enduring social tensions. As far as the Jewish majority is concerned, a robust Jewish establishment has been set up to enforce an Orthodox monopoly on Jewish life in Israel. Despite the limited numerical size of Orthodox Jews within the Jewish population, Orthodox Jewish norms regulate matters of personal status for all Israeli Jews regardless of their actual religious identification. This situation increasingly polarized the relationship between the Ultra-Orthodox and Orthodox communities on the one hand, and the secular and non-Orthodox Jewish communities on the other, portrayed by a growing number of scholars as a *kulturkampf*.

Ofrit Liviati, *Judicial Activism and Religion-Based Tensions in India and Israel*, 26 ARIZ. J. INT'L & COMP. L. 583, 601–02 (2009).

ambitions vis-à-vis a *totalitarian modern-day state*. On the one hand then, one finds Syed Abul Ala Maududi, the founder of the Jamaat-e-Islami, arguing that Allah must be the “Ruler, Dictator (*āmir*) and Legislator” of his desired Islamic state.³⁴ And on the other hand, one finds BJP parliamentarians arguing threateningly that “[i]f you have a State, you must have one attitude, one behaviour, one pattern of thinking.”³⁵

Comparing Hindu-majority (though officially secular)³⁶ India and Muslim-majority (and officially Islamic)³⁷ Pakistan is instructive for the purposes of this Review. Despite their diverging religious identifications, these two historically-linked states possess similarly poor human rights records with respect to their respective religious minorities. Moreover, looking beyond the secular/religious professions of each state’s legal system, both states strongly resemble each other in their governance practices. This is true both at the higher levels of governance (e.g. the governing structures that each state’s constitution puts into place), and also at the lower levels (e.g. how the police operate). A number of scholars have argued that India and Pakistan both inherited repressive governance practices from their shared British colonial experience.³⁸ This provoca-

34. See AHMAD, *supra* note 26, at 65. It is important to emphasize that while Ahmad’s work does discuss motivating ideas that were important at the founding of the Jamaat-e-Islami, the larger focus of his ethnographic work is to demonstrate how and why the Indian wing of the Jamaat-e-Islami has, over the years, moved from rejecting to embracing and participating in India’s democratic and secular political system.

35. 13 PARL. DEB., LOK SABHA 10 (Synopsis of Debates) (2002) (India) (statement of M.P. Anadi Sahu), available at <http://parliamentofindia.nic.in/lsdeb/ls13/ses10/190702.html>.

36. INDIA CONST. pmbl. (declaring India to be a “sovereign socialist *secular* democratic republic” (emphasis added)).

37. See, e.g., PAKISTAN CONST. (1973), art. 2 (“Islam shall be the State religion of Pakistan.”). For a longer discussion of different aspects of Pakistan’s Islamic governance, see generally Jeffrey A. Redding, *Constitutionalizing Islam: Theory and Pakistan*, 44 VA. J. INT’L L. 759 (2004).

38. See, e.g., AYESHA JALAL, DEMOCRACY AND AUTHORITARIANISM IN SOUTH ASIA: A COMPARATIVE AND POLITICAL PERSPECTIVE 4 (1995) (“Only die-hard protagonists of difference in the highest common denominator of the destinies of subcontinental states and polities would deny that democratic representation in India and military dictatorship in Pakistan and Bangladesh have of late beset them with analogous, if not similar, sets of problems and challenges.”); IMTIAZ OMAR, EMERGENCY POWERS AND THE COURTS IN INDIA AND PAKISTAN 2–4 (2002); Anil Kalhan, *Constitution and ‘Extraconstitution’: Emergency Powers in Postcolonial Pakistan and India*, in EMERGENCY POWERS IN ASIA: EXPLORING THE LIMITS OF LEGALITY 89, 91 (Victor V. Ramraj & Arun K. Thiruvengadam eds., 2010) (“[While] India and Pakistan both have been governed by constitutions incorporating commitments to democracy and

tive claim, on which space limitations do not permit further elaboration, would support the conclusion that it is this inheritance of strong and trigger-happy bureaucracies that is responsible for each state's shoddy treatment of religious "outsiders" rather than each state's confessional status.

Other theorists have examined the dark underbelly of the modern-day state outside of the specific dynamics of South Asia. For example, both Robert Cover and Will Kymlicka have questioned the healthiness and robustness of exclusive (national) communities. In his seminal work, Cover highlighted the hegemonic and jurispathic ambitions of contemporary states, including the United States.³⁹ Kymlicka's work has characterized the widespread contemporary desire for national purity and unity as essentially paranoid in cause and effect.⁴⁰ In these accounts, *religion* (or its absence) seems to have little explanatory power on its own with respect to how a community will react to and deal with "deviants." If the community operates like a *modern-day state*, however, intolerance and violent repression seem all too possible.

fundamental rights, both countries' legal frameworks build upon colonial-era laws, institutions, and norms that were designed not to facilitate democratic governance and accountability, but rather to establish and maintain centralized control by the executive.".)

39. See Robert M. Cover, *Nomos and Narrative*, 97 HARV. L. REV. 4, 40 (1983) for his argument that

[legal interpretation always takes place in the shadow of coercion. And from this fact we may come to recognize a special role for courts. Courts, at least the courts of the state, are characteristically 'jurispathic.' It is remarkable that in myth and history the origin of and justification for a court is rarely understood to be the need for law. Rather, it is understood to be the need to suppress law, to choose between two or more laws, to impose upon laws a hierarchy. It is the multiplicity of laws, the fecundity of the jurisgenerative principle, that creates the problem to which the court and the state are the solution.

40. Kymlicka argues that "Western" and "Eastern" nations have diverged in how they view the threat of antinational secessionist movements in Will Kymlicka, *Federalism and Secession: At Home and Abroad*, 13 CAN. J. L. & JURIS. 207, 218 (2000). Kymlicka's larger argument here is that "Western" states in particular have largely managed to contain secessionist movements by their national minorities because these states have learned to view such movements as part of the give-and-take of liberal democracy, and thus as something they have to permit instead of fear and repress. *See id.* at 214, 223. Conversely, "[i]n [Eastern and Central European countries] . . . it is widely believed that 'the secession of foreign-speaking or minority territories forebodes national death.'" *Id.* at 223 (quoting Istvan Bibo's work). Thus, while Kymlicka identifies a difference between "West" and "East" in this work, it is not a difference predicated on religion (or its absence).

The focus here on Islam's capacity to incorporate "difference" within a larger religious outlook, thereby allowing both nonbelievers and communal dissidents a meaningful stake within the religion, is an important counter example to Spiro's view of meaningful religious community. However, Islam is hardly unique in this respect. Anglicanism also offers a blurred account of who counts as "us" versus "them." Even as fierce conflict about the ordination of openly gay priests has broken out within the global Anglican community, this conflict has not resulted in stereotypical excommunications. Instead, new and interesting debates and realignments are developing *within* the Anglican community. As the next section discusses, the Anglican experience not only serves as a reminder of the blurred indeterminacy of much religious community membership, but also of the healthy nature of many religious—and national—communities' *internal debates*.

B. RELIGIOUS PURITY?

This section contests Spiro's overly generalized account of meaningful religious community—and, by Spiro's extension, meaningful national community—by discussing another religious community which does not conform to Spiro's view. The previous section argued that a sharp distinction between an "us" and a "them" is actually not constitutive of many major religious traditions, including both Hinduism and Islam. This section adds to this point by highlighting the fact that a radically diverse "us" is perfectly consistent with robust, meaningful religious community. This time, however, the context and example for this point will come from Christianity.

When Spiro discusses whether and how citizenship norms will migrate from state to nonstate spheres in the twenty-first century, he writes that "direct transference of democratic theory and citizenship principles proves difficult across the public/private divide" (p. 149), and that "liberal democratic theory does not always lend itself to nonstate application" (p. 149). In Spiro's account, religion is a perfect example of the "private," nongovernmental world, and the application of liberal governance norms to religious communities is likely to be especially problematic. Spiro notes that "[a]dherents of religions do not get to vote on doctrine, although democratic-type procedures may prevail at some levels, as when cardinals select a pontiff" (p. 149). Furthermore, religions also control membership entry and exit in ways which violate liberal political norms

(pp. 151–55). Nonetheless, for Spiro, all this is understandable (and perhaps enviable) as a mechanism to enforce community solidarity and strength (p. 154). After all, “[d]ifference is what community is all about, at a constitutive level. It is what builds those bonds of loyalty, of allegiance, of a willingness to sacrifice for fellow members” (p. 156).

The worldwide Anglican Church (or “Communion,” as it is officially known) provides an excellent counterexample to Spiro’s argument that meaningful religious community is a function of internal community conformity, which is itself the product of exclusionary membership practices. The Anglican Church has been no stranger to intense internal debates. In the past thirty years, memorable debates have broken out within the church over the ordination of female priests and, more recently, the ordination of a sexually-active, openly homosexual man as a bishop.⁴¹ However, the church has demonstrated that the internal diversity of thought and practice that results from its inclusiveness can provide a meaningful religious and community experience.

With respect to the more recent debate over gay bishops, the (Anglican) Episcopal Diocese of New Hampshire ordained Gene Robinson as its bishop in 2003.⁴² Robinson had lived openly with another man for almost twenty years and had previously divorced his wife after acknowledging his homosexuality to both himself and her.⁴³ His ordination as a bishop resonated globally, because it was the first ordination as Anglican bishop of a sexually-active, openly homosexual person,⁴⁴ and because it occurred in the midst of an already intense debate concerning sexuality within the worldwide Anglican Church.⁴⁵

41. See Mary Frances Schjonberg, *Sexuality Discussions Bring Lambeth Bishops to Frank Conversation*, EPISCOPAL LIFE ONLINE (July 31, 2008), http://www.episcopalchurch.org/79901_99622_ENG_HTM.htm.

42. *Episcopalians Formally Ordain Second Gay Bishop*, ALL HEADLINE NEWS (May 17, 2010), <http://www.allheadlinenews.com/articles/7018716641>.

43. Lawrence Ferber, *Bishop V. Gene Robinson: The Right Reverend—The Gay Bishop Doing God’s Work*, PASSPORT ONLINE (Oct. 12, 2010), <http://www.passportmagazine.com/businessclass/BishopVGeneRobinson.php>.

44. And just recently, a lesbian woman was ordained by the Episcopal Church in California, again provoking intense debate within the global Anglican community. See William Crowley, *Mary Glasspool: Anglicanism’s First Lesbian Bishop*, WILL & TESTAMENT: WILLIAM CRAWLEY’S BLOG (May 14, 2010, 11:07 GMT), http://www.bbc.co.uk/blogs/ni/2010/05/mary_glasspool_anglicanisms_fi.html.

45. See, e.g., Resolution I.10: Human Sexuality, LAMBETH CONFERENCE RESOLUTIONS (1998), available at <http://www.lambethconference.org/resolutions/>

In response to Robinson's ordination, many Anglican churches, both within and outside the United States, protested loudly, claiming that Robinson's ordination was a perversion of Biblical teachings and law. The opposition was so intense that the Church did not extend Robinson an invitation to the most-recent (2008) "Lambeth Conference," the decennial gathering of Anglican bishops in Canterbury, England.⁴⁶ As well, a group of approximately 250 Anglican bishops boycotted the 2008 Lambeth Conference, and instead held an alternative meeting in Jerusalem styled as the Global Anglican Future Conference (or "GAFCON").⁴⁷ As one of these boycotters explained, his non-attendance in Canterbury was a result of his feeling that "[t]he Anglican Church is being destroyed by false teaching of the Bible on issues such as sexuality."⁴⁸ In addition, both individual American Episcopalian churches and even some dioceses who have disagreed with Robinson's ordination have oriented themselves away from the American Episcopalian church seeking association with the like-minded Anglican bishops and provinces in Africa and South America.⁴⁹

On first blush, this recent (and ongoing) Anglican debate over homosexuality seems like the perfect example of the sort of intense line drawing that Spiro associates with "meaningful" religious communities. Instead of waiting to see their church's doctrines be further "watered down" by contemporary attitudes regarding sexuality, a group of bishops has proactively circled their wagons, refusing a certain interaction with those of their peers they perceive to be homosexual-friendly.

1998/1998-1-10.cfm; see also *Timeline: Battling for the Priesthood*, BBC NEWS (Aug. 5, 2003), <http://news.bbc.co.uk/2/hi/americas/3123115.stm> (providing a timeline of recent debates concerning gender and sexuality within Anglican and other Christian churches).

46. See Riazat Butt, *Gay 'Climate of Controversy' Clouds Anglican Gathering*, GUARDIAN Jan. 21, 2008, <http://www.guardian.co.uk/uk/2008/jan/21/religion.gayrights>.

47. See Robert Pigott, *Bishops Turning Back on Lambeth*, BBC NEWS, Jun. 25, 2008, http://news.bbc.co.uk/2/hi/uk_news/7474525.stm.

48. See *Anglican Conservatives Form Group*, BBC NEWS (Jun. 29, 2008), http://news.bbc.co.uk/2/hi/middle_east/7479735.stm (quoting Reverend Rod Thomas).

49. See, e.g., Mary Frances Schjonberg, *Pittsburgh: Episcopal Church Petitions to Join Property Case, Wants Duncan to Vacate Offices*, EPISCOPAL LIFE ONLINE (Feb. 17, 2009), http://www.episcopalchurch.org/81803_105094_ENG_HTML.htm; *Fort Worth: More Diocesan Leaders Seek Realignment*, EPISCOPAL LIFE ONLINE (Sep. 11, 2008), http://www.episcopalchurch.org/81803_100590_ENG_HTML.htm; *US Anglicans Join Kenyan Church*, BBC NEWS (Aug. 30, 2007), <http://news.bbc.co.uk/2/hi/africa/6970093.stm>.

But this is where the utility of Spiro's discussion stops. When interpreting religious conflict, as with all conflict, it is just as important to note the silences and points of agreement as it is to highlight the points of contention. In this respect, it should be noted that the "mainstream" Anglican Church has not excommunicated any member of the organized antihomosexual "faction." In fact, an important Anglican Church document from 2004, the Windsor Report, emphasized that

[the Anglican Church] need[s] to develop the habit, and thence the virtue, of that charity which listens intensely and with good will to widely different expressions of sincerely held Christian theology, at the levels both of method and of content. As a Communion, we need a common forum for debate, a common table to which we can bring our questions for a proper family discussion.

. . . .

Where a fresh wave of scholarship generates ideas which are perceived as a threat to something the Church has always held dear, it is up to the scholars concerned, on the one hand, to explain how what is now proposed not only accords with but actually enhances the central core of the Church's faith. And it is up to the Church, on the other hand, not to reject new proposals out of hand, but to listen carefully, to test everything, and to be prepared to change its mind if and when a convincing case is made.⁵⁰

In response to statements of faith like these, as well as the recent discussions at the (boycotted) 2008 Lambeth Conference, the antihomosexual (GAFCON) group has written:

[We] remain[] a gospel movement. [We are] far from saying that [our] membership [represents] the only true Anglicans or the only gospel people in the Anglican Communion. We thank God that this is not the case. But [our] movement recognises the acute spiritual dangers of a compromised theology and aims to be a resource and inspiration for those who wish to defend and promote the biblical gospel.

. . . .

Given that some esteemed colleagues from the Global South have strongly commended the Windsor [Report] Process to us, we are reluctant to say that it cannot work. But there is nothing new here such as to make us hesitate from the course we are taking, given the urgency of the situations with which we are dealing and the realities already on the ground. As [these colleagues] themselves remark, 'the Anglican Communion as a communion of ordered churches is at the probable brink of collapse.' We warmly appreciate the good words which they have written about GAFCON and look forward to co-

50. LAMBETH COMMISSION ON COMMUNION, THE WINDSOR REPORT 22–23, 30 (2004), available at <http://www.aco.org/windsor2004/downloads/windsor2004full.pdf>.

operation with [our colleagues] in the future as we ourselves try to avoid that collapse and renew the Communion.⁵¹

Clearly, there is vociferous disagreement within the Anglican Church over matters of gender, homosexuality, and also the Anglican Church's intertwined legacies of racism and colonialism. That being said, these debates are also alive and well in the larger world, and the statements, threats, reconciliations, and compromises that are emanating from different quarters of the worldwide Anglican Church look very much like the ordinary stuff of usual (if fierce) politics. While it is impossible to predict the direction that this Anglican debate will take, it remains an *internal* debate. Moreover, any permanent rupture of the larger Anglican Church (or Communion) would appear to represent for everyone a serious failure of (meaningful) *religious* outlook and *community-oriented* practice.⁵²

III. FEDERAL COMMUNITIES

The Anglican Church is divided on issues that elicit deep feeling and emotion from church members of every persuasion. However, that being said, an all-out civil war has been avoided, and the opposing factions maintain contact and communication and the possibility of understanding (even if disagreeing).⁵³ Seeing that issues concerning (homo)sexuality are also fracturing many contemporary political communities as well, the Anglican Church's experience could be instructive not only in the religious realm, but also in the realm of the nation.

This final Part explores what the conflict resolution/dissipation mechanisms the Anglican Church has used can

51. GAFCON Communiqué on Establishment of Primates Council and Fellowship, GAFCON (Sept. 10, 2008), http://www.gafcon.org/news/gafcon_communique_on_establishment_of_primates_council_and_fellowship/ [hereinafter GAFCON Communiqué].

52. For example, see the following statement by the Lambeth Commission:

There remains a very real danger that we will not choose to walk together. . . . [That being said, o]ur aim throughout has been to work not for division but for healing and restoration. The real challenge of the gospel is whether we live deeply enough in the love of Christ, and care sufficiently for our joint work to bring that love to the world, that we will "make every effort to maintain the unity of the Spirit in the bond of peace." (Eph. 4.3).

LAMBETH COMMISSION ON COMMUNION, *supra* note 50, at 60. Additionally the [Anglican Church's] primates stated in 2000, "[T]o turn from one another would be to turn away from the Cross, and indeed from serving the world which God loves and for which Jesus Christ died." *Id.*

53. See GAFCON Communiqué, *supra* note 51; Butt, *supra* note 46.

tell us about religious and national communities and identities. In particular, this Part concentrates on the *federal structure* of the Anglican Church, and how the diversity of religious practice and identity that this religious federalism permits translates to the political realm and creates the possibility of meaningful, yet nonexclusive and nonconformist, national communities and identities. In short, this Part accepts Spiro's valuable efforts to connect usually disparate discussions of religious community and national community. But this Part argues that national communities, *like* their religious counterparts, do *not* necessarily rely on internal conformity for their meaningfulness. Hence to the extent that exclusionary national citizenship practices intend to advance internal conformity as a means to meaningful national community, these exclusionary practices are misdirected. Indeed, following the demonstration in Part II that federalist structure and value-pluralism are features that can help build meaningful *religious* communities, this Part demonstrates how these same elements can build meaningful *national* communities too.

The Anglican Church's debates about sexuality arose, at least in part, because federalism was a defining organizational principle of the church. Federalism in the Anglican Church arose out of the church's long history of colonization and missionary activity, which required decentralized authority.⁵⁴

54. For a history of the Anglican Church, see generally DAVID L. EDWARDS, *CHRISTIAN ENGLAND: FROM THE REFORMATION TO THE 18TH CENTURY* (1983). The federal quality of the Anglican Church refers to the separation of powers that exists between the various geographically-defined Anglican dioceses and the overarching governance of the worldwide Anglican Communion. See COLIN PODMORE, *ASPECTS OF ANGLICAN IDENTITY* 79–123 (2005). Originally, the Anglican Church was the religious arm of the British Empire, with the English monarch at the head of the church. Consecrated bishops swore an oath of loyalty to the monarch as part of their ordination. E. GARTH MOORE & TIMOTHY BRIDEN, *MOORE'S INTRODUCTION TO ENGLISH CANON LAW* 20 (2d ed. 1985).

Loyalist sentiment during the American Revolution had a religious as well as patriotic element. Rebelling against the Crown could be seen as heresy against the Anglican Church. See *id.* (rebelling against England as a nation involved reneging one's consecration oath). After the Revolution, King George signed into law an act which permitted English bishops to consecrate those outside the dominion of the Crown. See PODMORE, *supra*, at 27.

With this act, Anglican congregations were empowered to disagree on points of doctrine and faith. Diversity of doctrine and practice extended throughout the British colonies of the eighteenth and nineteenth centuries. See DAVID L. EDWARDS, *CHRISTIAN ENGLAND: FROM THE 18TH CENTURY TO THE FIRST WORLD WAR* 319–25 (1984) (describing the spread of Anglicanism in Jerusalem, Canada, and South Africa). At the same time, members of the An-

While centrally administered religions, such as Catholicism, have also seen controversy over different issues (e.g. ordination of female priests and abortion), it is arguably the case that the Anglican Church's federal structure facilitates and encourages doctrinal experimentation. This is no different than in political communities that are structured along federal lines.⁵⁵

The United States is one such federalized political community, and a troublesome feature of Spiro's discussion of the American national community is that it diminishes the federalized nature of the American polity and American culture. Spiro's discussion of state citizenship, largely limited to Chapter 2, is superficial and conclusory. For example, writing of Texas, Spiro declares, "Take a state such as Texas, which more than most states sustains a distinct state-based identity. Anyone who moves to Texas can claim state citizenship, which *inevitably* tends to dilute the identity, especially in the face of substantial in-migration."⁵⁶ (p. 55). In a work about the innovations and evolutions in United States citizenship, one would expect a more serious consideration of the dual-track nature of U.S. citizenship⁵⁷ and the diversity of American (state) culture and (state) identity.

With respect to the fifty states, demographic and ethnographic information suggests that state citizenship and state community continue to matter in a very real way despite great changes in the nation's economy and legal structure over the past two hundred years. For example, despite commonplace notions that territorial state attachments—and, by extension, state communities, identities, and cultures—have evaporated in a hyper-mobile American populace, demographic data indicates otherwise. For example, 54% of Americans lived in the same residence in 2000 as they did in 1995.⁵⁸ Of the people who

glican Communion maintain contact and meet from time to time at the Lambeth Conference to discuss their views about the direction of the Communion. *Id.* at 325.

55. *But see generally* Susan Rose-Ackerman, *Risk Taking and Reelection: Does Federalism Promote Innovation?*, 9 J. LEGAL STUD. 593 (1980) (arguing that a federal structure will not necessarily promote risk-taking and innovation).

56. Emphasis added.

57. The 14th Amendment not only universalized the norm of birthright citizenship with respect to the United States, but also confirmed that persons are "*citizens . . . of the State* wherein they reside." U.S. CONST, amend. XIV, § 1 (emphasis added).

58. All data in this paragraph are calculated from data found on SOCIAL SCIENCE DATA ANALYSIS NETWORK, CENSUS SCOPE: UNITED STATES,

did move during this five-year period, 54% of them remained in the same county. Of those who moved counties, 53% of them moved to a county within the same state. Ultimately, then, only 8% of Americans moved between states over the five-year period, and even then, interstate migration “most frequently occur[red] over short distances, and most migrants to the six highest states came from [adjacent or] nearby states.”⁵⁹ Moreover, this “mobility” appears to be significantly decreasing during the ongoing economic crisis.⁶⁰

Americans, then, do not move around the territorial United States all that much. This should not be surprising considering that Americans, like other people, have attachments to families, schools, and workplaces that are not instantaneously mobile. What is surprising, however, is that Spiro does not recognize how different territorial communities that Americans attach themselves to are representative of very different legal, cultural, and moral communities *within* the territorial U.S. In particular, recognizing the moral antecedents to different states’ policy choices in family law, education, and labor law,⁶¹

MIGRATION & IMMIGRATION (2000), http://www.censusscope.org/us/chart_migration.html (last visited Nov. 7, 2010).

59. U.S. CENSUS BUREAU, STATE-TO-STATE MIGRATION FLOWS: 1995 TO 2000, at 1 (2003), *available at* <http://www.census.gov/prod/2003pubs/censr-8.pdf>. Measuring American interstate mobility over the long term is difficult and, as a result, reliable data of this kind are not easy to obtain. That being said, year-to-year mobility data is available for each of the years between 1947 and 2006. This data is largely consistent with the five-year data presented here, while also suggesting that American interstate mobility over the past sixty years has, if anything, actually declined. *See* U.S. CENSUS BUREAU, ANNUAL GEOGRAPHICAL MOBILITY RATES, BY TYPE OF MOVEMENT: 1947–2009, *available at* <http://www.census.gov/population/socdemo/migration/tab-a-1.pdf>.

60. *See* Damien Cave, *Recession Slows Population Rise Across Sun Belt*, N.Y. TIMES, Dec. 23, 2009, at A1, *available at* 2009 WLNR 25854202.

61. For example, same-sex couples have migrated to Massachusetts for family reasons, but it would be hard to characterize this move as “just” for family and irrelevant from the perspective of “morality.”

With respect to education, different states’ policies enable (or discourage) different educational possibilities. To the extent that one state’s curriculum standards include requirements for sex education in elementary school and the teaching of evolutionary theory in high-school biology, and another state’s curriculum insists on abstinence-only “sex education” and equal time for discussions of “intelligent design,” one can fairly describe these policy decisions as related to “morality.” One can also do the same vis-à-vis states that tolerate wide disparities in educational quality between rich and poor school districts.

State policies also enable (or discourage) different employment possibilities. States have different minimum wage laws, different environmental standards, different labor and unionization laws, and numerous other public policy disparities. And as Spiro points out, all of these different types of laws and pol-

and also taking a conceptual step back, one should be able to recognize how Americans in the contemporary United States are members of different moral communities. And these moral communities are not ethnic enclaves but the prized units of the American federal system itself, i.e. the states.

Spiro is not alone amongst theorists in wrongly diminishing the importance of the states as sites of moral meaningfulness in the contemporary American landscape.⁶² However, this position is increasingly an untenable one in a nation that, like the Anglican Church and other religious communities, is facing intense debates over issues pertaining to sexuality and love. For instance, states are staking out divergent legal positions on the issue of same-sex marriage. The era of family law convergence in the United States is over (if it ever really began).⁶³ This divergence in family law shines an especially critical light on Spiro's reliance on an undifferentiated "American" culture when, for example, he describes how immigrants to the United States who choose to assimilate "learn the language, [] go to school here, [] marry and work; they have become Americans"⁶⁴ (p. 17).

Americans are Americans, certainly, but they are also Michiganders, Texans, and New Jerseyites. These latter differences in moral belonging and moral community—of legal *and* moral citizenship—really do matter. By diminishing the states in his discussion of U.S. citizenship law, Spiro obscures both the possibility and reality of *national* community that is not tightly premised in internal conformity.

To be sure, diversity amongst the fifty states could be greater. For example, it is the case, historically speaking, that

icies have "morality" components, especially in this day of notions like "corporate responsibility" (p. 147).

62. For example, see the discussions of the states in Vicki C. Jackson, *Federalism and the Uses and Limits of Law: Printz and Principle?*, 111 HARV. L. REV. 2180 (1998) and Edward L. Rubin & Malcolm Feeley, *Federalism: Some Notes on a National Neurosis*, 41 UCLA L. REV. 903 (1994). For further discussion on the moral community aspects of contemporary states, see Jeffrey A. Redding, *Slicing the American Pie: Federalism and Personal Law*, 40 N.Y.U. J. INT'L L. & POL. 941, 954–61, 972–75 (2008).

63. For more on the divergence of family law in the United States, see Redding, *supra* note 62, at 975–81. Even where there appears to be legal convergence—for example, forty-eight states forbid same-sex marriage—there are important differences in how states effectuate these policy choices. Michigan, Tennessee, and Alabama all constitutionally forbid same-sex marriage, yet they do so in significantly different ways. *Id.* at 980–81.

64. Emphasis added.

the price for admission to the Union has been that polygamy be “forever” banned (e.g. Utah). However, it is also true that no State is going to be “excommunicated” or “banished” from the United States for engaging in controversial and divisive family law practices, including same-sex marriage and (coming soon to a State near you) legalized polygamy. Instead, what will happen is that different states will be allowed to enforce different laws. Moreover, this maintenance of diversity will not only avert potentially fatal civil strife, but it will also be heralded as a singular achievement of the “American” political genius. Thus, when Spiro hails “America, its system of government, and everything else it stands for” (p. 46), it is not clear why he appears to exclude federalism.

The American way is also the Anglican way, and also the way of any number of religious communities which do not operate with the sharp antagonisms that Spiro simplistically assumes. Ultimately, then, while one must sincerely appreciate Spiro’s attempt to link discussions of “the political” and “the religious,” one has to simultaneously lament how he diminishes certain kinds of national and religious communities and the similarities between them. *Neither* national nor religious communities necessarily depend on exclusivity and conformity for their integrity or meaningfulness. Open borders and pluralism can be robust operating principles for *both*.⁶⁵

CONCLUSION

Beyond Citizenship is a wide-ranging and important work. It is ambitious and provocative, and it pushes at the borders demarcating not only scholarly disciplines but also those which are erected between “real-world common-sense” and the “merely theoretical” and “trivial.” Yet, in its eagerness to stretch the reader’s imagination, it engages in speculation and relies on counterfactuals which are troublesomely *counter factual*. In closing, it is helpful to specifically engage with one of Spiro’s counterfactuals, because its creative aspects so vividly encapsulates both the attractive qualities of, and the problems with, Spiro’s work more generally.

65. This is not necessarily opportunistic. Both the United States and the Anglican Church stress the importance of a federal structure to each community’s self-understanding. The United States would not be the *United States* without federalism and, as the discussion in Part II suggests, the Anglican Church would be *less Christian* if it were to split up over, or smother, its internal differences. See discussion *supra* note 50.

In Chapter 2, attempting to show how “the domestic citizenship structure” of state citizenship “demonstrates how thin citizenship regimes correspond to thin identity constructs” (p. 54), Spiro imagines the contours and potential implications of a counterfactual Maryland citizenship regime:

Assume that as a condition for citizenship in the state of Maryland, a new resident were required to pass a test about Maryland history . . . and pay a fee of \$100. Assume also that no benefits were to come with citizenship status beyond a certificate of naturalization, suitable for framing. The upshot, I think, would be a large proportion of newcomers not bothering to apply. On one hand, that might marginally reinforce the state identity among those who did To the extent it was something that one had to affirmatively seek, as opposed to passively receive, one would expect only those who entertained some affinity and commitment to the state to bother with the hassle and expense. In this scheme, Marylanders might be more inclined to wear the identity on their sleeves. On the other hand, the identity itself would emerge as fairly inconsequential, something in the way of the Knights of Columbus or other civic associations. (p. 55).

Spiro’s hypothetical here is imaginative and thought-provoking (as they are throughout the work). This book does not tread tired ground. Yet Spiro’s imagination can also be quite troublesome in its tendency to disconnect from ground realities. Indeed, Spiro can only *assume* here that membership in the Knights of Columbus “or other civic associations” is fairly meaningless, an echo from his simplistic gloss over the nature and functioning of “religion” that this Review has extensively discussed. He presents no evidence for this claim and ignores obvious counterexamples like the ACLU and its well-known “card-carrying members.” Moreover, the Knights of Columbus’ recent \$1 million donation to the pro-Proposition 8, anti-same-sex marriage campaign in California suggests an alternative read on the significance of membership within that (Catholic Church-affiliated) civic association.⁶⁶

The recent California same-sex marriage debate also illustrates the larger shortcoming of Spiro’s work, namely his confidence that the meaningfulness of a community—whether marital, religious, or national—derives from the ability of that community to exclude “outsiders” and enforce internal conformity. In his discussion of community, Spiro telescopes from large to small communities, and from religious to national associations, and then onward to civic and intimate ones. For Spi-

66. See Veronique de Turenne, *Knights of Columbus Tip the Balance with Big Anti-Gay Marriage Donation*, L.A. TIMES L.A. NOW BLOG (Aug. 20, 2008, 3:49 PM PST), <http://latimesblogs.latimes.com/lanow/2008/08/prop-8-post.html>.

ro, what unites all these groupings is the way in which the power to exclude correlates directly with internal coherence read as strength and meaningfulness.

The California marriage debate argues against this easy conclusion, however. Certainly, some marriage proponents argued that the meaningfulness of marriage as an institution would diminish if it was opened up broadly to same-sex couples. Yet, in response, many people—including many married heterosexuals themselves—have argued that the exclusion of same-sex couples from the marital club itself diminished the transcendent, loving, and honorable qualities of this communal institution. For these people, Proposition 8 was “Proposition H8,” and California was the latest state (before Arizona earned that honor) to earn the unenviable “Hate State” moniker.

This is all to say that *Beyond Citizenship* quite admirably raises a number of important and intriguing issues about community belonging and identity generally, and U.S. citizenship law and American national identity in particular. These are complicated issues, especially right now as the United States is experiencing unpredictable change in its internal structuring and its external relations. This Review has argued that this complexity requires more than axiomatic beliefs which are ungrounded in social, political, or religious realities. It has also sought to reaffirm that most basic of truths: “*Once no one is an American, no one is an American.*”