

GLOBALIZATION AND THE TRANSFORMATION OF CITIZENSHIP

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ABSTRACT OF THE DISSERTATION

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This dissertation examines the condition of contemporary citizenship as it is being contested and redefined, with consequences for the prospects for social justice. The study contradicts current theoretical developments that understand the reformulation of citizenship under globalization in terms of expansion and inclusion, by drawing on overwhelming evidence of displacement and disenfranchisement to suggest that citizenship is in demise. While some theorists suggest that waning sovereignty allows new citizenship claims to be made at global and urban scales, my analysis of the practices of the U.S. state shows that it is still thoroughly powerful in constructing the state-subject relationship. Not only does the nation-state serve as the impetus behind, and the mechanism for, differentiation practices that maintain the in/exclusionary quality of citizenship, but also the hegemonic U.S. state has expanded its territorial reach to influence the relationship between states and subjects far beyond its own borders.

The main body of the dissertation examines in turn the three broad theoretical strands that dominate the globalization/citizenship debate, each positing a new form of citizenship apparently emergent under globalization: postnational, cosmopolitan, and urban. Through examinations of prisoners' rights at Guantánamo Bay and the 'war on terror' conducted in Iraq and Afghanistan I find, respectively, that both the international human rights discourse of postnationalism and the cosmopolitan attempt to generate global democratic institutions are weak in the face of the persistent nation-state. Similarly, the thoroughly attenuated, 'clientalistic' form of citizenship found in contemporary cities, that abandons citizenship to the market as the state retreats from its buffering role, reflects the way in which the nation-state's practices and policies in the context of the global political economy have played out at the urban scale. In all three cases, the new forms of citizenship identified – empirical and normative – are overwhelmingly offset by the actions of the nation-state. Rather than accept uncritically an overly optimistic interpretation of the political potential of globalization, I suggest that the nation-state's spatial practices need to be drawn more fully into analyses of contemporary citizenship precisely so that possibilities for oppositional political formation can be evaluated.

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INTRODUCTION

The globalization / citizenship nexus

Since the end of the Cold War, there have been no contenders (in the popular discourse of the U.S. and arguably the West) adequately equipped to challenge globalization as the dominant macro-understanding of how the social, political, and economic world is changing. Popular media, the business world, and academics alike ensure that the deluge of information arriving on the desks of Wall Street, the television news in suburban homes, and classrooms is contextualized in "the global." But if globalization has become the watchword of contemporary North America, there are myriad processes and events which are construed as global. And even as "globalization" serves as the leitmotif, or even backdrop, of contemporary understandings of whatever form, its meaning has been universalized to the point that the term is almost useless because of the vast extent of phenomena it is supposed to encapsulate. Further, as it is currently employed, "globalization" often becomes a misnomer that, acting as a catch-all, detracts from the business of naming that which is *really* going on.

However, even as I suggest that the apparently obscure meanings of "globalization" and "the global" should be pried open and left subject to contestation, there is clearly *something* going on here. Where the concept of the "Americanization of culture" remains contested by scholars who recognize that localized cultural forms are remarkably resilient and resistant, North American tourists can still find familiar stores and restaurants wherever they might care to visit. Simultaneously in the financial world, stocks, futures,

and currencies have become globally oriented to the extent that a nation's GNP bears little or no correlation to its wealth, and national economies, like Indonesia's, can be sunk by foreign investors (or *disinvestors*) who then proceed to start off a chain of market crashes across the world.

These interpretations of global activity – cultural and financial – fit neatly into an understanding of globalization as the free movement of people, ideas, and capital, which tends to dominate popular, and even academic, thought on the subject. However, the complexity of globalization is revealed when we broaden the ambit of what we understand to be global activity. Economic globalization then becomes more than a matter of finance and new and expanded capital movements, and more of an issue of the internationalization of production (and its management). ‘Successful’ corporate leaders have made the shift from internationalized business ventures (where Foreign Direct Investment exploited cheap overseas labor and material resources) to a truly global business acumen, where capitals based in different countries and maintaining headquarters in global cities agglomerate temporarily to exploit a number of cheap locations while avoiding constraints from national governments. It now becomes obvious that focusing only on globally connected stock exchanges and markets offers a fairly limited understanding of economic globalization.

The extent of *political* globalization is perhaps less transparent. Depending on their degree of success or failure, military interventions overseas can be projected as North American protection of freedom and democracy (and oil), or as the U.S. fulfilling its

obligation to global political entities, such as the United Nations (U.N.) peacekeeping force. North American global geopolitical activities raise interesting issues. First, by focusing on the existence of U.S. involvement in foreign domestic and international disputes, or the presence of U.S. forces around the globe, it again becomes obvious that North American intervention in other countries is far more significant than the "McDonaldization" thesis might suggest. Second, the institutional complexity of globalization is revealed as it becomes clear that both national and international organizations are involved in contemporary geopolitics. The notion of institutional complexity is required to comprehend adequately the ways in which global political forms butt against existing national political orders. The complexity of globalization is then discovered in recognizing how these global and national forms coexist. This interpretation of globalization thoroughly undermines the 'free movement of people, goods, ideas, and capital' conceptualization, which drastically oversimplifies contemporary processes by suggesting that previously nation-based phenomena have thoroughly shifted to a global orientation.

The point of departure for this dissertation is that the contemporary political economy operates globally, and global political and economic institutions have been established (or adapted) to manage these developments. However, these institutional forms have not *replaced* nation-states, rather they coexist, albeit sometimes uneasily. In this context, the aim of this dissertation is to establish the societal impact of this partial shift to a globally organized world. Under a capitalist system of nationally organized political economies, there are both winners and losers, with respect to individuals within states, and to nation-

states themselves. Given that the institutional forms have shifted as we move towards an extra-national system of organization, it is reasonable to assume that the societal impact – the configuration of winners and losers – may have shifted as well. In broad terms, then, the aim here is to establish first, who is losing out, and how that social effect is achieved. And then, rather than acquiesce to the sometimes popular opinion which dictates that globalization is inherently beneficial to corporations, I will attempt to examine whether there is any way in which globalization can be reclaimed and redefined in the interests of the people, rather than against them. Fundamentally, then, this dissertation considers the relationship between the state – in all its forms – and civil society.

Citizenship, in its simplest formulation, contains the relationship between civil society and the state. It is a political condition, and one by which – in the contemporary scenario of the territorial organization of states – individuals are allocated to one state rather than another. Citizenship confers membership in the political community, and constructs those members as equals, yielding the twin phenomena of citizens' obligations to the state and their rights from the state, respectively. According to their alternative political commitments, republicans consider the obligations of citizenship – especially active political participation – to be its defining premise, whereas liberals identify the rights that membership guarantees to be the crucial rationale for maintaining and preserving citizenship.

Originally, citizenship was granted in the context of the *polis*, the Greek city-state, establishing a territorial identification that superseded localized group loyalties.

Subsequently, the territorial basis of citizenship shifted to membership of the vast Roman Empire. The differences between the premises of Greek and Roman citizenships formed the basis of the different emphases, towards duties or rights, which underpin debate concerning contemporary citizenship in Western liberal democracies. And while the precise qualities of each version of citizenship are barely relevant here, it is worth noting that the transition from the Greek emphasis on freedom and political participation, to the Roman understanding of citizenship as a legal status granting rights was contextualized in, if not directly attributable to, the transformation in the territorial basis of citizenship. Thus, even in its original form, the spatial organization of citizenship influenced its qualities.

As the organization of society began to shift towards an international system of states in the eighteenth century, national membership was granted through citizenship. In the British case, which serves as a model for Western liberal democracies, and which was detailed by T.H. Marshall, civil citizenship was awarded in the eighteenth century, political rights were extended in the nineteenth century, and the twentieth century – particularly in the period after World War II – witnessed the introduction of social citizenship¹. Citizenship served as a mechanism for bringing together groups with previously more localized allegiances, and for integrating them into a coherent political entity despite the existence of regional differences. The construction of a community with a specific political culture was accompanied by the formation of bounded states such that

¹ As with the Greek and Roman versions of citizenship, the Western European model barely stood up to its inclusionary claims. For instance, women were not granted suffrage until the twentieth century. The contours of the unequal condition of citizenship are thoroughly complex, and comprise one of the bases of

nation-states emerged, with national communities adopting territorial identities and professing allegiance and loyalty to that nation-state. This formation of a national identity served as the basis for establishing liberal democracies and facilitated the development of industrial capitalism based on a system of national economies.

The 'crisis of citizenship' that has unfolded in recent years is attributed to a variety of different phenomena, depending on political orientation, and the aspect of citizenship emphasized. For republicans, the lack of political participation and "civic-mindedness" made apparent by an increasing focus on citizenship *rights*, represents a failure to recognize that "the good life" is achieved in public engagement. Thus, political activity should not be viewed as a means to an end, rather it is an end in itself. Of course, a lack of interest in political life precedes the contemporary era, however the processes developing under globalization have established a new set of criteria by which the national loyalty and patriotism valued by republicans can be undermined. Alternatively, for those advocating a liberal or radical perspective, the state's retreat from rights provision and/or its unequal allocation of resources constitute the contemporary crisis of citizenship. Thus republicans focus on problems within civil society, while liberals and radicals concentrate on the state. However, I will argue here and throughout this dissertation that these different 'crises' more or less directly represent alternative perspectives on the same problem: namely, that citizenship is at once universalizing and exclusionary.

this dissertation. Therefore, although this matter will be discussed at length throughout this work, it is sufficient simply to recognize here that the universalist claims of citizenship belie its exclusionary form.

Citizenship is *theoretically* granted to an abstract citizen-subject, with no cultural identity but with political membership in the state awarding citizenship. Citizenship is *actually* granted to nationals who are members of a community with specific cultural characteristics. However, the contemporary synchronization of the nation and the state in a delimited territory – the nation-state – establishes the cultural community of the nation and the political community of the state as identical. They are, in fact, dissimilar, as many cultural affiliations appear within the same territory, and are represented by and subjected to the same state. The specific political culture of the nation-state fails to represent those existing outside the hegemonic cultural identity as a supposedly political venture becomes simultaneously a specific cultural venture. In the context of this disjuncture between political and cultural identities which the strategic deployment of the misnomer ‘nation-state’ has proven insufficient to overcome, in combination with the post-civil rights era which dramatically exposed exactly how citizenship was necessarily exclusionary when organized around a system of nation-states, groups and individuals are increasingly establishing more localized political cultural identities, and connecting them to both re-empowered subnational and incipient supra-national arenas of political engagement. This process stands in direct contrast to the historical imposition of the emergent nation-state form over disparate localized identities.

The emergence of ‘more localized’ identities can be attributed primarily to the *de facto* exclusion of certain individuals from supposedly universal citizenship rights, based on their lack of adherence to a specific hegemonic political culture which defines norms of race, class, religion, gender, and sexuality -- as well as nationality -- for citizen-subjects.

These ‘more localized’ identities may find that they have greater powers to demand rights at subnational levels – such as from the companies for which they work or the cities in which they live – even if they still aim to challenge the lack of representation offered by the nation-state. Additionally, city or state level governments may have an explicit interest in advancing different regional goals, especially as the national government increasingly leaves them to their own devices in the face of global capitalism. A second avenue for demanding rights is made available by the mechanisms of supranational governments, in the form of international human rights, legislated by U.N. mandate. As the example of the European Union (E.U.) has shown, states are unlikely to readily yield sovereignty to a higher order. However, it is far more likely that some form of supranational organization such as the U.N. will be capable of bringing pressure to bear on nation-states in order that they may be forced to afford more expansive systems of rights to individuals.

Given the new empowerment of these long-standing non-nation oriented identities, it is barely surprising that republicans have identified an attenuation of patriotism and political engagement. Those who are bypassed by the hegemonic national identity are themselves liable to bypass the nation-state as an arena for political engagement, on the grounds that it is unlikely to yield substantive benefits. However, while the relative empowerment of a group of previously disenfranchised people generates an apparent crisis, it would perhaps be more appropriate to recognize that this change naturally constitutes a valuable shift towards exposing the problematic ambiguities of the mythically represented nation-state.

While the problem of the lack of representation and rights accrual among the marginalized is also a problem for liberals and radicals, they are equally concerned by the simultaneous *general* retreat by the nation-state. National governments are increasingly backing away from rights that have been historically afforded to civil society. This is particularly true for social rights, which have generally been acquired during the twentieth century and which are not constitutionally secured in the same manner as civil and political rights. Thus, for example, welfare was virtually eradicated during Bill Clinton's second term in office. It initially appears that a general rescinding of social rights would be equally experienced, unlike the *de facto* exclusion afforded by culturally-biased politics. However, even cursory attention to contemporary society reveals deep social inequalities.

I will suggest in this dissertation that the government's repeal of social citizenship is a response to globalization. This claim is premised on the assumption that as the global market has become inundated with truly transnational corporations, governments are no longer required to reproduce the labor force in order to maintain national industries. Furthermore, as manufacturing has been shifted to poorer countries, leaving corporate headquarters and their required services in global cities – predominantly although not exclusively in richer countries – there has been a change in labor force requirements within the old industrial nations and their national economies. The polarized workforce of global cities does not need to be reproduced by national governments, because the elite, overvalued professionals are maintained by their employers, and the downgraded portion

of the labor force merely needs to be repressed and controlled rather than socially reproduced. Hence, the downshifting in social citizenship provision, but also the increased denial of civil and political rights through contemporary social features like the imprisonment of vast numbers of young black men and Latinos.

Therefore, for liberals and radicals, the crisis of citizenship stems from the lack of universal application of rights, initially made apparent as the previously disenfranchised have increasingly voiced their claims, but also resulting from the state's retreat from its obligations, which has been unevenly experienced by members of civil society. However, the impact of globalization on citizenship is not limited to the effects of new scales of governance and new economic systems. Global immigrations have an even more direct impact on citizenship by introducing individuals into national civil societies who, according to the current system of organization of citizenship, have no reason to be loyal to the state that they are newly subjected to, nor do they receive rights from that state. Thus immigration has intensified existing ambiguities in citizenship, throwing into sharp relief the scalar disjuncture between economic, political, cultural, and legal institutions.

If the institutions governing the political economy have transformed under globalization, then through unprecedented global immigrations, so has the composition of civil society. Immigrations have proceeded over the centuries, but it is only since the 1960s that people have moved in such large numbers. And yet it is more than the volume of people moving that makes contemporary immigration new and different. In a world where migratory flows are increasingly complex, immigration into the U.S. is comparatively simple in that

it is dominated by the movement of people from South and Central America and Asia. But those immigrants now tend to maintain strong connections with their families and communities back home, sending money, making frequent visits, or even only temporarily migrating, ensuring their significance in *both* the domestic economics and politics of their new home and their place of origin. Moreover, given the complexity and intensity of inter-national connections that these transnational migrations create, an increasing number of supra-national institutional arrangements – as well as bilateral and multilateral agreements – have emerged to manage these movements.

In theory, this postwar cohort of immigrants should enjoy a certain level of protection afforded by institutions such as the U.N. or the E.U., as well as the potential mediating influence of their originating country, which often has especial interest in ensuring their well-being. But more than just receiving the privilege of protection, some non-nationalized immigrants and temporary workers – i.e. those defined outside the standard category of national citizen – have begun to demand rights in the places where they live by virtue of their participation in the local labor force. In Europe in particular, where there is now free movement of labor between E.U. countries, certain non-nationals have acquired a bundle of rights that, while barely equivalent to those of national citizens, clearly exempt them from visitor or temporary worker status. In North America, an elite class of ‘business migrants’ has managed to secure special privileges, essentially by buying citizenship rights with massive financial investments in North American industry.

But even as European guest workers or North American business migrants gain from their position in the labor force, immigrant temporary and/or undocumented workers (especially in the United States) tend to be downgraded into lower-status employment by virtue of their immigrant status. Therefore, although suggestions of the existence of a global labor force may bear some accuracy, it is essential to qualify such claims with the recognition that immigrant workers do not currently have the same access to rights as nationals. This is of little surprise, given that membership in a nation-state is still the primary, but more importantly the dominant, political identify for individuals and one which defines the boundaries of citizenship – which is of course why refugees and asylum-seekers are in the weakest political position.

There is no inherent reason why citizenship must be defined by membership in a nation-state; in fact, prior to the eighteenth century, cultural and political affiliations were distinct. However, given that the system under which citizenship has been developed over the last two centuries *has* been premised on national membership, citizenship has, logically, included nationals and excluded non-nationals. Now, however, as cultural and political affiliations again shift towards asynchronicity (and let us be sure to recognize that for some – the obvious example being slaves in the U.S. – synchronous cultural and political identities were *never* achieved) it might be reasonable to assume that the contemporary form of citizenship is inappropriate for the current arrangement of civil society.

We have, therefore, arrived at a situation where the arrangement of civil society, and the set of institutions established to manage that civil society, diverge in their scale of organization. While individuals exist as part of a global labor force in keeping with the globalizing economy, with many adopting transnational identities and existences, the state is still predominantly organized at the national scale. Thus the scale of the economy and the scale of politics no longer synchronize. Except there are additional complications: membership in the global labor force does not subsume national or local identities, in fact as the emergence of transnational migrants has shown, these cultural identities remain a crucial element of individuals' lives; similarly, the globalization of the economy has not been, and never can be, a wholesale transformation – like people, capital has to be fixed in place, however temporarily, to be productive. Simultaneously, the emergence of supranational political organizations and the strengthening of local states mean that the nation is far from being the exclusive site of politics. Therefore, although there has been a clear transformation from a nationally-organized synchronicity of political, economic, and cultural affiliation, it would be inaccurate to suggest that a thorough transformation to a global system of organization has occurred, or is even possible at this stage in world history. Rather, I suggest we have a multi-scale system of political, economic, and cultural organization and affiliation, where processes and practices coexist, sometimes in cooperation but sometimes in contradiction.

Spaces of citizenship

Given that the system of spatial organization that supported citizenship has undergone transformation, and yet has not yielded a precise and coherent alternative, any

investigation of citizenship needs to stem from an understanding of the complexity of the institutional framework that has arisen with globalization. In other words, assuming that the contours of the societal phenomena of citizenship are a direct consequence of its spatial organization (following an axiom of social theory), contemporary citizenship can only be fully understood through an examination of the broader relations which contextualize it. Recalling that under capitalism citizenship is essentially the organization of the relationship between civil society and the state in the interests of capital, it is fair to say that locating the crux of citizenship in cities – where the people are – precedes economic transnationalization. Even when the incipient nation-state was emerging to override more localized allegiances, the city was still the arena in which the relationship between the state and its people unfolded.

Citizenship, as the relationship between the state and civil society, is, in the context of capitalist society, embedded in the triadic capital-state-labor set of relations, where citizenship is part of the state's mediation of the relation between capital and labor. In terms of the organization of the capitalist political economy, the spatial reorganization constituting globalization has produced *cities* as the crucial places for transnationalized corporations. Given that industry is no longer organized into discrete nationally based capitals, industries are increasingly less likely to be afforded national protection. Therefore, transnationalized industries are increasingly less likely to look to nations to provide them with their requirements, rather they expect some degree of self provisioning for certain functions, and they can negotiate directly with cities competing for their investments. Thus cities are no longer functioning as sites of nation-state sponsored

social reproduction, rather, following the entrepreneurial cities model, they are in a heightened mode of competition with other cities to provide the environments, services, resources, and labor required by capital

The headquarters of transnationalized corporations require the availability of other highly technical skills and services, and, in terms of labor requirements, a polarized workforce. This has two main consequences for citizenship. First, for the elite workforce, corporations provide certain social rights while providing sufficient compensation to allow high-grade labor to purchase other forms of social reproduction in the market place. Simultaneously, requirements for the downgraded labor force are for cheap and pliable low skilled or unskilled labor, such that the state is no longer required to participate in their social reproduction. Rather than providing social rights, the state is involved in controlling and repressing labor to ensure its vulnerability (which generates pliability). Of course, to maintain this polarization, the state also functions to preserve the political and civil rights of elite labor, while it is precisely the denial of these sets of rights for downgraded labor that facilitate their powerlessness in the face of the denial of their social rights.

Second, because these requirements are locally specific, and because they are organized by the operation of the local state, city governments become crucial players in the effectiveness of this system and *cities* become the specific sites where the new system of capital-labor relations, with the especially new mediatory role of the state, get played out. Therefore, the sites of transformed citizenship may be dictated by the demands of global

capitalism, but ultimately it is because individuals are drawn to these sites for employment opportunities, and because city governments are willing to respond to the demands of capital, that the transformed version of citizenship persists in these spaces.

Immigration has, of course, complicated the capital-state-labor relation. First, as immigrants enter the country as part of the global labor force they are economic participants of their host society, rather than political members. As U.S. history shows, various assimilation scenarios may follow, but as temporary worker and undocumented statuses become more viable, it is now more feasible for workers to remain in the U.S. without becoming citizens. For these non-citizen workers, any territorial identification beyond citizenship in their country of origin is with the city in which they reside rather than in the national civil society. Second, the presence of immigrants transforms civil society itself in that it facilitates the weakening, downgrading, and exploitation of a previously relatively empowered national working class (itself formed through previous rounds of immigration, acculturation and ‘Americanization’), by effectively undercutting their labor costs and by being more pliable. However, it might also be fair to say that immigration has expanded the possibility for rights claims and demands, by extending the base of the disenfranchised in terms of both volume, and exposure of U.S. practices to an international audience.

Across the globe, the population has been urbanizing for thousands of years, but the advent of capitalism intensified the speed and volume of urbanization, such that it is no longer possible to explain what is happening in society without considering what is

happening in cities. But even as the ‘winners and losers’ of transnationalized capitalism and transformed citizenship can be understood only by examining their operation *in place*, the corollary argument – that what is proceeding in cities can be understood only by examining global political, economic and social processes – is also true. The processes that constitute urban life cannot be understood without considering the broader configurations of contemporary economic, political and social changes that constitute globalization, and, with respect to the reproduction and control of people more specifically, the transformation of citizenship that is embedded in these processes.

Inasmuch as immigration has transformed long-standing assumptions concerning access to civil society, and relations within civil society, these changes can also contribute to an understanding of urban process. For a variety of reasons, immigration to the U.S. predominantly involves movement to cities, and especially to major cities. The apparent ‘problems’ of citizenship – lack of patriotism and unequal rights allocation – which are most obvious among non-citizen residents are, therefore, most concentrated in cities where there is a heavy presence of immigrants. Thus it is in cities that the exposure of the ambiguities of citizenship is most apparent. Again, this shows why societal activity, and more specifically the transformation of citizenship, is most available for examination in cities, *and* why it is crucial to understand what is proceeding in cities in order to understand social processes.

It may also be fair to suggest that urban space is that which is most open to change, and therefore most available for manipulation, reinterpretation, and reterritorialization, both

by hegemonic interests and by the disenfranchised. But even as the city seems to offer realms of possibility that may facilitate real social change, this very possibility makes the realization that cities are where inequality and oppression are most evident (although clearly not exclusively so) even more difficult to bear. Cities can be constituted in ways that bring people together to make their mode of living more efficient, equitable, and sustainable, and yet the everyday and the extraordinary in cities both bring examples of how this is simply not the case. If the organization of citizenship no longer corresponds to the organization of the economy and the polity, and the consequences are the reproduction of gross inequality, then the solution seem to be obvious. Citizenship – or some other equivalent system of organizing civil society – needs to be restored, but in a manner consistent with political and economic systems of organization, with the net result being a sustainable and equitable system of social organization.

This appeal is barely original. Much of the recent work on contemporary citizenship is specifically oriented towards how citizenship might be viable under a globalized system of organization. But the point of departure for this dissertation is the claim that much of this work stems from the general realization that citizenship is being affected by new global processes, without offering a sustained investigation of the consequences of these processes. All too often, what we think *should be* rests on an inadequate understanding of what *actually is*. The purpose, then, of this dissertation is to examine exactly how citizenship has been transformed, but also, rather than leave the impetus for these changes to a fairly nebulous and ultimately useless ‘globalization’ (and recognizing that changes happen for specific reasons and in the interests of some rather than others), I

want specifically to consider *why* the transformation of citizenship under globalization has developed in the way it has. I maintain that without superior understandings of the existing reasons behind the transformation of citizenship than those we currently work with, the likelihood of developing better ways of organizing civil society, and of understanding the successes and failures of social movements with exactly that mission, is severely limited.

In this context, I want to understand the transformation of society under globalization as rescaling – or the reorganization of the scale at which various social processes are organized. This approach is underpinned, theoretically, by the assumption that the content of social process is thoroughly constituted in its spatial organization, to the extent that social organization is coterminous with spatial manipulation, and thus that power relations are established in the ability of an agent to control the scale at which the social process is enacted. I suggest that this approach enables us to examine how social practices and processes have changed (i.e. what they have become), but, more importantly for my purposes, it enables an investigation into *why* these changes have taken place and the procedures through which they have been put into effect.

Incorporating a thorough investigation of why we have what we have – rather than simply advocating what we would like to have – enables us to make the connections between the mechanisms for and the consequences of changes. Having established these connections, we can begin to debunk them and to offer alternatives. I further suggest that it is through investigating the micro-scale consequences of multiply-scaled processes, that we begin to unravel exactly how the manipulation of scaled space facilitates the

operation of certain social processes, and thus move toward understanding the value and limits of a theory of scale.

In the narrow context of the matter of citizenship, the obvious entry point for examining the effect of scale transformation on social processes is to consider how social polarization is generated through scale change. The arguments made previously concerning labor force polarization in global cities consider a specific response to globalization. Thus, although globalization is universalized with regard to the fact that it unravels everywhere, the conditions it generates are far from universal. First, the very condition of global capitalism is that it requires different places to fulfill different functions, and therefore the emergence of global cities – with their associated labor force polarization – is an evident trend, but is not the necessary trajectory for all major cities. Second, although global capitalism may *require* the formation of the specific configuration of political, economic, and social processes that constitute a global city, localized responses may differ. Thus, although there may be pressures on a city government for it to reproduce the conditions required by capitalism, it may refrain from doing so or attempt to do so through various means and approaches, although these choices may render it weaker in the competition for capital investment.

The different conditions, and variegated local responses, indicate capitalism's inherent spatial differentiation, but also the power of local states to resist the impact of globalization. However, rather than posit some benevolent (or malevolent) local state as the ultimate decision-maker for locally specific practices, it becomes clear that contrary

to some globalization theses, the national state still constrains and partially dictates local and global state activity. Therefore, although global economics might establish the optimum conditions for capital, which are then played out in a variety of local contexts, this apparently direct cause and effect relationship is mediated by nationally-mandated practices. The question regarding the influence of the nation state can then be rephrased. Instead of considering the extent to which the nation-state's power is waning, the more useful question becomes what are the new roles for each scale of state practice under globalization?

Having established that state practices – or at least the expression of political and economic power in some form – still unfolds at local, national, and global scales, the question of what exactly constitutes the scalar transformations of globalization can be addressed. There are two potentially complementary and potentially divergent systems of spatial organization at work. First, the standard national-hierarchical model of spatial organization, where local states are conditioned by national-states, still persist, but has been amended somewhat by the introduction of global scale economic and political processes which impinge, more or less directly, on national sovereignty. However, the introduction of extra-national processes and institutions simultaneously gives rise to an alternative model of spatial organization, which Castells (1996) in particular has described as a network of flows between nodal (local scale) points. In this second, non-hierarchical model of scaled space, national scale processes and institutional forms are barely relevant as conditions in local spaces are dictated by global processes.

Political, economic, and social processes co-exist in accordance with the principles of both models of spatial organization, but these processes can contradict each other. For instance, with respect to the movement of people, immigrations theoretically align with the national model, with individuals being constrained by the boundaries of nation-states. And yet the existence of a global labor force explicitly contradicts these boundaries. But what is particularly interesting – and really highlights the complexity of the coexistence of these contradictory spatial models – is that the global labor force is endorsed by institutional processes at *all* scales, including the national scale that it simultaneously contradicts.

Broadly, this model of space facilitates an understanding of globalization which allows different places and space to be differentially affected by global processes. In other words, the extent to which places are separately incorporated into transnational and national urban hierarchies will define their locally specific outcomes. Thus any particular city must be examined in the context of the coexistence of these sets of spatial arrangements. But processes and institutional practices are similarly reconfigured in the intersection of these two models. I suggest that in order to fully comprehend the processes at work, it is crucial to investigate citizenship through the lens of this complex spatial arrangement. In other words, citizenship is still governed to some extent by individual's relations to national civil society. Simultaneously, however, individuals are members of the global labor force, which positions them in a direct relationship with the processes and institutions that are part of the global model of space. Global capitalism incorporates global and local scale economic practices, and the political institutions that

manage them. Thus individuals are subject to, and can theoretically make demands on, global political institutions and local states, as well as the nation-state.

The model which I will use to investigate contemporary citizenship is that of a matrix, where the processes controlling civil, political, and social citizenship (on one axis) are constructed at global, national and local scales (on the second axis). However this matrix is complicated by the potential contradictions that arise from not only different scale processes, but also from the different sets of interests proceeding at each scale. Thus, for instance, the national state does not only coincide with and contradict global processes; there are also different branches of the national state with potentially contradictory interests. The ambivalence of borders and territories creates an ambiguous system of societal processes, but one that is specifically geographical, in that it is thoroughly conditioned by its spatial organization. These trends raise significant questions concerning sovereignty and democracy. However, global capital appears to have seized the advantage and is manipulating the geographical ambiguities, yielding two important questions. First, how is the nation-state to be preserved as the site of democracy or, if that is no longer possible, how can new scales of organization be rendered democratic? Herein lies the second question: how can the processes of globalization, which seem to be inevitable, be seized in the interest of people rather than capital?

It is in the context of different scales of organization for different state functions and activities that we can resituate the potential for non-citizens to make claims – effectively to make citizenship demands – against a heretofore nationally organized state. Although

the transformation of citizenship also affects citizens, it is those individuals who are formally non-members of the civil societies they have regular access to whose situation foregrounds the full complexity of contemporary citizenship. Therefore, in the context of claims-making by immigrants, it is precisely the discontinuity of scaled economic and cultural activity with the scales of political organization that facilitates non-nationals' claims against the nation-state. At one level, the ability of non-citizens to make citizenship claims is dependent on the perseverance of the nation-state, but in the compromised form that allows their position in the global labor force to operate as the basis of their claims against the nation-state. However, given the transnational model of space, and the partial shift toward extra-national institutions, it is also crucial to consider the possibility of the power of individuals in the context of transnational systems.

Argument and structure of the dissertation

The theoretical framework established here will operate as the basis for the central question of this dissertation, which is how scale transformations in the system of societal organization have affected claims to citizenship. More specifically, the dissertation will juxtapose ideas about expanded citizenship against a backdrop of the shooting of Amadou Diallo, a Guinean immigrant living in New York City and working as a street vendor, by the New York Police Department (NYPD), in order to examine the quality of contemporary citizenship and the possibility for directing new forms of claims against the state. At one level, this case is simply an example of the lack of civil rights available to young black men and Latinos in New York. As such, Diallo's shooting is an example of the treatment of the downgraded labor force in a global city. Further his killing highlights

the ways in which civil, political and social rights are, for some individuals, separated and afforded at the discretion of the local state. However, given his immigrant status, Diallo's presence in New York also reflects the ambiguities that encourage immigrant labor to enter the labor force, while simultaneously renouncing illegal immigration in order to pacify national citizens.

After the shooting of Diallo, Rudy Giuliani, the Mayor of New York, was called upon to explain the denial of Diallo's civil rights. Subsequent protests brought global attention to the case, and demands for state accountability were vociferous and sustained. The Diallo case is also an example of how non-nationals are now able to demand certain rights from their place of residence. The case also exhibits the ways in which local states are the sites of these claims, and that agents acting at multiple scales are able to demand accountability from the local state. It appears that transnational processes and institutions may be available to individuals as well as global corporations. Despite the protests that incorporated a multiplicity of interest groups, organized at different scales, the four officers who shot Diallo were acquitted. This suggests that there may be limits to an apparently empowered transnational condition, with limited success in claims-making, given the lack of democratic institutional forms and ultimate accountability.

This dissertation adopts a somewhat unconventional format. It is written in two parts, with Part I providing an empirical case that serves only as a backdrop, or parallel reference for the main analytical section in Part II. That second part comprises three 'stand-alone' chapters, each engaging a relatively discrete sub-section of the

globalization/citizenship literature. Part 1 comprises three chapters. Chapter 1 provides a roughly chronological overview of the citizenship literature. Starting with T.H. Marshall's classical analytical work conducted on the expansion of modern citizenship in post-World War II England, the chapter proceeds to consider the resurgence of citizenship as a topic of thematic interest within political philosophy and related fields, where interest in the concept derives from “the demands of justice and community membership - the central concepts of political philosophy in the 1970s and 1980s, respectively” (Kymlicka and Norman, 1994:352). Theorists from different camps aimed to project liberalism, communitarianism and republicanism as the dominant politico-theoretical model for securing democratic justice through the rights and responsibilities of citizenship. However feminists and cultural pluralists interjected with the now common refrain that the implicit universalism written through the unproblematized notion of 'community' in all these models invoked a hegemonic subject that failed to reflect the stratified nature of society and, consequently, of access to citizenship.

Recognizing the relative merit in the radical critique of the universal subject, I draw two strands from the distinct foci in this debate – *citizenship-as-activity* and *citizenship-as-identity*, respectively – that serve as analytical tools for comprehending the mutually constitutive components of citizenship. Even while the ways in which 'activity' and 'identity' are interimbricated were being worked out, theorists began to question the assumption of the nation-state as the automatic locus of citizenship, on the grounds that global processes were beginning to alter the agents in the capital-state-labor relation, and that the practice of citizenship increasingly exceeded the nation-state. For some,

“Citizenship is said to be increasingly *denationalized*” (Bosniak, 2001: 238, my emphasis). This new focus on the *scale* of citizenship draws an extra component into the interimbricated analytical strands of citizenship, but also draws attention to the way that our theories need to develop in order to negotiate emergent social conditions. After all, citizenship has never been static (Marston and Mitchell, 2004) and its modern, national form is merely the construct of a historical moment.

The way in which this attention to the impact of globalization on citizenship has manifested draws out the two main theoretical issues that are discussed throughout the dissertation. First, I find theories that consider the 'new spaces' of citizenship, to be peculiarly aspatial, at least in the specific sense deployed in contemporary geographical thought concerning the spatiality of social phenomena. A second related observation is that this aspatial perspective perhaps inevitably tends to underemphasize the production of space, particularly that enacted by the state, and thus the questions of difference explicitly woven into the subjectification process. As such, the value of input from new theoretical contributions has been undermined by the ways in which they have tended to abandon the advances made in 'pre-global' traditional theory and subsequent radical critique. Having raised these questions, the remainder of the dissertation seeks both to understand the transformation of citizenship under globalization, and to consider the lacuna in theoretical contributions that exist outside recognition of the construction of citizenship through its interwoven activity, identity, and scale.

New theoretical interventions have largely been oriented toward understanding the impact of globalization as expanding access to citizenship – both with regard to *who* could access citizenship, and the *scale* at which it is accessible. However, contrasting theoretical assertions with the reality of actually existing conditions brings this perhaps pre-figured focus into sharp relief, and draws attention to the *quality* of the citizenship experience. In chapters 2 and 3, I effect this juxtaposition of theory and ‘actually existing’ conditions first by detailing the case of Amadou Diallo, the Guinean immigrant killed by officers from the New York Police Department in February, 1999, and second, by expanding the empirical focus to the broader strategies and tactics of policing in New York City under the Giuliani mayoral administration. The objective here is to show that Diallo’s death was symptomatic of the broader construction of civil rights in New York City, as an indication of the larger stratification of access to citizenship rights, but also to foreground how civil rights work as the set of rights that particularly underpin citizenship as a whole (Marshall, 1950).

Part II does not attend to this particular juxtaposition of theory and practice directly. Rather the case of policing in New York City serves mainly to express the manifestation of the institutional demise of citizenship as a problem to be taken seriously in the light of celebratory accounts of citizenship under global conditions, although I do return to the question of policing New York for a closer analysis of urban citizenship. I examine in turn what I classify as the three main theoretical interventions on the globalization/citizenship intersection: the debates on postnational, cosmopolitan, and urban citizenship. Without questioning the continuation of the nation-state as the formal

scale of citizenship, each of these three sets of theories argue that the impact of globalization has shifted the organization of citizenship away from the national scale, in part: postnationalism and cosmopolitanism argue for the increased importance of supranationalism, while urban citizenship focus on the rising importance of the subnational scale.

The question of temporality is key to the framing of my analysis. Chapters 2 and 3 detail conditions during the period prior to the terrorist attacks in the city on September 11, 2001, precisely to show how ‘post 9/11’ rhetoric, that apparently attends to the current threat to civil liberties with the justifying catch-all of ‘national security’, belies the history of the existing strategy of selectively denying civil rights in the city. Even if the targeted population has been broadened since 9/11, considering that date as a moment of change obfuscates the way in which the institution of citizenship had already been undermined through the selective application of rights. However a different logic informs my understanding of the U.S. in the international arena. Prior to 9/11 the U.S. presence in the global sphere was characterized by a contradictory blend of extremist versions of militarist unilateralism and neo-isolationism that replaced post-war liberal internationalism (Kupchan, 2002). However, ongoing U.S. opposition (along with China and Russia) to the International Criminal Court (Ralph, 2003) for example, reflects the way that this curious blend of foreign policies allowed the projection of U.S. interests onto the global sphere long before 9/11. There is no need, then, to endorse conspiracy theories in order to recognize that the justifying discourse for the ‘war on terror’ exposes a pre-existing unilateralist bent in foreign policy. As such, I argue that the post 9/11 era

has revealed pre-existing tendencies towards the impossibility of ‘global citizenship’ as much as it has obscured the pre-existing retreat from ‘urban citizenship’. Following this line of argument, chapters 4 and 5 examine the global scale in the post 9/11 era, and chapter 6 focuses on the pre-9/11 urban scale.

In chapter 4 I examine the contentions of postnational citizenship theory in the light of the U.S. administration’s treatment of prisoners from the ‘war on terror’, concentrating mainly on the prisons at Guantánamo Bay. I suggest that the U.S. state’s unmitigated attack on the Guantánamo prisoners’ most basic rights stands firmly at odds with the notion of postnational citizenship emerging via the application of international human rights. Rights formally acquired from the international scale are offset by placing limitations on rights against the nation-state. Particularly concentrating on the spatial production and legitimation of these conditions, I argue that rather than the ‘deterritorialized’ subject of universal personhood that underpins postnational theory, the U.S. state has ‘reterritorialized’ the Guantánamo prisoners in multiple ways. Via these spatial manipulations, the U.S. state constructs itself as simultaneously present (controlling the subjects) and absent (without responsibilities to the subject). This disaggregation of the state/subject relationship, and selective application of some of its constituent parts, redefines citizenship and rescinds its normalized condition. Ultimately, the U.S. state’s capacity to redefine both itself as a legal body and the international order, reflects its capacity to implement its own interests, directly *contra* postnationalist assertions of waning national sovereignties.

Extending the thematic focus concerning the hegemonic state's production of the postnational order expounded in chapter 4, in chapter 5 I broaden the focus by juxtaposing theories of cosmopolitan citizenship against a necessarily revisionist take on the war in Iraq. Cosmopolitanism works from the premise of a commitment to individual and collective responsibility to a common humanity, and thus specifically considers the organization of globalized democracy on the assumption that global processes have attenuated the nation-state's power. This chapter is markedly distinct from chapter 4 because – even unlike other normative theories of citizenship – having proven the global interdependence of phenomena, cosmopolitan theory is written entirely in the subjunctive. I start by discussing the normative theoretical negotiations that characterize confrontation between cosmopolitanism and the entrenched statism of liberal nationalists over what is the most appropriate scale for the organization of democracy. However by showing that the global order is characterized by U.S. hegemony to the extent that not only are national interests cast as 'global interests', but that this particular, hegemonic vision is cast *as* cosmopolitanism, I suggest that the U.S. state blends material and discursive production of space in ways that resist the feasibility of the cosmopolitan ethos.

Chapter 6 reverts closer to the story of policing New York City established in the first part of the dissertation. However, even as the chapter focuses on the city globalization is ever-present as the possibility of 'urban citizenship' is argued in relation to the way in which global processes inflect the urban order. Global cities theory, and particularly the work of Saskia Sassen, has had a strong influence over theoretical understandings of

‘citizenship in cities’, but interest from the less economically focused genre of work on transnationalism and immigration has thematically oriented questions of urban citizenship towards political and cultural identities. Still others concentrate on the institutional viability of the city as a space for citizenship. Despite marked differences, these approaches share the idea of the possibility of the city emerging as a scale for asserting citizenship as it has been politically and/or economically reinvigorated under globalization.

My argument in chapter 6 is that this ‘opening up’ of the city under globalization is part of a broader rescaling process that has led to wholesale changes in both the function and the form of the city, with marked consequences for the reproduction of labor. I argue that citizens have been refigured as ‘clients’, and rather than acting as a buffer against the market the state has become the agent of discipline in a much more expansive sense. Thus while the city may have emerged as a new space in the context of the global political economy, the condition of that new space and the available citizenship therein are thoroughly ordered by a neoliberal logic. Although it is the form of the *city* that is re-ordered around the issue of disciplining labor, I suggest that both the impetus for this re-ordering and systems of differentiation remain organized around the nation-state.

The dominant theme throughout this dissertation is the way in which the re-organization of state space in the global political economy is reconstructing the institution of

citizenship. For many, paying adequate attention to the possibilities of ‘active citizenship’ precisely derives from adopting a ‘bottom-up’ analytical approach (for example, see Ehrkamp and Leitner, 2003) – precisely the opposite of that which I aim to do here. There is definitely merit in the ‘grassroots’ argument, particularly if it is understood in the context of Katharyne Mitchell’s (2004) exposition of the contemporary order as established through the messy intertwining of global neoliberalism and a persistent national liberalism that derives from the complex inter-relation of states and subjects. What concerns me here, though, is the tendency for contemporary analyses of citizenship to deploy these arguments in a way that renders the state – and particularly the nation-state – invalid, or limited. The danger is that processes which structure subjects are simply left out of the analysis, while the state’s production of space continues to thoroughly order the framework for both accession to citizenship, and its quality. This dissertation aims to redress this lacuna, by questioning exactly how globalization has transformed citizenship.

Part I: Actually existing citizenship

CHAPTER 1

THEORIES OF CITIZENSHIP

There are many ways to categorize approaches to, or theories of, citizenship, with equally many logics for the diverse classificatory systems that have begun to spring up to contain the recently burgeoning literature concerning citizenship. Arguably then, any such classification can be declared arbitrary, and its adoption is certain to shape subsequent arguments and theoretical conclusions. Moreover, *any* such attempt at classification of citizenship-oriented literature is problematic at a time when both an explosion of academic interest in citizenship has yielded a multitude of ideas, theories, and concepts, and the widespread acceptance of interdisciplinarity has yielded a substantial literature that, although the condition of citizenship is barely the focus, has significant consequences for our understanding of contemporary citizenship.

With these caveats in mind, my objective in this chapter is to establish a simple classification of citizenship theory, which follows its roughly chronological, development, and will serve as the basis for the remainder of the thesis. There are two main reasons for establishing this theoretical classification. First, I surmise that the tangential attention to citizenship from inquiry focused elsewhere has effectively reduced the contribution of theoretical premises from original debates in ongoing accounts of citizenship, with the effect that a potentially fruitful symbiotic relationship between literatures has emerged partially and haphazardly. Amassing a theoretical structure within

which the connections between different literatures is laid out clearly might yield more effective methods for their productive interpellation.

Second, and more crucially to the objective of this dissertation, the evolution of citizenship theory has been structured by the ghost of its original traditions, such that it has been far too easy to attend only to matters contained in the pre-established frame. Perhaps because of the relatively limited impact of geography and geographers on the subject, analyses of citizenship have been peculiarly aspatial, even as space and its transformations, have become increasingly crucial to the organization of contemporary social life. The impacts of globalization, immigration and multiculturalism have, then, perhaps not been understood as fully as they might have been, because the structure of traditional analysis has been too simplistically lain onto their transformative actions. By foregrounding the trajectory of citizenship oriented inquiry, and by exposing its limitations for dealing with the contemporary conditions of citizenship, I aim to fully expose the ways in which citizenship has transformed under global conditions, and how theory may better keep abreast of these empirical changes.

Traditional political theory

A rough chronological account of contemporary theories of citizenship begins with T.H. Marshall's work in post-war England. Whether it is explicitly acknowledged, contemporary debates concerning citizenship are, more or less, indebted to his analysis, forwarded in a series of lectures given in 1949 and first published in 1950. Marshall established that the accomplishment of formalized political equality in England had not

simultaneously engendered substantive socio-economic equality. Moreover, he suggested that socio-economic marginalisation generated cultural exclusions, which served to deny rightful access to an allegedly common culture. According to Marshall, “Citizenship is a status bestowed on those who are full members of society. All who possess the status are equal with respect to the rights and duties with which the status is endowed” (Marshall, 1992: 18). Working on this premise, he suggested the extension of citizenship rights as a solution to the discrepancy between formal equality and material inequality.

Marshall argued that citizenship could be divided into three elements, namely civil, political, and social, according to the following definitions:

The civil element is composed of the rights necessary for individual freedom—liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to justice... By the political element I mean the right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body... By the social element I mean the whole range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in the society.

Marshall, 1992: 8

According to Marshall’s thesis, civil citizenship was extended in the eighteenth century and institutionalized through the formalization of the legal system; and political citizenship, in the form of electoral rights and the extension of the franchise, emerged in the nineteenth century. But it was not until the appearance of social citizenship, facilitated by the creation of the welfare state in the twentieth century, that socio-economic inequality was adequately addressed. Marshall’s analysis led him to conclude that reduction in income inequality and the extension of common culture had made possible “the enrichment of the universal status of citizenship” (Marshall, 1992: 44). In turn, he

claimed that this ‘enrichment’ had made the perpetuation of unacceptable levels of socio-economic inequality less feasible. Further, he concluded that while the rights of citizenship were both valuable and comprehensible, the associated duties were too imprecise and based on an untenable system of allegiance and obligation.

Marshall’s model has been critiqued for its evolutionary perspective which appears to suggest that the extension and expansion of citizenship rights are both inevitable, and irreversible². But as Susan Smith (1989) notes in the context of the recent abrogation of social citizenship, social rights are especially susceptible to revocation (or extension), owing to their statutory nature. Critics have particularly challenged the notion that social rights inevitably result from class struggle (Giddens, 1982; Mann, 1987). Instances of insurrection may yield repression rather than the acquisition of further rights, and rights “may be extended for reasons only partly if at all associated with social struggle” (Barbalet, 1988: 108). This potential problem in Marshall’s theorizing relates in part to his model’s Anglocentrism. As Mann (1987) observes, Marshall explains the evolution of citizenship in England, but an extrapolation from historical specificity to a theory for Western capitalist society is misplaced. Through an analysis that considers the processes involved in securing and extending citizenship in varying states, Mann concludes that the English example is only one of a number of histories, and that to explain divergent national experiences “emphasis should be placed upon the strategies and cohesion of the ruling classes” (1987: 339).

² Some claim that Marshall’s work does *not* suggest an evolutionary model as critics have claimed (see, for example, Barbalet, 1988). Regardless of this disagreement, the larger point remains that broader sets of rights do not accrue automatically and uniformly as an extrapolation from civil rights.

The suggestion that social struggle may not result in the expansion of citizenship rights has also led to demands for greater attention to the functions of the state, given its crucial role in determining the processes of social participation and the formation of citizenship rights (Barbalet, 1988; Turner, 1990). Kelly (1995) goes further to suggest that existing citizenship theories are inherently problematic because of a general skepticism concerning the state's capacity to function in either the common interest, or the interest of individuals. Following the assumption that the citizen has ultimate loyalty to the state he suggests that an adequate theory of the state must precede a theory of citizenship. In contrast, Turner (1990) suggests that the most significant aspect of state-society relations in an era of disorganized capitalism is the state's diminished scope for maneuver, which has left it unable to fully protect the interests of its citizens. Taken at face value, Kelly's skepticism and Turner's assumptions of a diminished state imply the waning value of citizenship. However, even though they do not emphasize the role of capital themselves, their recognition that the capacity of the state is constrained by capital, can serve as the basis for an understanding of citizenship as constituted in the inter-relations between the state and capital, rather than in a decontextualised state-society relationship. Without accepting the notion of a declining citizenship, or the caricaturish representation of capitalism as disorganized, establishing an emphasis on the state-capital relation can provide a point of departure from which to draw out the full complexities of citizenship.

Turner (1990) responds to Mann's critique of Marshall's failure to attend to the role of the 'ruling class' in the granting of citizenship. He notes that Mann's conceptualization of

citizenship as a passive condition, where a ruling body indulges its citizens with rights, disavows the possibility of active citizenship, where rights accrue as a consequence of social struggle. Thus Turner goes beyond Marshall's assumption that class-based action necessarily yields an extension of citizenship, yet he does not hold with the thesis that such an extension is solely dependent on a benevolent or compromised state.

Furthermore, in concordance with his notion of the viability of 'struggle from below' he stresses that social action is not restricted to class-based activity. Turner offers further nuance to a theory of citizenship by suggesting that the character of citizenship varies between states according to cultural structurings of the relationship between public and private space, and the role of the state in relation to these different spheres of activity.

Turner proceeds to combine "these two aspects of citizenship (the private/public division, and the above/below distinction)... [to] develop a heuristic typology of four political contexts for the institutionalization or creation of citizenship rights" (1990: 200). It is not quite clear why Turner wants to create this taxonomy of citizenship, and it is even less clear that the result is useful. Apart from a general recognition that the material conditions of citizenship depend on its specific historical constructions, the notion that the condition of citizenship in one state is similar to that of another which falls into the same category, is without substance (Yuval-Davis, 1991). However, Turner's identification of public/private and active/passive citizenships foregrounds significant debates which have been taken up in citizenship theory, and which go beyond the abstract theorizing of citizenship based on rigid and fixed understandings of the state, civil society, and their inter-relations.

Marshall's society-centered perspective has been central in a debate concerning how citizenship rights are granted, and even as his critics have identified flaws in Marshall's theorizing, usually they have retained his framework. But a further criticism is less commonly made among traditional political theory, namely that Marshall's framework pays scant attention to matters concerning the *quality* of citizenship. Theories that focus on the dynamic of the struggle between the state and civil society are premised on comparatively fixed understandings of what constitutes citizenship. However, there remains considerable normative debate over what citizenship entails. At one level these debates operate in terms of the rights and responsibilities of citizenship; in other words what the relationship between the state and civil society should look like. Marshall's society-centered approach, which advocated a specific understanding of 'citizenship as rights', is not accepted universally. Conflicting opinions within contemporary debates reflect divergent political commitments on matters of what, following Kymlicka and Norman (1994) I will refer to as 'citizenship as activity'.

But a second set of debates rejects the implicit universalism in Marshall's work in terms of the constitution of civil society itself. These theorists focus on the stratification of civil society, which they claim affords a complexity that Marshall overlooked by utilizing an unproblematic notion of 'community'. The point of departure for theorists concerned with difference within contemporary society is Marshall's assumption of the coincidence of civil and political society. He does not assume that all those in civil society have equal access to political citizenship, but he fails to consider the possibility of differentiated

access to civil society itself (Yuval-Davis, 1991). Whereas Marshall presumed that cultural exclusion could be eliminated through the reduction of socio-economic inequality, theorists concerned with difference recognize that integration is not the inevitable result of a reduction in material inequality (Kymlicka, 1998). Matters of citizenship are bound up in deeply politicized questions of allegiance, community, identity, and difference, as much as in politico-legal definitions. Kymlicka and Norman's (1994) conceptualization of this particular avenue of inquiry as 'citizenship as status' perhaps risks reifying a formalized legal distinction between citizens and non-citizens that fails to encompass the differentiated access to citizenship rights available *within* these categories. Therefore, I prefer to understand the stratification of access to citizenship through the concept of 'citizenship as identity'.

‘Citizenship as activity’: Traditional normative inquiry

The notion of citizenship operates as both a political framework for modern society and as a means for social organization. As Shafir (1998: 3) notes: “Organizing social life around the political goal of securing freedom for the citizen generates a general vision of humanity”. It is not surprising then that the nature of citizenship as a universal, or ‘general’, concept is subject to considerable debate. Divergence in contemporary understandings of citizenship as either a system of duties, or as a system of rights can be traced back to the original Greek and Roman conceptualizations. In the Greek context, citizenship involved replacing tribal loyalties with the notion of a civic community. The underlying principle was that emancipation from the private sphere (*oikos*) into the public sphere (*polis*) would facilitate a higher quality of life, whereby “the practice of freedom,

in collective rational and moral deliberation over a common destiny is its own reward” (Shafir, 1998: 3). Alternatively, the Roman vision of citizenship was premised on legal, rather than political freedom. This was in part due to a change in principles, whereby freedom to participate in government of the city-state was replaced with freedom to enjoy the legal status of citizenship, and thus be fully incorporated into the Roman Empire. With an emphasis on status and rights (especially the right of ownership), the Roman individualist vision contrasted with the Greek notion of the good of the community (Shafir, 1998). The distinction between the right and the good, and debate over where priority should lie constitute the basis of the contemporary debate between liberals and communitarians.

Rawls' liberalism

Debate over the quality of citizenship was reinvigorated by Rawls' revision of the theory of individual liberalism, first offered in his *A Theory of Justice* in 1971. Rawls (1998) retains the liberal principles of individuals as the bearers of rights, and the toleration of difference, while working towards a public orientated conception of justice. Constituted in a theory of social cooperation, justice is intended to operate as a basic framework within which individuals can act in accordance with their own conception of the good, while still adhering to a communal understanding of the right. According to Rawls' notion of 'justice as fairness' individual interactions can, indeed must, result in mutual benefit if everyone is prepared to adhere to a system of cooperation; the private individual is part of the public community. Rawls has a specific notion of what justice entails. According to his definition, justice is a system where individuals have equal

access to basic rights and liberties, and social and economic inequalities are only admissible insofar as they are equally distributed, and operate to the greatest benefit of the least advantaged members of society. He affords the principle of individual rights precedence over that of safeguarding communal advantage. Classical liberal doctrine prevails here.

In order to avoid utilitarian understandings of justice, the task for Rawls is to establish how a system of justice, or the universal right, can derive from multiple, competing understandings of what is good. Therefore his objective is to determine how an ‘overlapping consensus’ can be achieved, in order that citizens with different belief systems may proceed freely and equally. Rawls claims that if citizens have the capacity for a sense of justice (universal) and a conception of the good (particular), they will be able to create a free and equal society from what he refers to as ‘the original position’. By this he means that a just polity can be derived from a scenario whereby social positioning and contingent advantages are eradicated from the constitution of the basic structure.

Thus:

the fair terms of social cooperation are conceived as agreed to by those engaged in it... But their agreement, like any other valid agreement, must be entered into under appropriate conditions. In particular, these conditions must situate free and equal persons fairly and must not allow some persons greater bargaining advantages than others. Further, threats of force and coercion, deception and fraud, and so on, must be excluded.

Rawls, 1998: 61

From this understanding, citizens are free to reconceive their conception of the good, to make claims, and to fulfill their responsibilities (which Rawls reduces to restricting claims to what is reasonable under the principles of justice). As long as the basic structure

of justice is adhered to social unity and justice will prevail, and citizens will be afforded their rights equally.

The communitarian critique of liberalism

The most thorough, although not necessarily most coherent, response to Rawls' liberal theory of citizenship has come from communitarians, who suggest that the focus on the individual rights of citizenship should be supplanted with an emphasis on the duties associated with allegiance to a community. The challenge to the liberal notion of individualism and human rights is premised on an understanding that "we cannot justify political arrangements without reference to common purposes and ends, and that we cannot conceive our personhood without reference to our role as citizens, and as participants in a common life" (Sandel, 1984: 5). The divergence in opinion here reflects the liberal adherence to the Roman notion of citizenship as individual legal status, and the alternative communitarian utilization of the Greek model, premised on public, political life being the highest form of existence. Communitarians justify their choice of the Greek model with the claim that "democracy requires a strong and lively civil society... for the sake of its coherence and stability over time" (Walzer, 1995a: 1). Therefore, according to a communitarian notion of individuals as members of a community, Rawls' liberalist notion of deriving consensus through the articulation of different individual interests is clearly insufficient, even if his aim is to achieve mutual benefit.

For my purposes communitarian theorists can be roughly divided into two groups, although the proponents of communitarianism would undoubtedly disagree with this

limited classification. Civic republicans emphasize the need for political participation, while civil society theorists propose that the virtues necessary for democracy are found and learned through participation in civil society itself. However, both civic republicans and civil society theorists adhere to the same principles of public life as the highest form of existence, and social unity as realizable through participation in society.

Perhaps following the most anti-liberal version of communitarianism, MacIntyre (1984) claims that the modernist tendency to individualism has destroyed a universal *telos*, without which human life lacks unity and intelligibility. In a more temperate interpretation, Oldfield (1998) suggests that the liberal understanding of individuals as autonomous agents neglects to consider the essential dimension of identity as part of a collectivity. According to communitarians, individuals construe themselves as more than simply bearers of rights. Rather individuals understand that they have duties in terms of their identity as members of a family, a religion, a nation, or some other community allegiance (Oldfield, 1998). Therefore, although identity is not *only* constituted through society, it is inextricable from the communal bonds that contextualize it (Sandel, 1982). Unless the explicitly social role of individuals is attended to, community membership is reduced to an instrumental state, only useful in securing the individual's good life and not for any wider group-based purpose.

Portis (1986: 458-471) suggests that a completely instrumental commitment to social life is impossible given that "Individuals must define themselves in social terms, and for this reason alone they must value relevant social entities as meaningful in themselves... the

range of self interests is constrained by what sort of person one believes oneself to be”. Thus societal consciousness and principles arise out of socially defined roles, and any claims to rights or autonomy are necessarily understood within the context of these roles (MacIntyre, 1984). Therefore, by implication, Rawls’ ‘original position’ must be untenable because individuals cannot be understood, or make decisions, external to their social context.

Liberal individualism established the individual as sovereign. Thus for liberals, citizenship operates as a status which ensures individuals the freedom from state or societal encroachment on their rights. However, in communitarian understandings of citizenship, this utilitarian notion of political life is replaced with an understanding of participation in public life as the good life itself (Oldfield, 1998). For advocates of civic republicanism, participation explicitly involves political engagement. According to Oldfield (1998: 79), there are two central tenets to the civic republican tradition. Firstly “citizenship is an activity or practice, and not simply a status, so that not to engage in the practice is, in important senses, not to be a citizen”. And secondly, to ensure that citizens engage in the practice of citizenship, they need both the opportunity and the motivation to participate”. He suggests that the practice of citizenship can only be secured if citizens recognize and perform their duties, and education, in a broad sense, is the means by which citizens can and should be reminded of these obligations.

The notion of civil society similarly requires active engagement. According to civil society theory, social and political participation remain essential for the preservation of

freedom, well-being, and responsibility (Selznick, 1995). However, civil society theorists appear to be more realistic about the disengagement that exists in contemporary society, and suggest that an exclusive focus on political activity draws attention away from other spheres of activity. Moreover, even if political engagement was the primary focus of all individuals, these theorists contend that citizens are relatively ineffectual in the face of state power, in terms of decision making. Instead, civil society theorists suggest that the good life is established in the social sphere itself. Therefore they extol the notion of “people freely associating and communicating with one another, forming and reforming groups of all sorts, not for the sake of any particular formation... but for the sake of sociability itself” (Walzer, 1995b: 16). The contention here is that the strength of all forms of activity – social, political, economic, and cultural – depends on the viability of voluntary associations. According to Walzer (1995b) ‘critical associationalism’ engenders alliances that are both cohesive and powerful enough to challenge the inequalities established by the market, and resist nationalistic intolerance to pluralism.

Proponents of civic republicanism are concerned to distinguish between a general sense of benevolence and the social bonds which constitute communities: “citizenship is not about altruism: it is about acknowledging the community’s goals as one’s own, choosing them, and committing oneself to them” (Oldfield, 1998: 81). Citizenship is cast as the choice of one political identity in preference to another, which explicitly entails recognizing who is a member of a specific community and who is not. Under this definition, choice of political identity is a central attribute of citizenship, and one that secures individual autonomy. According to Oldfield, this choice will be made via war or

revolution if necessary. Contrary to liberal assumptions that the imposition of obligations threatens autonomy with authoritarianism, communitarians suggest that obliging citizens with duties safeguards their autonomy by establishing a democratic political community with a shared identity. Autonomous activity requires some form of moral dimension to establish it as compatible with life as a community member. This moral authority derives from shared understandings and institutional forms rather than the preservation of individual rights which liberalism advocates, and which facilitates moral chaos. The liberal understanding of contractual arrangements between individuals cannot achieve the strong participatory democracy necessary for the creation of a social environment that allows degrees of freedom (Barber, 1984).

Oldfield (1998) draws directly from Aristotle's description of the *polis* to suggest that friendship is the underlying principle for the successful creation of community. Although individuals differ, their membership in a single political community generates a relationship that incorporates respect for difference, and thus enables autonomous action. This notion of friendship is premised on commitment "to the fellow citizens, who – in choosing amongst themselves how to conduct their shared lives in the spirit of justice – create and sustain a community" (Oldfield, 1998: 84). Plant (1974) contends that the authority necessary to maintain a community founded in concord is derived from rules established in consensus, and which do not therefore threaten individual autonomy. Political judgment is therefore necessary for securing the common aims and appropriate ways of life of a shared political community, and is an essential element in the practice of

citizenship. Thus autonomous individuals are capable of living together, as a community, by using judgment to come to a consensus.

Communitarians claim that in order to ensure that citizens are capable of participation they must be equipped with the necessary rights and resources, but that an appropriate institutional setting is also required. They suggest that this requires political decentralization in order that self-government can occur, although the definition of 'political' is a broad one that encompasses "any public tasks and activities that a community wishes to engage in" (Oldfield, 1998: 87). In addition, civil society theory works to establish more power to its associations through socializing the economy, and resisting nationalist intent by encouraging pluralism (Walzer, 1995b). Given the non-political (although not inherently apolitical) focus of civil society theory, its adherents treat authority, in the form of the state, as a sphere for supporting the associations of civil society. Their understanding of the state is drawn from an assumption that civil society itself has insufficient resources to redress inequality, ensure collective security, and establish the rules for associational activity (Selznick, 1995). However, the state cannot survive if it is thoroughly alienated from civil society, and therefore the two spheres interact in mutually supportive ways (Walzer, 1995b). For civil society theorists, civic virtues are the essential element of citizenship; less attention is paid to the notion of autonomy, given the voluntary nature of associationalism. In other words, adherence to the ideal of community is not so much an obligation or duty, as a responsibility that citizens willingly partake in.

The new liberal response

In response to the communitarian critique that the liberalist focus on rights merely involves a commitment to neutrality, more recent liberal theory has also turned to considering the virtues necessary for responsible citizenship. For instance, Macedo (1990) suggests that ‘public reasonableness’ entails individuals articulating notions of the good, and being willing to entertain alternative understandings. ‘Public reasonableness’ is therefore similar to the communitarian notion of consensus. Despite this apparent move to convergence, liberal and communitarian understandings of citizenship retain underlying theoretical differences. In a direct rebuttal of the communitarian attack on liberalism, Thigpen and Downing (1987) claim that roles are given, rather than chosen, identities. Therefore defining individuals in terms of their roles as members in a community denies the possibility for autonomy. Thigpen and Downing (1987: 647, original emphasis) emphasize the persistent difference in communitarian and liberal theoretical derivations of autonomy: “While liberals want to protect the right of *individuals* to choose their good, communitarians emphasize the right of the *collectivity* to autonomy”.

Thigpen and Downing claim that liberal notions of individualism and human rights are essential requirements for the protection of freedom, on the understanding that the communitarian ‘shared experience’ offers inadequate protection from authoritarianism. Similarly, with respect to participation, they claim that moral individualism is necessary if authoritarianism is not to become an imminent possibility. In defense of Rawls’ suggestion that mutual benefit can derive from individual rights, Thigpen and Downing

focus on what they perceive to be a misreading of the ‘original position’. They emphasize that Rawls’ understanding of the ‘original position’ is premised on an ‘abstract self’, rather than a ‘living self’. In other words, liberals maintain the understanding that individuals can separate their political, public identity, from their personal, private identity, in order to establish fairness and justice. According to this conceptualization, “although people cannot escape social ties, they can critically evaluate shared understandings” (Thigpen and Downing, 1987:645).

Ultimately, liberalist notions establish a market-based, clientalistic notion of citizenship and allow the state to retreat from any responsibility to its citizens. Moreover the notion that individuals will, or even can, resist their private interests in order to establish a just polity is overly optimistic. However, the communitarian alternative places emphasis on a ‘common good’ that provides no resistance to undemocratic formations and that in certain circumstances may be neither ‘common’, nor ‘good’. While debate between liberals and communitarians persist, there appears to be little advance in terms of extending and expanding citizenship. As Kymlicka and Norman (1994: 369) suggest: “In the absence of some account of legitimate and illegitimate ways to promote or enforce good citizenship, many works on citizenship reduce to a platitude: namely, society would be better if the people in it were nicer and more thoughtful”.

A further problem with these theoretical viewpoints is their treatment of identity. While liberalist citizenship is based on an abstract, universal individual, communitarian theorists consider identity to be an unproblematic group phenomenon. Understandings of

consensual or just polities are then premised on an unstratified citizenry. In effect, these approaches conflate citizenship as activity with citizenship as identity, by failing to consider systems of marginalisation that prevent equal access to the duties and rights of citizenship. As such, liberal and communitarian theories are useful in terms of their abstract contributions concerning community formation, the prioritization of property rights, and so forth, but provide little help in understanding the material realities of citizenship

Republicanism

Beiner (1995) understands the liberalism-communitarianism incommensurability as a condition of the ‘universalism-particularism conundrum’, where the liberal intention of establishing universal rights is inconsistent with the communitarian preference for imagining a particularistic community of allegiance. For theorists attempting a normative conceptualization of citizenship, Beiner’s conundrum represents the key problem. Beiner rejects liberalism and communitarianism as unsuitable perspectives on citizenship because their instrumental approaches to political community jeopardize the idea of citizenship itself. Conceptually, he contends, liberal universalism is flawed because the preservation of individual worth rejects the whole notion of an exclusive identity, on which citizenship is premised. Communitarianism is flawed because in celebrating a particularist group identity, the imminent risk of ethno-cultural nationalist uprising threatens the dissolution of citizenship. Thus, Beiner introduces a coherent understanding of identity to citizenship theorizing. His solution to the conundrum involves what he

refers to as the republican perspective, which he locates between liberalism and communitarianism, and according to which:

there is a requirement that all citizens conform to a larger culture, but this culture is national-civic not national-ethnic. It refers to political, not social, allegiance, or, to employ the classical liberal dichotomy, it identifies membership in the state, not membership in civil society.

Beiner, 1995: 8

Beiner's model appears closer to classical liberalism than he might suggest, and therefore barely tackles the universalism-particularism conundrum, and yet it does appear to provide the conceptual room to examine cultural difference. Here it is useful to note Beiner's suggestion that republicanism is exemplified by the Habermasian notion of 'constitutional patriotism'. Habermas (1992) works from an understanding that nationalism is a specifically modern condition of political identification. 'Nation' originally referred to a culturally homogeneous territorial unit, and was conceptually distinct from the notion of political organization until the mid 18th century. As 'nation' became a signifier for political identity, 'citizenship' became a referent for ethno-cultural identification as well as for the practice of exercising political rights. For Habermas, citizenship, borne out of self-determination rather than national identity, therefore requires political consensus but not cultural homogeneity. Here, understandings of citizenship can be seen to diverge from the civic republican tradition which sanctions cultural homogeneity as a condition for 'community'.

Habermas also notes that the notion of citizenship has only recently come to refer to the accrual of rights. Previously it referred solely to political membership in a state,

according to the principles of *jus soli* and *jus sanguinis*. Thus Habermas delinks citizenship and political culture from socio-cultural identities, activities, and rights. This conceptualization seems to offer a useful premise from which a more inclusive understanding of citizenship could operate. On the assumption that individuals only have to conform to a political culture in order to accomplish the status of citizen, there should be no social or cultural limitations to the rights of citizenship. Further, the separation of citizenship and rights appears to hold promise for those who are not full political members in the territory in which they live.

The problem arises when this theoretical understanding of citizenship is put into practice. Habermas contends that citizenship needs to be embedded in a political culture based in freedom, but his conceptualization of how this can be achieved fails to extend beyond the conventional methods of communitarian theory. His contention that the U.S. is an example of how political culture can establish constitutional principles in a multicultural form discredits his theoretically useful contribution. It appears that Habermas fails to fully consider the identity-based stratification which comprises political cultures in democratic states. The constitutional freedom that he identifies as the security for valid consensus, has clearly not established civil, political or social equality. Furthermore, he appears to operate with a narrowly defined understanding of identity, premised purely on an equally narrowly defined cultural difference. This is perhaps a result of his particular focus on immigration and the changing borders of European states. However, it is important to recognize that political cultures in democratic states are equally successful at

discriminating against theoretically free and equal citizens who are socially, economically or culturally marginalized.

This problem may ultimately have to be understood as a limitation to the possibilities of citizenship itself, at least in the form we currently understand it. Such a conclusion would be drawn from an understanding that political culture could only ever operate as a reflection, or in the interests of, specific identities. However before the possibility of securing some form of identity-sensitive political culture is jettisoned, there is some value in returning to Beiner's original specification in order to understand the republican approach to difference. Beiner utilizes two three-fold schema to locate republicanism and, although he is not particularly clear on the subject, they presumably coincide. By overlaying his liberalism-republicanism-communitarianism model with his multiculturalism-republicanism-nationalism model, it is reasonable to assume that Beiner dismisses multiculturalism with the same critique as liberalism. Thus, according to Beiner, multiculturalism relies on individualistic self-interest, which operates to the detriment of a cohesive political culture. My contention here is sustained by Beiner's comment on the relationship between multicultural identities and the political culture of the state:

How far is a society really obliged to go in order to accommodate minority cultures? Is a liberal society required to condone the wearing of veils by Islamic schoolgirls forced by their families to do so?... Should the Hispanic population in the U.S. not be required to adapt to English as the primary language of daily life? If there is no limit whatever to cultural pluralism, then clearly we approach the point where the very notion of common citizenship as an existential reality dissolves into nothingness.

Beiner, 1995: 8

There is some merit in Beiner's contention that a consensual political culture needs to be maintained in order to preserve citizenship as a meaningful construction that can be invoked to secure rights. However, a multiculturalism de-linked from liberalism is not inherently antithetical to a common political culture in the way Beiner appears to conceive it. Rather multiculturalism, or, to avoid the pejorative meaning of that term, the valorization of difference, is antagonistic to *hegemonic forms* of political culture. While Habermas and Beiner are careful to establish that the need for assimilation to a political culture is not the same as cultural assimilation, what they both appear to miss is that political culture is, in itself, an expression of a specific identity. Or, formal and informal rules which dictate how a citizen might act, or what rights they might receive, are prescribed by normalized, hegemonic forms. Thus the practical application of republicanism belies Habermas' contention that the conjoining of national citizenship and national identity (defined in terms of the hegemonic rhetoric of what it means to be a member of a nation) is theoretically inadmissible. Despite having gone beyond the liberal and communitarian automatic conflation of citizenship as activity with citizenship as identity, the republican tradition still adheres to a scheme that invokes identity-based prescriptions of suitable citizen activity.

'Citizenship as identity': The radical critique of traditional inquiry

While justice was the focus for political philosophy in the 1970s, community membership became central in the 1980s (Kymlicka and Norman, 1994:352), somewhat later than in popular discourse. As questions of equality, identity and subjectivity emerged in the academy, theories concerning 'citizenship as identity' attempted to

promote more inclusive understandings than traditional, normative debates had achieved. Citizenship, as subject matter, then became relevant to a number of disciplines including, but certainly not limited to, geography, as social sciences produced the empirical evidence to question the contentions of largely abstract political philosophy. Feminists, in particular, have been instrumental in foregrounding questions of gender inequality in citizenship, while cultural pluralists have adopted a parallel tack into abstract political philosophizing, particularly by introducing questions of race and ethnicity-based inequality. These approaches share a critique of the abstract, or universal, citizen-subject deployed in traditional normative inquiry, and ground concepts of the form citizenship might take, and definitions of the citizen-subject, in understandings of a ruptured civil society. Rather than conflate citizenship as activity and citizenship as identity, the two are shown to mutually constitute each other in the production of citizenship, and theories are broadly engineered toward understanding how this production takes place, as an express attempt at reconfiguring the political culture of the nation-state.

Feminist critiques

Feminists have offered a cogent critique of contemporary citizenship by establishing that the abstract, gender-neutral individual it promulgates is actually constructed in gendered ways that prevent real egalitarianism. However feminist theories diverge in terms of foci and political commitments. In reaction to liberalist constructions of citizenship as a public activity dominated by men and the relegation of women to the private sphere, some feminists have suggested that an alternative vision of politics must be grounded in notions of needs, care and friendship. Feminists working with a civil society based

approach to citizenship have argued that given women's roles as mothers and carers of the family, their identities comprise socially and morally superior values. Furthermore, as these values reflect the fundamental basis of humanity, they should be used to establish a political morality based on women's experiences (Elshtain, 1981). Therefore civil society feminists reject masculinist liberalism grounded in undifferentiated conceptions of justice in favor of a feminist politics of the private sphere that emphasizes love, care and the family. By valorizing the private sphere as a feminine space and by attributing women with certain values, these critics offer essentialist and ultimately restrictive visions of women's identities and their public roles. Moreover, 'maternal thinking' is not inherently connected to democratic activity (Dietz, 1985, 1987). Rather, motherhood is an expression of a particular and unequal relationship between mother and child, and is therefore a wholly unsuitable model for a collective, generalized, and egalitarian democratic citizenship.

Following a communitarian approach, Pateman (1988) aims to expose the thoroughly masculinist construction of citizenship by emphasizing that all aspects of citizenship – the citizen, 'appropriate' citizen activity, and the polity – conform to a masculine figure. Thus women's accession to citizenship and civil society retains the features of gendered inequality, whereby the sphere of femininity remains devalorized. She concludes that the incorporation of women into the realm of citizenship creates a predicament, given that to demand equality is to accept the patriarchal conception of citizenship. Thus women must be like men (although they can only ever be lesser men) to invoke rights, because

demands centered around specifically female attributes are incommensurable with citizenship as patriarchy.

For Pateman, a 'sexually differentiated' conception of citizenship could work to valorize women's distinct identities by recognizing that womanhood offers an equally valuable contribution to the perpetuation of an active civil and political society. And thus the private/public dichotomy, which maintains the patriarchal form of citizenship, would be negated. Pateman's analysis starts from a reasonable premise - that citizenship is a thoroughly masculinist condition, and that the devalorization of the private sphere has maintained citizenship as an unequal condition. However, her thesis has the same problems as Elshtain's in that it retains essentialist notions of women, and restricts them to the private sphere. Furthermore, both Elshtain and Pateman adhere to a communitarian vision that invokes civil society as the necessary sphere for reorganization, without offering a convincing account of how this might lead to political transformation.

Contrary to communitarian feminism that works to valorize women's difference, neo-liberal feminism rests on the premise that equality will derive from a gender-neutral citizenship. Neo-liberal feminists contend that the social system encourages women into dependence on men and the state, and that redress must take the form of equal access to the market and the public sphere. Relegated to the private sphere, and into a dependent role in the family, women have unequal access to the labor market. Therefore, women need both greater access to the labor market, and appropriate levels of compensation for social reproduction (O'Connor, 1993; Okin, 1989, 1992, 1994; Orloff, 1993). However,

the premise that substantive equality will be achieved through the allocation of individual rights fails to negotiate the structural formations of maldistribution that, in practice, maintain inequality. The neutrality on which liberal equality is premised necessarily conflicts with the special group rights that enable the recognition and valorization of difference. This is problematic for gender difference, as equality for women is premised on the ability of women to be 'just like men' (Pateman, 1988), but also for other axes of difference such as race or class that neo-liberal doctrine does not encounter, or respond to.

Fraser and Gordon (1998) provide a social democratic critique of citizenship that concentrates on how civil society is constructed in a way that operates to the detriment of women and other marginalized groups. Attacking the liberal-inspired retreat of the welfare state, they suggest that the distinction between social insurance (where the recipient merely takes back what they put in) and public assistance (where the recipient 'gets something for nothing') is grounded in the inequalities inherent in the contract basis of civil citizenship. Historically, the 'individuals' to whom civil citizenship was extended were propertied, white men; women and the working classes (who had no property), and slaves (who *were* property) were excluded. However the system was not simply one of exclusion, rather "it was by protecting, subsuming, and even owning others that white male property owners and family heads became citizens" (Fraser and Gordon, 1998: 121). Furthermore, the creation of civil society within the public sphere demoted traditional responsibilities through kinship to the private sphere. The gendered public/private distinction was thus formed as a contract/charity distinction, whereby

contractual public obligations were distinct from voluntary, private charitable acts. Contemporary ideologies of welfare in the United States retain this contract/charity distinction, which enables social insurance to be cast as a contributory system, whilst public assistance denotes dependency. Thus Fraser and Gordon establish that civil citizenship established along gendered lines works to the detriment of an egalitarian social citizenship.

Feminist critiques of standardized, masculinist citizenship formations have all recognized the gendered nature of political culture and, by implication, their attempts at theoretical advance have promoted an identity-based conceptualization of citizenship. Thus, they extend beyond classical liberal and communitarian understandings of citizenship which fail to recognize that the political culture they defend is a reflection of a specific (according to feminist critiques, masculine) socio-cultural identity. However, the feminist critique retains problems. Communitarians invoke an essential understanding of 'woman' as belonging to the private sphere that both restricts the potential for women's identities and denies difference among women. By making gender the only axis of 'difference', these theoretical contributions only reflect the interests of a very narrowly defined subject. Alternatively, liberals demand equal treatment, which effectively works to delegitimize any form of difference and simultaneously constructs women in the form of 'lesser men'. Fraser and Gordon's social democratic critique improves on the communitarian visions by recognizing that access to civil society was denied to both women and slaves and, by extension, that contemporary citizenship is gendered, but also

thoroughly racialized³. Their work allows room for an analysis which considers differences other than gender, and Fraser's (1997) subsequent work clearly expresses this potential, but feminist theories of citizenship have generally not lived up to their potential of opening up hegemonic constructions to alternative understandings. A more in-depth understanding of identity is required if the stratification within citizenship is to be fully exposed.

Cultural pluralism and multiple differences

Cultural pluralists echo feminist critique, in terms of attempting to expose the ways in which the allegedly universal, abstract individual reflects a specific socio-cultural identity. However, cultural pluralists consider multiple axes of subjectivity to provide a more general understanding of the citizen-subject as a hegemonic representation. Young (1989) suggests that the public-private distinction is imposed onto difference, such that the public realm is one of universality, whereas difference is relegated to the private sphere. She claims that a universal form of citizenship, premised on the possibility of transcending group difference and expressing a general determination, is inherently unjust because it denies historical systems of stratification and oppression:

In a society where some groups are privileged while others are oppressed, insisting that as citizens persons should leave behind their particular affiliations and experiences to adopt a general point of view serves only to reinforce that privilege; for the perspectives and interests of the privileged will tend to dominate this unified public, marginalizing or silencing those of other groups.

Young, 1989: 257

³ Fraser and Gordon actually restrict their comments on race to noting that slaves in the United States were originally excluded from civil citizenship. Their primary focus is on how the contract/charity distinction affects women's access to social citizenship. However, there are obvious implications for differences other than gender in their work. There appears to be a general tendency for racial and ethnic difference to be relegated to historical and/or non-Western spheres when theories of difference are discussed. This seems particularly strange given the obvious importance of race and ethnicity based issues in contemporary Western democracies.

For Young, the solution is to work within a system of differentiated group rights where individuals are incorporated into citizenship through both their individual and their group identities. The underlying premise of Young's contention is that the condition of equal rights before the law does not translate into a condition of treatment as equals, and therefore special rights of representation and policy application (in relation to needs) are necessary to redress this inequality. Thus differentiated group rights are intended to preserve the heterogeneity of the public sphere.

For some, special group rights contradict the basic premise of equality thus threatening the value of citizenship (Porter, 1987), while encouraging individuals to focus on difference rather than their larger, integrated community (Glazer, 1983; Heater, 1990). In addition, Young fails to consider the different concerns posed by largely integrative special representation or polyethnic/multicultural rights, and divisive demands for self-determination and self-government (Kymlicka, 1998; Kymlicka and Norman, 1994). Recognizing that fears concerning the threat of multicultural demands to the integrity of citizenship are usually misplaced, racist premises, Kymlicka (1998) suggests that states need to confront multicultural issues in order to maintain healthy democracies. This assumption is premised on the notion that the divisiveness caused by inattention to particular group needs potentially restricts the viability of the common purpose that is necessary for the persistence of viable citizenship.

Kymlicka (1998) differentiates between demands based on multicultural needs and representation, and demands for self-determination that potentially foster separatism.

While the former promote integration and inclusion and therefore do not threaten the stability of democracies, the latter specifically involve a threat to integration by advocating a system of separate political communities. Kymlicka suggests that secession is not inherently catastrophic, but that it is frequently infeasible. Thus he claims that social unity in multinational states needs to be established on the grounds of a shared identity, given that a consensual political culture is insufficient grounds for superseding nationalist sentiment. Kymlicka recognizes the difficulties involved in this proposition, but maintains that the various national identities must be incorporated, rather than resisted, to preserve a stable democracy. While this multicultural thesis appears to be a productive way of considering difference, Kymlicka works with a very narrow conceptualization of culture that threatens to undermine his thesis. His understanding of the relationship between cultural difference and political culture is similar to (although more progressive than) that promoted by Beiner in the republican thesis, and ultimately draws the same sort of critique.

While Kymlicka recognizes that a common identity cannot be imposed on separatist movements, his understanding of multicultural needs and representation rests on the assumption that assimilation to a political culture does not demand cultural assimilation. This might be true in terms of cultural expression such as language use, choice of attire, or other cultural markers. However, in terms of conforming to a national political culture, Kymlicka fails to understand that this involves adherence to a specific, hegemonic cultural identity, and one that excludes and marginalizes on the grounds of race, ethnicity, class, gender, and other differences. Hegemonic political cultures are constructed in the

interests of certain identities, and thus operate to the detriment of marginalized groups. Rather than recognizing the very limited acceptance of alternative cultural heritages as progressive, a drastic reconfiguration of political culture instead might operate as the basis for establishing equal treatment. Furthermore, this sort of reformation might resist the need for a common identity, which Kymlicka suggests is a pre-requisite for social unity. If those who are marginalized by socio-political systems experienced equal treatment instead, then particularistic oppositional activity would be less likely to prevail. This utopian condition is unlikely to emerge, given the ability of global systems of capital to foster and maintain inequality and divisiveness. However it is particularly imprudent to fail to recognize that the political culture of Western democracies operates in hegemonic interests.

The dominant conceptualization that the political culture is equally accessible and responsive to all citizens is comprehensively debunked by Ho and Marshall's (1997) critique of supposedly racially neutral legislation. They contend that the systematic prioritization of white knowledges and "the unreflexive use of dominant, white community standards as normative" (Ho and Marshall, 1997: 209) work to limit the extension of citizenship in hopelessly exclusionary ways. For Ho and Marshall, the dominance of whiteness is perpetuated through a Foucauldian styled "dynamic network of decentralized webs that deploy multiple processes – judicial, economic, linguistic, military/paramilitary – from varied sites" (Ho and Marshall, 1997: 214). They contend that discourses of deviancy are used to undermine the threat to white domination, by legitimizing racist action and legislation. For instance, they explain that the penalties for

carrying small amounts of crack (the drug predominantly used by urban black people) are far more severe than those for possessing far larger amounts of powder cocaine, despite the fact that they are chemically identical. African Americans account for 93% of federal convictions for crack possession, and yet it is estimated that whites account for 77% of America's crack users. Political cultures, that Kymlicka suggests all citizens must conform to, are far from being neutral systems.

A further problem with Young's (1989) notion of differentiated citizenship is that she ultimately conceives 'group identity' to be an unproblematic concept. More broadly, feminist and anti-racist critiques have exposed different elements of the hegemonic form of citizenship, but have struggled to develop effective methods to redress the system in more inclusionary ways without acquiescing to essential, particularistic categories.

Mouffe contends that an antiessentialist vision of democratic politics is necessary for a reconstructed form of citizenship:

it is only when we discard the view of the subject as an agent both rational and transparent to itself, and discard as well the supposed unity and homogeneity of the ensemble of its positions, that we are in the position to theories the multiplicity of relations of subordination.

Mouffe, 1992: 371

Thus Mouffe recognizes the specific contingency of identities, which allows individuals and groups to operate as both oppressor and oppressed, and which demands an understanding of unstable subject positions. She proposes that a common political identity, which acts as the basis of an egalitarian form of citizenship, must be founded on a conception of equivalence that rejects the denigration of the private sphere and establishes all identities as legitimate and valuable.

Mouffe's antiessentialist project offers a starting point for a more inclusive understanding of citizenship, but is limited in conceiving how this might evolve. This problem is a condition of the complexity of theorizing heterogeneous identities, and as is common, in comparison with hegemonic versions of universality and fixity, an anti-essential, poststructuralist understanding of heterogeneity appears weak in terms of developing coherent, practical alternatives. But this is not necessarily a reason to abandon the project. Dealing with the complexity of the explicitly intersectional nature of identity renders genuine coalition formation more feasible, and serves its purpose as a means rather than an end. Moreover, it is only by rejecting homogeneous categories of race, gender, sexuality and other differences that individuals and groups will recognize the differences between and among themselves (Young, 1991).

Eisenstein (1995) proposes that instead of maintaining a same/difference binary, an understanding of the *similarity* of interests might be fruitful in working towards coalitions of resistance. While this might appear to be a fragile and nebulous response to hegemonic versions of citizenship, oppositional struggle requires some degree of unity to present a coherent alternative. Without recognizing the multiplicity of dimensions of subjectivity, the likelihood of coalitions is limited. Recognizing the similarity of interests in deposing hegemony is easy; it is the reconstruction of an alternative conceptualization of citizenship that might well prove to be the stumbling block. Coalition building is fraught with difficulty (Reagon, 1998; Mohanty, 1998), but ultimately the work of coalition building is a pre-cursor to an egalitarian, active citizenship.

Radical critiques of traditional political science have persisted and expanded in many ways as, for instance, examination of heteronormativity has extended the charge that citizenship does not accrue equally (Bell, 1995; Valentine, 1996). Other contributions have focused on amassing empirical evidence and expanding theoretical understanding of marginalization in relation to citizenship (for example, the edited collection of Yuval-Davis and Werbner, 1999), in an intellectual context where questions of gender, race, sexuality, ethnicity, and so forth are still frequently marginalized in the attempt to understand how citizenship is transforming. Moreover, some feminists and cultural pluralists have taken on broader political philosophical themes, and have extended their debates from citizenship *per se* to broader matters concerned with the organization of democracy (for example, Fraser, 1997; Young, 2000).

Citizenship: Activity, identity, and the spatial dimension

As Kymlicka and Norman (1994) note, the erroneous sometime conflation of the distinct themes of citizenship as activity and citizenship as identity, resulting from conceptual misunderstanding or the desire for an integrated theory of citizenship, only serves to resist theoretical accuracy. Therefore they suggest that “we should expect a theory of the good citizen to be relatively independent of the legal question of what it is to be a citizen” (Kymlicka and Norman, 1994: 285). Although a distinction needs to be drawn between citizenship as activity and citizenship as identity for any sort of theoretical clarity to prevail, their interdependent relationship must be recognized as one where activity and identity are mutually constitutive elements of citizenship. All too often in traditional

inquiry they are held separate, or alternatively, conflated, such that the activity of citizenship is seen to precede any condition of the citizen-subject. Adherence to particular models of rights and responsibilities, that foreground a specific political culture, prefigure and are prefigured by understandings of identity, which many theorists fail to establish adequately.

The explosion of interest in citizenship certainly draws from the complex issues surrounding the activity-identity intersection that have infiltrated intellectual inquiry since the 1980s. However any theoretical interest in citizenship surely gains impetus from the wide scale political and social maneuverings of the last decade or so. The geopolitical map of Europe, which had remained relatively stable since the end of World War II, has been radically altered through the decimation or reunification of what were, at one moment in European history, the Soviet Union, Yugoslavia, Czechoslovakia and divided Germany. Elsewhere, civil wars in Rwanda, Palestinian resistance, or secessionist movements in French-Canada remind us that Europe is not the only site of tempestuous politics and reconfigurations of national and/or ethnic identities and allegiances.

Less dramatically, but of equal significance, nation-states can no longer stake an automatic claim as repositories of democracy and human rights, if such a claim was ever legitimate. A variety of global and local pressures now threaten the integrity of the nation-state, which had been established as the most coherent scale of formal citizenship in Europe and North America since the eighteenth century. Outside these geographical confines, populations pinned their hopes on citizenship as post-communist regimes in

Eastern Europe promised a democratic future, while financial collapse in Indonesia and Argentina undermined the state's capabilities to provide rights. Simultaneously, long standing patterns of global migrations have intensified and increased in complexity, such that residency in a nation is decreasingly a marker of political membership, although increasingly a status from which groups and individuals are making claims against their places of residence, premised on international human rights.

Certainly the epistemology of activity/identity facilitates examination of some of these conditions, but they also suggest that there is a thoroughly new geography to citizenship. Most normative debates and identity-based analyses of citizenship still rest, at least implicitly, on the assumption that the nation-state is the automatic scale of the institutional relations that comprise citizenship. The question of immigration, in particular, has rarely been raised in citizenship theorizing, except as a question of assimilation and institutional 'multiculturalism'. Historically this unproblematic reassertion of the exclusionary boundary of the nation may (or may not) have troubled radical theorists, but it has easily been circumnavigated, probably in favor of pragmatic concerns. Nevertheless, this strategy is no longer possible, regardless of political persuasion, given the ways in which the nation-state and its relations with civil society are transforming under globalization. These manifestations suggest that a spatial element must be introduced into analyses, to intersect with the activity/identity nexus, such that citizenship is understood as the mutual constitution of activity, identity, *and* some form of spatial referent.

Introducing globalization to theories of citizenship

Through the 1990s, even as the radical critique of traditional political science persisted and developed, globalization became a significant, or even dominant, theme across a range of academic disciplines. Increasing complexity in the relationships between individuals and states, and changes to the role and form of the nation-state, the foundation of modern citizenship, meant that proponents of traditional political science and those engaged in radical critique alike were confronted with new material conditions. While it seems inevitable that academics would be forced to update some of their theoretical premises to remain relevant, certain intellectual traditions appear to have proceeded relatively unimpeded by the societal transformations wrought by globalization. For example, noting that intellectual attention to citizenship has largely comprised questioning what I have established as the activity and identity elements of citizenship, Bosniak (2001: 237, original emphasis) asserts that "most analysts have tended to ignore another set of questions that are fundamental to citizenship. These are questions concerning citizenship's location – that is questions about where citizenship takes place and where it *should* take place".

Much of the reason for this inattention to place derives from assumptions that the nation-state *is* the automatic scale of citizenship, especially among traditional political theorists. Some of these assumptions have been implicit; presumably an automatic legacy from the traditions of T.H. Marshall. Still others reflect an explicit, reactionary engagement with attempts to inflect citizenship with cosmopolitanism (for example, see Nussbaum, 1996)

or to locate citizenship outside the nation-state. As Bosniak (2001) notes, these responses range from Hannah Arendt's classic repudiation of 'world citizenship'⁴ to more recent critiques that the term citizenship only has meaning in the context of the state (Himmelfarb, 1996). Still a growing impetus among both academics and activists derives from a conviction that citizenship is increasingly exceeding the bounds of the nation-state. As Bosniak (2001: 238, my emphasis) puts it, "Citizenship is said to be increasingly *denationalized*, with new forms of citizenship that exceed the nation developing to replace the old"⁵. Certainly advocates of a form of citizenship that exists outside the nation-state can appeal to historical precedent. While the formation of modern citizenship emerged alongside the nation-state during the 18th and 19th centuries (Anderson, 1983; Habermas, 1992; Hobsbawm, 1996), the original Roman and Greek city-states and the European city-states of the 16th and 17th centuries (Hall, 2001) preclude any automatic connection between citizenship and the nation-state.

For those traditional theorists who have responded to the intellectual pressures of globalization, much of the emphasis has been placed on establishing how to preserve the institution of citizenship in the face of immigration and pressing multicultural claims, and reassessing normative prescriptions for citizenship (see Kymlicka, 2001, for example).

⁴ Arendt claims that "A world citizen, living under the tyranny of a world empire, and speaking and thinking in a kind of glorified Esperanto, would be no less a monster than a hermaphrodite" (Arendt, 1968, cited in Bosniak, 01: 238, n3).

⁵ The matter of whether new forms of citizenship need to thoroughly *replace* the old raises interesting questions. Perhaps the most intriguing of these concerns not whether new forms replace old, but how they coexist in complementary and contradictory ways. For example, discussions of citizenship in the European context have varied on the question of whether EU citizenship reflects a deterritorialization of citizenship and supercession of the nation-state (see Behnke's (1997) critique of Martinello (1995), for example). I make no attempt to resolve this question here; rather leaving it open to interrogation throughout this thesis. However, it is clear, not just in the European context but also in federal arrangements such as the US, or in the case of 'dual citizenship', that more than one territorial political identity can be asserted simultaneously.

While this body of work broadly carries reactionary, or at best classical liberal, appeal, it is still useful in terms of its ability to provide an understanding of how citizenship, as an institution, is faring. For radical interests, the challenge of globalization emerged partially in the form of establishing how to stretch concern for inequalities and exclusions to encompass new members of society. However, despite some notable exceptions, many radical theorists have not gone beyond the bounds of national citizenry to investigate the relationship between immigrants and the nation-state. As I will argue throughout this dissertation, this partial inattention to matters of globalization is ultimately problematic, first because of the exclusion of the broader community, but more importantly because radical critiques argue for equal access to an institutional form that is no longer present in certain substantive ways.

The impulse of globalization has done more, however, than throw up new questions for existing theoretical and empirical perspectives. A new body of work, intersecting thematic, if not political, elements of both traditional and radical perspectives, has emerged around the questions of, in Bosniak's words 'where citizenship takes place'. Consequently, these new approaches also consider to whom citizenship accrues, and what the material conditions of citizenship look like, under global conditions. Whatever the merits of certain theoretical and empirical visions of a 'deterritorialized citizenship', the clear shift away from the tendency to separate 'activity' and 'identity' components of citizenship is a productive development that might establish a pathway for maintaining and encouraging the crucial connection of radical critique and normative inquiry, as the

global context becomes a more popular avenue of inquiry than the form of citizenship itself.

Falk (1994) asserts that global citizenship is founded on some combination of the aspiration to a unified humanity, increasing global integration, an impetus towards a global economic consciousness, and transnational political mobilization. From these 'levels of engagement' in a global conscious, Falk establishes five "overlapping images of what it might mean to be a global citizen at this stage of history" (Falk, 1994: 132). These are: 1) the global reformer, who advocates political centralization in some form of world government, on the premise that loyalty should be to humanity rather than a particular political community; 2) the member of the global elite whose denationalized identity is oriented towards transnational business rather than global civic-mindedness; 3) those who believe in coordinating the management of environmental and economic matters on the world scale, with state and international institutional co-operation, given humanity's shared destiny; 4) the regionalist, who Falk essentially establishes as the European at this moment in history; and 5) the transnational activist who operates to promote a transnational political consciousness capable of exerting pressure where needed rather than restricting oppositional activity to a particular state.

Falk's interpretation of global citizenship conflates the institutional arrangement of citizenship and the politicized identities of community membership, as it subsumes two different versions of citizenship – transnational and postnational – and intersects them with either a cosmopolitan or a global political-economic consciousness. Alternative

theories, which share an interrogation of the absolutist connection between citizenship and the nation-state, differ in terms of their analyses of what has been generated under globalization. Academics who consider transnational citizenship place emphasis on how individuals make significant attachments and attempt to assert rights in more than one nation. As such, transnational theorists tend to be less concerned with changes to the nation-state *per se*, and more concerned with changes in the relationship between civil society and the state. In fact, given that transnationals aim to claim rights in the nation, regardless of their formal political membership status, they effectively re-assert the function of the nation-state (see Johnston, 2001, for example). Falk's global business elite and transnational activists, along with an additional category of diasporic or transnational immigrants, effectively operate transnationally, albeit with different objectives.

Alternatively, postnational theorists argue that the nation-state is becoming increasingly obsolete, as crucial elements of the citizenship relationship derive from institutional arrangements beyond the nation. The term 'postnational citizenship' is most commonly linked with Yasemin Soysal (1994, 1998), who argues that "individual rights, historically defined on the basis of nationality, are increasingly codified into a different scheme that emphasizes universal personhood" (Soysal, 1998: 189). As such, Soysal, Brubaker (1989b), Hammar (1990), and Layton-Henry (1990a, 1990b) among others argue that partial membership with selected rights, or denizenship, derive from an international human rights discourse that challenges the preeminence of the nation-state as the locus of sovereignty. Falk's global reformer, global management advocate, and regionalist all

transcend the nation-states, and adopt new scale institutional forms – global or regional – that are postnational.

Falk's global citizen categories also layer a politicized identity on top of the transnational / postnational distinction. Whereas the global business elite and the regionalists assert political-economic self-interest, global reformers, global management advocates and transnational activists are thoroughly cosmopolitan. Cosmopolitanism implies "the person whose allegiance is to the worldwide community of human beings" (Nussbaum, 1996: 4). Cosmopolitan citizenship thus requires attention to oppressed groups in an attempt to secure global distributive justice. In its strongest form, cosmopolitan citizenship advocates establish the loyalties of national citizenship as an anathema to an obligation to humanity. For instance Linklater's (1998) cosmopolitan citizenship replaces national structures of power and coercion with global communities of dialogue to achieve common, egalitarian ends. While Falk's global reformers and global management activists actively choose the global arena over the nation-state, transnational activists retain a notion of a global greater good, while still operating within nation-states.

Falk's global citizen categories are barely encompassing, but are useful here to contrast the types of global citizenship that have been established in academic debate.

Transnational and postnational citizenship actively intend to refigure the way that the institutional organization of citizenship is understood, while cosmopolitan citizenship is more concerned with how a new, global consciousness is emerging within civil society. Incipient postnational and transnational theories have suffered from a tendency to divorce

understandings of the institutional form of citizenship from the realities of the global political economy. As such, theories tend to suffer from a naïve optimism concerning actually existing rights and conditions for immigrants and denizens, in part due to an overly simplistic analytical jettisoning of the nation-state, and its replacement with global or local scale institutional forms.

The global cities literature has provided a way for a more sophisticated understanding of globalization to be read into theories of citizenship. Most recently led by Saskia Sassen and Manuel Castells, this body of work analyzes urban change in the context of the globalization of capital and labor. Originally, labor was incorporated analytically simply as a disembodied constituent component in understanding the place of the city in the global economy. Here, global cities are described as nodal points within a network of flows, whose shape bears no correlation with the modern state system (Castells, 2000; Sassen, 1991). Moreover, global cities have a new set of internationalized service and financing oriented functions that require a polarized labor market (Sassen, 1988, 1991). Subsequently, greater attention has been paid to the detailed complexity of the international labor markets emerging in global cities, and the consequent ramifications for labor and immigration. This line of inquiry had led to some degree of intersection between literatures examining global cities and global citizenships. Sassen (1996) asserts that, despite the new global economic trend to polarize the workforce, “the city has indeed emerged as a site for new claims: by global capital which uses the city as an ‘organizational commodity’, but also by disadvantaged sectors of the urban population,

which in large cities are frequently as internationalized a presence as capital” (Sassen, 1996: 208).

This portrayal of the city as a place of new types of struggle for rights, or 'new claims' from new types of citizen-subjects, has inspired a newly burgeoning literature concerning 'citizenship in cities', or 'urban citizenship'. The overarching premise here is “that the transnational flow of ideas, goods, images and persons... tends to drive a deeper wedge between national space and its urban centers” (Holston and Appadurai, 1999: 3) leaving cities, rather than nations, as the strategic spaces where individuals may struggle for rights, and where the contours of democracy are challenged, shaped and re-shaped.

Analyses of urban citizenship consider its history, its future possibilities, or the form of its contemporary existence. For instance, while Bender (1999) reveals how historic precedent for urban citizenship is not limited to Europe, with his discussion of how political territorial identification was with the city in the late 19th century U.S., Beauregard and Bounds (2000) and Brodie (2000) imagine normative models of a future urban democratic citizenship. Much of the work that analyzes existing urban citizenship intersects specifically with the global cities literature by asserting and examining the possibility of 'new claims' in cities (see Sassen, 1996 for example). As Isin (2000a: 13) notes, “While the debate rages over the national issues of whether immigrants should be given political and social rights, the majority of immigrants settle in cities and use urban resources to mobilize and articulate their demands for recognition”.

All these various ways of understanding citizenship outside the nation-state suggest that a spatial dimension needs to be incorporated into theories of citizenship, in addition to the activity-identity focus already established. Given that new analyses generally focus on the reorientation of citizenship around either global or local scales, I shall refer to this as 'citizenship-as-scale'. Therefore, I suggest that citizenship can be understood through a triadic epistemology of activity-identity-scale, where each element constitutes, and is constituted in, the others.

Some of the most recent work has started to bring together the multi-faceted components of citizenship that I have outlined briefly in this chapter. Understandings of actually existing citizenship are beginning to consider various aspects of the intersecting ramifications for citizenship-as-activity, citizenship-as-identity, and citizenship-as-scale that globalization has wrought. And yet the fundamental spatiality of globalization, in which these changes are contextualized, appears to have been missed. For some, the lack of attention to the spatial dimension is a yawning chasm. For example, in his assertion of global citizenship, Falk suggests that "traditional citizenship operates spatially, global citizenship operates temporally" (Falk, 1994: 138-9), entirely dismissing the conceptual relevance of space in contemporary social formation. Other, less explicit, inattention to space comes in the form of the peculiarly aspatial understandings of inherently spatialized phenomena, such as Soysal's (1994) simplistic assertion of the global scale as a replacement for the nation-state in postnational citizenship. Even Sassen's relatively sophisticated understanding of globalization, and the plethora of work on urban

citizenship seems to disembody itself from the theoretical complexity of spatial organization under globalization.

This lacuna is partly by design. Largely anthropological discussions of cosmopolitan citizenship, for example, barely intend to examine the abstracted historical trajectory of citizenship as an institution. In other cases, particularly in more abstract discussion of the institutional arrangement of citizenship, it is an omission with serious consequences for the usefulness and validity of the argument presented. Either way, the time is ripe to produce an explicitly spatialized understanding of citizenship, by injecting theories of scale, largely developed by geographers, into existing work on citizenship. That is the task of this dissertation.

CHAPTER 2

CITIZENSHIP IN CITIES: CIVIL RIGHTS AND THE CASE OF AMADOU DIALLO

In the early morning hours of February 4, 1999, four New York Police Department (NYPD) officers opened fire on Amadou Diallo as he stood in the vestibule of his apartment building. Seconds, and 41 bullets, later Diallo lay dying. He had been hit nineteen times. Amadou Diallo was a 22 year old immigrant from Guinea in West Africa, who worked as a street vendor in Manhattan, and was, according to friends, “a pious Muslim, never in trouble with the law” (Vogt-Downey, 1999). Although he had made a fraudulent appeal for political asylum, falsely claiming in a sworn deposition that he had been imprisoned and tortured in Mauritania and that his parents and uncle had all been killed by soldiers (Haberma, 1999: B1), Diallo had no criminal record and was legally resident in the U.S. by virtue of a valid student and work visa.

On the night of February 3, 1999, Edward McMellon, Kenneth Boss, Richard Murphy and Sean Carroll were patrolling in an unmarked police car. The four officers, who were not routine partners, were all members of the NYPD’s Street Crimes Unit (SCU), which had been established, ostensibly, in an attempt to reduce the number of guns on the street by patrolling for violent criminals in ‘known’ high crime areas. In early 1999 a serial rapist had attacked a number of women in the Bronx. As the SCU unit’s car proceeded down Wheeler Avenue in the Soundview section of the Bronx, at about 12:40 a.m., Officer Carroll thought he saw someone who fit the general description of the rapist, and

was acting suspiciously by hiding in the shadows of the apartment building at number 1157.

The four officers got out of the car and Carroll and Mc Mellon approached the figure in the vestibule, who was not a lurking rapist but Amadou Diallo, a resident of the apartment building. The details of what then transpired are vague and contested. However, according to trial testimony of the officers, they identified themselves and told Diallo to stop, but he ran back into the vestibule, removing a black object from his pocket as he ran. Allegedly thinking that the object in Diallo's right hand was a weapon, Officer Carroll shouted "gun", and he and McMellon fired 16 rounds each into the vestibule, emptying their guns. It has never been determined which officer fired the first bullet. Officers Murphy and Boss had followed their colleagues towards the vestibule and when they saw McMellon stumble backwards, apparently creating the impression that he had been shot, they also fired their weapons, unleashing nine rounds between them.

Forty-one bullets had been fired into the vestibule, and nineteen of them had hit their target: "...half hit Diallo in the legs. Five pierced his torso. One hit him in the right arm. One went through his chest. One entered through his back. Diallo's body... became a jumble of exit and entry wounds" (Bastone, 1999: 1). According to the autopsy report issued by the city's Medical Examiner, the victim died of "multiple gunshot wounds to trunk with perforations of aorta, spinal cord, lungs, liver, spleen, kidney, and intestines" (cited in Flynn, 1999a: B5). It was only when Diallo lay dying that the four officers realized the black object he had removed from his pocket was a wallet, not a gun. Almost

immediately, Officer Boss used his radio to summon an ambulance and an NYPD supervisor, and witnesses “reported a sad, stunned aftermath” (Flynn, 1999b: B14). Officer McMellon later gave testimony that he held Diallo’s hand as he lay in the vestibule, and begged him not to die.

New Yorkers responded swiftly to the events of February 4. In the immediate aftermath of the shooting, individuals and groups congregated in protest and in prayer outside Diallo’s apartment and the Bronx courthouse. Mayor Giuliani had originally condemned the protests as “partisan publicity stunts that were silly” (Mayor Giuliani, cited in Cooper, 1999c: A1). But as the protest quickly escalated and became more organized, especially through the organization of the National Action Network and its leader the Reverend Al Sharpton, the response from city officials swiftly became more cautious. Dismissive comments made with regard to both protests and investigations into police misconduct were replaced with more measured assessments of relations between the police and New York’s black and Latino/a residents.

Giuliani appeared at prayer vigils conducted in Diallo’s name throughout the city, and reconsidered his earlier decision not to meet with local political and community leaders. He also arranged for Amadou’s parents – Kadiatou and Saikou – to be flown to New York from their homes in Guinea and Vietnam respectively, in order that they could claim their son’s body and return with it to Guinea for Amadou’s burial. Perhaps not surprisingly, however, Amadou’s parents vociferously rejected the hospitality, complete with police guard, offered by the city, and teamed up with Sharpton instead. But the

mayor still maintained his defense of the four officers involved in the shooting, claiming that Diallo's death was a tragic mistake rather than a violation of his civil rights.

Meanwhile, the protests continued to escalate in frequency, aural volume, and scope of mobilization.

Public outrage at the shooting was now being exhibited through thoroughly organized civil disobedience events. Several hundred protesters collected daily outside 1 Police Plaza, the NYPD headquarters in lower Manhattan. Every day up to two hundred of those protesters would block the entrance to the building, intentionally getting arrested in order to draw attention to the circumstances surrounding Diallo's death. By the time daily protests ended on March 29, 1999, nearly 1200 arrests had been made, although Manhattan District Attorney Robert Morgenthau later dismissed all charges, much to the chagrin of New York City Police Commissioner Howard Safir.

Initially the arrestees were 'ordinary' civilians, acting either as individuals or as members of various advocacy organizations such as the Center for Constitutional Rights, Amnesty International, 100 Blacks in Law Enforcement Who Care, the NAACP, the Gay and Lesbian Task Force, and the National Action Network. However renowned public officials and celebrities also registered their protests, lending apparently greater legitimacy to the cause and inspiring others to join. The high profile arrestees included National Action Network leader Al Sharpton, NAACP president and former Congressman Kweisi Mfume, former New York City mayor David Dinkins, the Reverend Jesse Jackson, Harlem Democratic representative Charles B. Rangel, Bronx

Borough president Fernando Ferrer, former Manhattan Borough president Ruth W. Messinger, various City Council members, New York State Comptroller H. Carl McCall, former Congressman and previous staunch supporter of Mayor Giuliani the Reverend Floyd Flake, Chloe Breyer (daughter of Justice Stephen G. Breyer of the US Supreme Court), members of Congress Eliot L. Engel of the Bronx and Major R. Owens and Nydia M. Velázquez of Brooklyn, publisher of Black Enterprise magazine Earl G. Graves, publisher of *Essence* magazine Ed Lewis, actors Susan Sarandon, Ossie Davis and Ruby Dee, and comedian Dick Gregory.

Former Mayor Ed Koch's protest was registered dramatically when he was rushed to hospital by ambulance after his blood pressure dropped and he experienced an irregular heartbeat during his morning workout and just hours before he had planned to be arrested. As he was being transferred from the local hospital to Columbia Presbyterian Medical Center Koch held what was tantamount to a news conference from a gurney. Koch managed to turn his health scare into an anti-Giuliani media stunt by claiming: "At the gym, they thought they should call in E.M.S. I said to them, 'I don't really want to go to the hospital. I have to be arrested at 11:30.'" (Ed Koch, cited in Finder, 1999: B5).

Koch specifically criticized Mayor Giuliani for failing to meet with black elected officials and community leaders, but the protests – from a diverse set of interests – were organized around a variety of issues, stretching beyond the immediate concerns of the events of February 4. While the central concern of the protest was to express outrage at the shooting of Amadou Diallo and demand the indictment and prosecution of his killers,

broader issues were also being addressed. As Jesse Jackson said prior to his arrest on March 25: “I plan to be with a coalition of conscience that has come to protest not only the slaying of Diallo, but in fact a mood of permissive violence toward people of color” (Jesse Jackson, cited in Wilgoren, 1999a: B5).

A culture of protest and resistance to police brutality and racial profiling was already emerging in a more popular format, especially given the high profile of the beating of Rodney King by members of the Los Angeles Police Department and racial profiling charges in New Jersey among other incidents. However, as much as protest against the shooting of Amadou Diallo constituted a reaction to institutional racism in general, it was also specifically targeted at those who were considered to be the agents of racial profiling and a racialized system of brutality in New York City – namely Mayor Giuliani, Police Commissioner Howard Safir and the NYPD in general.

Giuliani and Safir were particularly criticized for their alleged ongoing insensitivity toward the protests and their apparent unwillingness to engage in efforts to resolve tensions in New York City. Less than three weeks after the shooting and with the city like a tinder box seemingly about to explode with the simplest spark of provocation, Safir claimed that a scheduling conflict might keep him from testifying at a City Council hearing into Street Crimes Unit practices. However, having been widely photographed at the Oscars ceremony in Los Angeles the night before the hearing, the Commissioner flew back to attend the meeting. Giuliani defended Safir, but he too was out of town at a speaking engagement in Arizona, where he was meeting with Republican Presidential

hopeful John McCain. Bronx Borough President Fernando Ferrer recognized: “There was a Police Commissioner at the Oscars last night. There was a mayor golfing in Arizona.... They both have been in denial about the pain this is causing in the city. They both seem not to get it, not to understand that we have submitted ourselves voluntarily for arrest not for fun, but to send a message” (Fernando Ferrer cited in Cooper, 1999c: B5).

The activity of the Street Crimes Unit (SCU), to which the four officers who shot Diallo belonged, was questioned specifically. Protesters attacked the SCU’s aggressive tactics and heavy-handed image, conveyed by their motto “We own the night,” and specifically condemned the SCU’s ‘stop and frisk’ activity that they claimed constituted civil rights violations largely for young black men and Latinos. Within the general critique of the SCU, the four officers who killed Diallo were particularly scrutinized. Boss, McMellon and Carroll had all been involved in prior shooting incidents that had prompted formal complaints. In all cases it was found that the shootings were justified and the complaints were unsubstantiated. However it also came to light during the protests that Officer Boss was also involved in the shooting death of Patrick Bailey in 1997. While Brooklyn District Attorney Charles J. Hynes had absolved Boss of any charges of criminal action, thereby not submitting the case to a grand jury, Federal prosecutors had begun examining the case to identify whether a federal inquiry would be necessary (Fried, 1999b, c).

In addition to civilian protest, institutional critique of the city’s administration and the NYPD came from a variety of sources. Perhaps more than individual civilians, or even groups, these leaders gained a forum through collective mobilization. The movement

began to forge an image of community representatives seeking to foster change – rather than simply offering critique – by demanding new practices and structures for the NYPD, and by pressing for real power and influence on the part of black and Latino/a leaders in city governance. Over and above participation in civil disobedience protests, formal political critique of Giuliani’s administration and the NYPD came from a variety of sources. Public advocate Mark Green called on Commissioner Safir to resign; New York State Governor George Pataki declared Mayor Giuliani’s handling of the unfolding situation in new York City to be insensitive; and Congressman Charles B. Rangel claimed that “It’s obvious that Giuliani is awkward dealing with Blacks” (Charles B. Rangel, cited in Hicks, 1999a).

At the City Council’s investigation into SCU practices on March 22, 1999, Councilman Sheldon S. Lefler, the chairman of the public safety committee identified his concerns with the unit, noting that over 80% of the SCU’s ‘stop and frisks’ yielded no arrest and that approximately half of all SCU arrests on gun charges were thrown out of court. He claimed that “there’s good reason to think you’re engaged in a fishing expedition and a random approach” (cited in Cooper, 1999c: B5). State Attorney General Eliot L. Spitzer, whose office was conducting an inquiry into whether SCU searches are conducted mainly on young black men and Latinos, cited anecdotal evidence that ‘stop and frisks’ were vastly under-reported, suggesting that the claimed 20% arrest rate for ‘stop and frisks’ is a considerable over-estimation (Pérez-Peña, 1999: B5). The U.S. Attorneys in Manhattan and Brooklyn also initiated investigations into the SCU on the assumption that its activity warranted federal investigation (Weiser, 1999: 46).

International attention also focused on the issue in the Spring of 1999. Abubakarr Wai, president of the United African Congress, and Aboubacar Dione, first consul of the Guinean delegation to the United Nations, officially demanded explanations why the four officers who shot Diallo remained free. Similar, although perhaps less directly influential, critiques were offered by advocacy organizations and media outlets. Amnesty International and Human Rights Watch issued Giuliani with requests for action, while the Village Voice, an often dissenting local newspaper, made its opinion clear by requesting that someone send Howard Safir a copy of the Constitution (Hentoff, 1999).

Galvanized by popular protests, the institutional critique of the City's administration and the NYPD seemed to sustain sufficient pressure to generate a more responsive reaction from Mayor Giuliani, even prior to the meeting to formulate official demands. He acknowledged "that there is a feeling in the minority community that police officers are unfair to them..." and that he "think[s] there is a reality to that feeling" (Barry, 1999b: A1). Having previously refused to meet with certain elected black officials for months, sometimes years, Giuliani now granted interviews with Manhattan Borough President C. Virginia Fields, State Comptroller H. Carl McCall, and black and Latino/a Council men and women, in order to discuss police-community relations. Claiming that he had learnt a lot from meeting with various groups, and following in the footsteps of Safir who, on March 26, advanced his plans to overhaul the organization of the SCU, Giuliani declared that the NYPD in its entirety would be subject to "major changes... to make something good come out of a terrible tragedy" (Giuliani, cited in Wilgoren, 1999b: 47).

Despite the aura of progress tentatively lauded by various interests, there was still considerable alienation between the administration and different groups and individuals. Congressman Charles Rangel and Mayor Giuliani disagreed over the Mayor's concern for and ability to communicate with people of color under his jurisdiction (Hicks, 1999a) and Al Sharpton expressed concern that black and Latino/a leaders were being "picked off" (Wilgoren, 1999a) via individual meetings with the mayor. Along with David Dinkins, labor leader Dennis Rivera and publisher Edward Lewis, Al Sharpton organized "an uncommon assembly of politicians, labor leaders, clergy members and business executives" (Hicks, 1999a) as well as relatives of victims of police brutality, who met on March 27, 1999 and distributed a proposal they had drafted for a set of ten diverse demands to be presented to the mayor (see Appendix 1). The demands were specifically aimed at halting police brutality in New York City, and mentoring NYPD activity to ensure that transformations were carried out and maintained adequately. Rather than just critique the administration, this strategy meeting was designed to convert the groundswell of protest into tangible practical and legislative transformation (Barry, 1999b). Many of the demands made were reiterations of existing requests to the Giuliani administration, which had been previously rebuffed but were now, in the new climate of widespread popular protest, likely to be met with more serious consideration.

Regardless of the Mayor's apparent conciliatory efforts toward restoring calm in New York City, he was still simultaneously advancing a defense of the NYPD, the SCU, and the four officers who killed Diallo, suggesting that "the New York City Police

Department conducts itself appropriately and has an excellent record of restraint which, unfortunately, is not getting the attention that it deserves” (Giuliani, cited in Cooper, 1999c: B5). Howard Safir offered similar commentary, defending the SCU and suggesting that the “Unit is one of the prime reasons for the reduction of violent crime in the city” (Safir, cited in Cooper, 1999c: B5). The Patrolmen’s Benevolent Association (PBA), the police union, specifically supported the officers who had killed Diallo, as well as the SCU more generally. The PBA funded a newspaper advertising campaign in defense of the four indicted officers, and capitalized on ferment within the NYPD already exhibited through counter-protests at 1 Police Plaza by planning demonstrations at the officers’ arraignment and throughout their trial.

It was in this climate of attempted reconciliation intermingled with ongoing hostility that, as instructed by Bronx District Attorney Robert T. Johnson, on March 31, 1999 the four officers surrendered in Queens, where they were arrested and suspended without pay for 30 days, the maximum allowable according to their PBA contracts. Later in the day, at the Bronx County courthouse, they were each criminally charged with two counts of second degree murder, which carries a minimum sentence of 15 years to life imprisonment in New York, and one count of reckless endangerment. All four defendants pleaded not guilty. DA Johnson criticized them for refusing to explain their actions before the grand jury, and requested that they be held in custody. The arraignment judge, John P. Collins of the State Supreme Court, denied this request and set bail at \$100,000 each. Justice Collins then oversaw the random selection of acting Supreme Court Justice Patricia Anne Williams as the trial judge.

The arraignment hearing somewhat foreshadowed the trial itself, with the prosecuting DA denouncing police brutality, and the defense lawyers citing their clients ‘reasonable belief’ that they were in imminent danger from Amadou Diallo because they thought he held a gun. During the hearing “the courtroom was divided by race and allegiance” (Waldman, 1999b: B4) with Diallo’s family and supporters separate from the officers’ families, supporters, PBA officials, and the SCU commander Inspector Bruce H. Smolka. The officers emerged from the courthouse, which had been sealed during the arraignment, into the midst of a protest that reflected similar divisions and the tenor of feeling in the city since February 4. While protesters against the police shouted that the officers were murderers, fellow NYPD officers chanted their support for the four (Waldman, 1999b). After a thirty day suspension, the four officers returned to work on April 30, but they had all been moved to non-enforcement positions and were not permitted to carry their guns and badges.

In the aftermath of the arraignment, the indictment of the four officers helped to somewhat pacify the protests – or at least remove one of the major points of grievance which had fueled protest. However the groundswell of protest, which had initially generated intense outrage and its expression through rallies and acts of civil disobedience, persisted and now reappeared manifested as the strategic broadening of critique and demands. Rather than dissipate and revert to the few hardened anti-Giuliani campaigners, protest in New York City was reinvigorated by its own success, and a wide coalition of interests was involved in events such as the April 15 march from Brooklyn to

Manhattan (Hicks, 1999b). At the heart of the protests in New York was the intention of promoting a 10 point plan with a specific focus on calling for federal monitoring of the police which Giuliani had continually resisted. The Center for Constitutional Rights, a New York advocacy group, took that aim even further by filing a Federal lawsuit intending to halt SCU activity. The protest was also broadened as it was brought to a wider audience. The Center for Constitutional Rights organized the National Emergency March for Justice Against Police Brutality in Washington DC on April 3. The march organizers had a specific intention: “we have come resolved to galvanize a new national movement to fight for police reform and accountability” (Ron Daniels, executive director Center for Constitutional Rights, cited in Herszenhorn, 1999c: 22) and the rally was specifically organized as a clamor for federal response.

The focus of many of these events was Amadou Diallo’s family, who had returned to New York City for the indictment of the four officers. Under Sharpton’s guidance, Amadou’s parents, siblings and an uncle initiated proceedings for a civil lawsuit against the officers and the NYPD, and met with a variety of political, religious and community leaders in the first of many highly publicized visits to New York City. In addition, following the arraignment of the officers, Kadiatou and Saikou Diallo embarked on a Sharpton organized, sixteen city anti-police brutality tour, although they failed to complete the schedule (Conover, 2000: 32).

The city’s administration and the PBA continued to defend the NYPD, the SCU, and the four officers, and in a still tense stand-off between NYPD supporters and antagonists, the

city's religious leaders attempted to reduce the animosity. Religious leaders in the city were instrumental in attempts to heal the rift between the city's administration and its population. Cardinal O'Connor met with Diallo's parents who had refused to meet with Giuliani (Wilgoren, 1999c). He also organized an interdenominational prayer service on April 20, which was attended by Giuliani, Safir and other political and religious leaders and at which prayers were offered for Amadou's family and for the police officers indicted on murder charges. For some the service was a moment of reconciliation, as Giuliani and the Reverend Calvin Butts of Harlem's Abasynnian Baptist Church embraced less than a year after Butts had renounced the mayor as a racist. However Diallo's parents were absent from the service, as was Al Sharpton who stayed away in protest because invitations were not extended to the families of victims of brutality (Wilgoren, 1999d).

Divisions between the different groups involved in and boycotting the event echoed an interfaith prayer meeting held by the United African Congress – a coalition of African immigrant groups – on March 14. With Giuliani and Safir in attendance, and expressing the belief that “the loss of an innocent person, the loss of anyone is a terrible, terrible rending tragedy” (Giuliani, cited in Herszenhorn, 1999a: B3), the Guinean Association of America (a UAC member) and Al Sharpton stayed away, complaining that UAC leaders had been too conciliatory towards Giuliani (Herszenhorn, 1999a). While leaders such as Cardinal O'Connor had hoped that by April 20 the daily protests might have diffused tension sufficiently enough to enable reconciliatory gestures, it appeared that discontent was still strong enough to mark any advance towards a suspension of hostility between

the two prayer meetings, even if restoring the status quo was clearly not a viable or desirable option.

The murder trial of Boss, McMellon, Carroll and Murphy took place almost a year after the killing of Amadou Diallo. The intense media coverage of all events surrounding the protest, the trial and seemingly the daily operations of the NYPD, Giuliani, Safir and the four officers abated as a general downshift in publicity replaced the dramatic events of the previous months. But media interest resurfaced with specific events such as the defense motion to dismiss charges in September 1999 – which was subsequently denied – and Safir’s ‘decentralization’ of the SCU into eight units reporting to regional commanders at the end of 1999, after he had promised an ‘overhaul’ of the discrete unit back in March.

One event that made clear how the undercurrent of protest remained strong, if temporarily quieted, was the December 1999 decision by the Appellate Division of the New York State Supreme Court to move the trial from the Bronx to Albany. Citing the demonstrations and the vast number of arrests of protesters, the justices decided that a fair trial for the four officers could not be achieved in New York City. Shifting the trial to Albany reduced the viability of a large, vociferous and constant protest during the trial, and also served to remove it from the jurisdiction of Patricia Anne Williams, a black woman, and give it to Justice Joseph Teresi, a white man.

While in no way matching the extent of civil disobedience that marked the actual killing of Diallo, events surrounding the decision to move the trial provided a neat summation of the ‘story so far’ and a prognostic taste of events still to come at the trial. Sharpton, Diallo’s parents and prosecuting District Attorney Robert T. Johnson criticized the decision, claiming that justice would not be served. In turn, Giuliani, Safir, PBA representatives and the defense lawyers asserted that this move was the only way to achieve justice given the publicity surrounding Diallo’s death. And while legal experts, civilian advocates, academics and journalists offered diverse opinions on whether the displacement of the trial was appropriate, or would affect its outcome, Diallo’s supporters once again experienced the disappointment and frustration of having their perspective overlooked and negated.

The trial of Edward McMellon, Richard Murphy, Kenneth Boss, and Sean Carroll, on charges of the second degree murder of Amadou Diallo, began on January 31, 2000, under the authority of Justice Joseph C. Teresi in the Albany County Courthouse.

Stephen C. Worth, a Manhattan based lawyer whose firm Worth, Longworth, Bamundo and London hold the \$11 million annual contract with the Patrolmen’s Benevolent Association, originally represented the defendants. However, officers are not obliged to use PBA appointed lawyers, and while McMellon elected to stay represented by Worth, Steven Brounstein, James Culleton, and Marvyn M. Kornberg were retained by Boss, Murphy and Carroll respectively, to act on their behalves in the joint defense.

During the trial the atmosphere in the courtroom replicated the tensions that had built in New York City over the previous year. An entourage of almost exclusively white, male NYPD officers, wearing ‘Free the Bronx 4’ buttons occupied the back rows of the courtroom, forming a “blue wall of solidarity” (Barry and Waldman, 2000: B1) and overlooking a courtroom divided by both race and conviction. Outside the courthouse a small crowd – which no doubt would have been much larger had the trial taken place in the Bronx – gathered in protest, while Al Sharpton and PBA president Patrick Lynch argued over the case in front of television cameras, particularly disagreeing on whether race was a factor in the killing of Amadou Diallo.

Under the lead of Robert Johnson, a prosecution team of assistant District Attorneys from the Bronx DA’s office – Eric Warner, Dan Levin, and Paul Rosenfeld – charged that the four officers had acted recklessly by failing to establish whether Diallo had understood the command to stop by not “slowing things down once Mr. Diallo was cornered in the vestibule” (Barry, 2000: B6), and by firing so many times. The main assertion of the defense lawyers was one that had been repeated since Diallo’s death by many of the officers’ supporters, including their lawyers at the arraignment hearing. They argued that the officers were innocent because they had thought that Diallo had a gun and therefore they had a reasonable belief that their lives were in danger⁶. In the defense team’s opinion, as in the oft-repeated opinion of so many defenders of the four officers, the death of Diallo was a ‘tragic mistake’, not a crime.

⁶ There are two statutes under New York State penal law which pertain to the question of ‘reasonable belief’ and which were presented by Justice Teresi in his instructions to the jury, prior to their deliberations. Section 35.30 states that police officers are justified in using deadly physical force to defend themselves or

The trial ultimately concentrated on a few main issues in its attempt to ascertain whether the four SCU officers were following routine but made a mistake, or whether their actions were unlawful. The first question raised concerned whether it was light enough in the vestibule where Diallo had been shot to see that he held a wallet, rather than a gun. Second, the duration of the gunfire came under considerable scrutiny. Claims from prosecution witnesses that there was a pause in the gunfire, and expert medical testimony asserting that the bullet that pierced Diallo's spine – paralyzing and felling him – must have been one of the first to enter his body, substantiated the prosecution's case that the officers were reckless. Once Diallo was on the floor of the vestibule, the prosecution suggested, the officers should have realized that he was no longer a threat and therefore should have ceased their firing. The defense rejoined with contradictory expert medical testimony asserting that only one bullet had hit Diallo while he was on the floor, implying that most of the bullets must have hit him while he was still standing, and therefore while he was still perceived to be a threat. Testimony of witnesses for the defense also revealed that there was considerable difference in opinion over the length of the pause between the two distinct bursts of gunfire.

When the defense rested, the prosecution team offered no rebuttal – shocking the courtroom, defense lawyers and the media, although legal experts contended that this strategy was not particularly surprising (Barry, 2000). On February 16, as testimony ended and closing arguments began, the defense and prosecution both recommended the

another person when making an arrest. Section 35.15 states that *anyone* is justified in using physical force when they believe it is necessary for the defense of themselves or another person.

introduction of lesser charges. The following day the judge agreed to add charges of first degree manslaughter, second degree murder (depraved indifference), second degree manslaughter, and criminally negligent homicide, to the original charge of second degree murder (intentional). The penalties for these new charges range from a minimum of probation for criminally negligent homicide up to a minimum of five years imprisonment for first degree manslaughter, thereby presenting the jury with a range of options if they found the defendants to be guilty.

A week later, late in the afternoon of Friday February 25, news that the jury had reached a decision interrupted local and cable television schedules, as most stations halted regular programming to cover the reading of the verdict (Kuczynski, 2000). After deliberating for two and a half days, the jury, which comprised 4 black women, 1 white woman, and 7 white men (following the replacement of a white female juror with a white man), had decided to acquit the four officers, finding them not guilty of each of the six charges. At least one juror, 72 year old Helen Harder, said that although she believed the officers should be held responsible and that the Diallo family should prevail against the NYPD in a civil suit, the prosecution had failed to prove their case (Hu, 2000). Her claims seemed to reflect the popular opinion on the street that an unfair verdict had been handed down because the prosecution had failed (McFadden, 2000a).

Some claimed that personnel from the District Attorney's office – who normally work *with* the police – should not be involved in cases where police officers were being prosecuted, given the potential conflict of interests. Concerns were voiced about the

prosecution's lack of attention to race during the trial, their failure to humanize Amadou, and the fact that they did not have the jury brought to the site of the shooting. Still others reacted to the role of the judge in the proceedings, citing "the wide latitude the judge gave the defendants in claiming legal justification for their actions" ('Visit to Defense Lawyers', 2/27/00, 43), as well as his four hour long instruction to the jury which, according to some "clearly came down on the defense's side" ('The Crucial Defense' 2/26/00, B8). Justice Teresi's impartiality was further questioned when he visited the defense team at their Bed-and-Breakfast accommodation just hours after the verdict had been delivered. According to legal experts "the judge's visit was not unethical - but rather ill-advised - it creates a bad taste so soon after the verdict" (Stephen Gilles, NYU School of Law Professor, cited in Waldman, 2000a: 43).

Much of the energy, however, was reserved for the expression of sheer outrage, as protest and counter-protest replicated scenes that had taken place throughout the previous year. Echoing the protest registered by a contingent outside the courthouse in Albany, for days after the trial verdict was announced thousands of protesters spontaneously took to the streets of New York City. They converged on Wheeler Avenue and marched to the 43rd Precinct station on the Bronx River Parkway, and stopped traffic in Manhattan as they marched down Fifth Avenue. On Sunday, April 27, 2 days after the verdict, over 1,000 people collected at the United Nations for a prayer vigil, and then marched down Second Avenue to City Hall. The vehemence of the protest and the strength of feeling on the street led to appeals for calm from both sides (Bumiller, 2000a).

As NYPD officers celebrated the acquittal, Safir and Giuliani's acquiescence to popular pressure was limited to an acknowledgment that some reform of the police department would be sensible. Giuliani offered sympathy for the Diallo family, but supported the officers and claimed that federal investigation was both unwarranted and unlikely to yield civil rights charges (Bumiller, 2000a). Although Safir announced that a departmental investigation would proceed, other public figures demanded external review of the NYPD. Executive director of the New York Civil Liberties Union Norman Siegel cited the case as an example of why creating a special prosecutor and police department reform were essential to prevent police misconduct, and Al Sharpton directly rebutted Giuliani by calling for a federal civil rights investigation, repeating his request for federal intervention in the case that he had already made when asking for federal monitoring of the trial.

Other political leaders offered a different response than that of the mayor. Fernando Ferrer, Bronx Borough President, speculated on the future of the SCU and claimed: "The bigger issue is reform of the Police Department. That still has to happen. And that is all about building a relationship of trust between the community and its Police Department. That, at the end of the day, is what will keep people in the community and police officers safer" (Ferrer, cited in Herbert, 2000b). Police-community relations in New York City became an issue for national debate with potential presidential candidates Bill Bradley and Al Gore, and senate contender Hillary Clinton, all commenting on the case, if in fairly sterile fashion.

Other public figures were less tolerant of what they perceived as an unjust outcome. The Reverend Calvin Butts, who had played a central role in the efforts at reconciliation a year earlier, condemned Giuliani and asserted that the verdict reflected entrenched racism. He claimed that Giuliani “has created in this city a divisiveness, a climate that gives a chance for people who are filled with rage, people who are racist, to strike out against the poor or downtrodden” (Butts, cited in Lipton, 2000c). He also urged the members of his congregation at the Abyssinian Baptist Church in Harlem to ensure that Giuliani’s bid for the Senate would be unsuccessful. Former mayor David Dinkins also “urged worshippers to make their anger at the verdict widely known” (Lipton, 2000c: A1) recognizing that reform will only come if sufficient numbers expressed their dissatisfaction.

Diallo’s parents, who reportedly had been in disagreement over the handling of their son’s estate, settled their differences sufficiently to jointly file a civil lawsuit against the City and the four acquitted officers on April 18, 2000. They also met with representatives from the Justice Department to press for federal prosecution of their son’s killers on civil rights violation charges. It would take yet another year for the Justice Department to announce that there would be no federal prosecution on civil rights charges of officers Boss, McMellon, Carroll and Murphy. The decision was announced just a few days after the second anniversary of Amadou Diallo’s death.

CHAPTER 3

CIVIL SOCIETY AND THE STATE: POLICING IN NEW YORK CITY

Some versions of the recent theoretical developments concerning global citizenship, particularly ecological and cosmopolitan citizenships, have essentially abandoned the connection between contemporary citizenship and traditional understandings of civil, political, and social rights. Later I will argue that such abandonment is infeasible, given that individuals are still enmeshed in a relationship with the state, regardless of the emergence of new sets of rights, or types of affiliations. Regardless, two theoretical strands of postnational citizenship that advocate either a deterritorialized, global version of citizenship (exemplified by the work of Soysal, 1994, 1998), or a citizenship re-territorialized at the urban scale (Sassen, 1996) both indicate that rights can accrue locally without formal political membership. The Diallo killing questions those assertions, given that his interaction with the state led to his death. However, for this incident to be understood as a violation of civil rights and citizenship, rather than simply a tragic accident, the activity of the state, here in the form of the NYPD, must be subjected to greater scrutiny.

This chapter examines how, contrary to conservative rhetoric in the local state and selective media, Amadou Diallo's killing was not an isolated incident. Rather I suggest that Diallo's death was symptomatic of the broader construction of civil rights in New York City. The objective of this chapter is to examine first, the condition of civil rights in New York City; and second, the extent of the stratification of access to civil rights, and

thus to citizenship rights more broadly. The chapter questions the extent to which civil rights accrual in New York City corresponds with the standard model of citizenship rights that is conventionally projected and subsequently used to justify a compendium of expectations regarding duties that citizens/residents are supposed to adhere to. I find that the model of civil rights accrual in New York, fails to conform to the frequently invoked model of universal citizenship, in that access to civil rights is thoroughly stratified according to the subjectivity of the citizen/resident concerned.

NYPD brutality

Of all the killings, and other incidents of police brutality in the U.S in recent years, Amadou Diallo's death perhaps stands out for the way in which it crystallized an anti-brutality movement out of previously disparate, and relatively powerless, attempts to protest the mistreatment of various members of society by law enforcement agents. However, although the incidents surrounding Diallo's killing were especially indicative of how matters of immigration, citizenship and urban poverty can have particularly ugly consequences when they clash with global capitalism, urban entrepreneurialism and local disciplinary regimes, Amadou's death was far from unique. While Giuliani consistently emphasized that incidents like Amadou's shooting do not imply routine police brutality and misconduct (Barry, 1999a,b), and that contrary assumptions reflect "excessive stereotyping and bashing of the Police Department, and... prejudice against police officers" (Barry, 1999b: B6), police advocates such as George Kelling went further to assert that Diallo's death was an isolated incident (Kelling, 1999).

Over 2000 people were killed by police officers nationwide in the period from 1990 to 1999, and the vast majority of them were people of color. In New York City, over 100 civilians were killed by the NYPD between 1995 and 1998 (Stolen Lives Project, 1999). In the city's popular and media imaginations, four names have become particular markers of "zero tolerance" policing and police brutality in recent years. These four are Diallo; Abner Louima, the Haitian immigrant brutally tortured in a station house bathroom; Anthony Baez, a young Latino killed by an illegal choke-hold; and Patrick Dorismond, a Haitian American shot to death by an NYPD narcotics officer just weeks after the officers who killed Diallo were exonerated. All four of these victims were young black or Latino men; Diallo and Louima were immigrants, Baez and Dorismond were first generation U.S. citizens. None of the victims was armed, or engaging in illegal activity at the time of the attacks that left them dead or seriously injured.

On August 9, 1997, Abner Louima was arrested outside a Brooklyn nightclub when he was mistaken for a participant in a fight⁷. According to Louima, a 30 year old Haitian immigrant, he was merely trying to break up the fight. On the way to the 70th precinct station house following his arrest, the patrol car in which the handcuffed Louima was being transported was twice stopped so that he could be beaten. Some time after arriving at the station house he was taken to the bathroom where he was verbally abused with racial slurs, and then held down and subjected to a further beating, before being sodomized with a toilet plunger and having the same plunger forced into his mouth. He sustained severe internal injuries including a ruptured bladder and colon, broken teeth

⁷ Details of Abner Louima's beating were taken from the following sources: McArdle, 2001a; USCCR, 2000; Dwyer, 2001; Human Rights Watch, 1998.

from the plunger attack, and severe bruising from the beatings. Despite his injuries, and the fact that he was bleeding profusely, it was several hours before he was taken from the station house to hospital by ambulance. Louima's injuries were so severe that he was hospitalized for two months. For his first three days in hospital Louima lay handcuffed to the bed.

Officer Justin Volpe, who was the main antagonist in the Louima beating, was originally charged with aggravated sexual abuse and first-degree assault in a state indictment. However the prosecution was actually handled by the U.S. attorney for the Eastern District of New York, which meant that federal civil rights charges were added. Volpe consistently asserted his innocence well into his May 1999 trial, until a succession of his fellow police officers broke the 'blue wall of silence' and provided damning eye-witness testimony (Fried, 1999d). Volpe subsequently pleaded guilty to violating Louima's civil rights among other charges (Barstow, 1999) and was sentenced to thirty years in prison (Fried, 1999e). At subsequent trials Officer Charles Schwarz was acquitted of beating Louima but was convicted of holding him down while Volpe attacked him. Schwarz was also convicted of conspiring to cover up his involvement in the attack, and received a sentence of fifteen years and eight months in prison for both offences. Officers Thomas Wiese and Thomas Bruder were sentenced to five years each for obstructing justice by fabricating the report that Schwarz had used in an attempt to exonerate himself. Other officers were also found guilty of, or pled guilty to, charges of lying about what they had witnessed in the 70th Precinct station house on the night Louima was attacked (Feuer, 2000a, b, c).

By the summer of 2001, the campaign to repeal Schwarz's conviction had attracted considerable popular and media attention (Fried, 1999f; Flynn, 2001). However even as Schwarz's friends solicited support from a broader population, Louima was settling his suit against the city. Having filed suit for \$155 million and certain changes to police practices as compensation for the horrendous injuries he sustained, Louima was eventually awarded \$8.75 million – \$7.125 million from the city and the remaining \$1.625 million from the Patrolmen's Benevolent Association – almost four years after the attack took place. It was the largest amount ever paid out in a police brutality case in New York City (Feuer and Dwyer, 2001). The settlement was almost stymied when the two parties disagreed over whether changes to police practices had occurred as a result of Louima's experience. One of the conditions for settlement stipulated by Louima included an admission by the NYPD that their practices needed amendment. However statements from the two sides following settlement expressed markedly different opinions on this matter (Dwyer, 2001).

In the very early hours of December 22, 1994, Anthony Baez, a 29 year old citizen of Puerto Rican descent, was playing football with his brothers in the street outside his parents home⁸. The family was due to fly to Florida for a vacation later that day. Officer Francis X. Livoti approached the brothers after the football landed on his patrol car, and he ordered them to end the game. When the ball struck the car a second time, Livoti attempted to arrest the brothers, but Anthony refused to put his hands behind his back to

⁸Details of Anthony Baez's death were taken from the following sources: McArdle, 2001a; Human Rights Watch, 1998.

be cuffed. Livoti used an illegal chokehold, with his arm around Anthony's neck, to hold him to the ground, face down. Anthony Baez died from asphyxiation due to neck and chest compression, complicated by asthma, less than an hour later.

Livoti had received eleven brutality complaints in an eleven year period prior to killing Baez, including a complaint that had been substantiated. However he was acquitted of criminally negligent homicide in October 1996 when the prosecution's case was found unproven. During Livoti's trial Acting New York Supreme Court Justice Gerald Sheindlin had suggested that inconsistency in officer testimony reflected a "nest of perjury" (cited in USCCR, 2000: 29) in the police department. With tension fuelled by public outrage at his acquittal, Livoti was fired by the NYPD in February 1997 following an internal investigation. He was subsequently found guilty of civil rights violations in federal court in June 1998, and sentenced to seven and a half years in jail. Apart from the four officers who were charged with Diallo's murder, Livoti is the only NYPD officer to be indicted on murder charges since Giuliani took office in 1994 (USCCR, 2000: 72).

In March 2000 an undercover detective from the narcotics squad of the Manhattan Gang Unit, Anthony Vasquez, approached Patrick Dorismond, a security guard for the 34th Street Partnership, on 8th Avenue in Midtown and asked if he had any drugs for sale. Having no way of knowing that the man approaching him was a plain-clothes police officer, Dorismond reacted aggressively, and the ensuing struggle ended with the 26 year old Haitian American being fatally shot by the officer. Dorismond's death was the third

incident of an unarmed black man being shot to death by NYPD officers in just over a year (Flynn, 2000a; Rashbaum, 2000a).

The case attracted further attention when Mayor Giuliani's immediate response to Dorismond's death incited public furor, leading even Republican strategists concerned with Giuliani's senate race to question the Mayor's handling of the situation (Bumiller, 2000b). Rather than apologize or express sympathy for Patrick's family, Giuliani chose to besmirch his character and blame him for his own death. Asserting Dorismond's involvement in various criminal activities including robbery, assault and illegal gun possession, Giuliani claimed "maybe it isn't an altar boy, it's some other situation that may justify, more closely, what the police officer did" (cited in Lipton, 2000a: B1). Regardless of the fact that Officer Vasquez would not have known Dorismond's record as he initiated contact, it later transpired that none of the charges Giuliani cited had been substantiated, and Dorismond had only ever been found guilty of disorderly conduct for relatively minor infractions (McFadden, 2000b).

Furthermore, in establishing his case against Dorismond, Giuliani had disclosed Dorismond's sealed juvenile arrest record. While Public Advocate Mark Green challenged the legality of Giuliani's actions in court (Lueck, 2000) Lieutenant Eric Adams of '100 Blacks in Law Enforcement Who Care' expressed outrage: "at 15 I was arrested... Does that make me a person who shouldn't be allowed to walk the city? When did it become that because of an activity at 13, 14, or 15 years old, this should cause you to be shot? For a man to justify that, that is sick" (Adams, cited in Lipton, 2000a: B4).

Following the advice of city lawyers, Safir defended Giuliani's release of Dorismond's records, recognizing that laws prohibiting release of sealed records no longer apply after the person has died, adding that there had been no complaints in all the other cases where sealed records of citizens killed by police had been released (Flynn, 2000b). A Manhattan grand jury subsequently found that the shooting of Dorismond was unintentional, and therefore decided not to indict Detective Vasquez (Chivers, 2000)

These particular incidents of brutality may have been the galvanizing moments for recent anti-brutality movements, and are certainly the most often cited in generic accounts of brutality in New York since the mid-1990s. However, details of numerous other unjustified killings and vicious attacks on unarmed, innocent, individuals – most often young black men and Latinos⁹ – point to a serious problem with NYPD policy and its proponents. Cousins Anthony Rosario and Hilton Vega were shot dead by two detectives from the 46th precinct during an apparent attempted robbery in January 1995. According to the medical examiner, at least some of the “hail of bullets in their backs and sides” (USCCR, 2000: 72 n177) occurred after the young Latinos had fallen to the ground (USCCR, 2000: 71-2). In June 1996, Aswan Watson was shot dead by two plain-clothes police officers while he was sitting in a stolen car. Watson was unarmed when he was shot, although the officers claimed that they opened fire when they thought he was reaching for a gun. Nathaniel Levi Gaines was shot in the back and killed by a Transit

⁹ Here I use the term ‘Latino’, largely recognized as a community based self-identification. However, the state uses the term ‘Hispanic’ to describe U.S. residents of Latin American origin and, later in this chapter, when referencing statistics released by the state I repeat the classification system used in the data collection. This is not to endorse the state’s use of the term ‘Hispanic’, but interrogating the naming of populations is beyond the scope of this project. Further, I consciously use the term ‘Latino’ when referring to the victims of aggressive policing, precisely because they are presominantly male. However, I use the term ‘Latino/a’ when referring to the broader Latino/a population.

Officer on a Bronx subway on Independence Day in 1996. The officer, who had a history of complaints against him, knew that Gaines was unarmed because he had frisked him prior to the shooting (Human Rights Watch, 1998: 292). When Edward Dominguez was kicked so hard in the groin by a police officer that he had to have a testicle surgically removed, departmental officials recommended that the officer should be fined 30 days' pay and put on departmental probation (Human Rights Watch, 1998: 293). On Christmas Day 1997, William Whitfield was shot and killed when he did not stop on an officer's orders. The officer who fired, and who had 12 complaints against him as well as the worst shooting record in the NYPD, claimed that he thought Whitfield was armed. In fact the victim was holding keys and a hat (Human Rights Watch, 1998: 295).

There is insufficient space here to provide all the details of all the killings and brutalities inflicted by police on unarmed, innocent people. However there is clear evidence to suggest that the most basic of civil rights – the right to life – are not afforded to some people in New York City. Moreover, the victims of these attacks are disproportionately young black men and Latinos. Some would argue that these cases provide insufficient evidence of systematic violence and misconduct in the NYPD. However the killing of Amadou Diallo was far from being an isolated incident. In the wake of the Diallo shooting, Giuliani consistently attempted to deflect attention from the notion that systemic problems within the NYPD had led to Diallo's death. In charging that perceptions of police brutality reflected media-frenzy derived *misperception* on behalf of the public, Giuliani emphasized the decline in incidents of excessive force among police officers, and asserted that a decline in police shootings proved that police violence was

waning (Barry, 1999a). While these claims may be true statistically, the conclusions drawn reflect the administration's desire to fabricate a version of events surrounding police brutality, rather than actively work to decrease it.

The NYPD and the City do not release statistics on police killings, and the mandate laid down in the 1994 Crime Bill for the U.S. Department of Justice to assimilate and disseminate statistics on killings by law enforcement has never been complied with. However statistics have been compiled by the Stolen Lives Project, whose "mission is to assemble a national list of people killed by law enforcement agents from 1990 to the present" (Stolen Lives Project, 1999: iv). Accepting the likelihood of some error, but also recognizing that such error is only likely to reflect under-reporting of deaths, the data for the number of civilians killed by law enforcement in New York City, Westchester and Long Island show a marked leap in police killings between 1993 and 1994 (see Table 3.1). Between 1990 and 1993, the average number of deaths inflicted by police was less than 6 per year. From 1994 through 1998 that average had more than quadrupled to more than 26 deaths per year (Stolen Lives Project, 1999, 232-64). Thus during the Giuliani administration, police *killings* had rocketed, even if the contention that police *shootings* had declined might be accurate.

Table 3.1 - Number of civilians killed by police in New York City, Westchester and Long Island, 1990-99

Year	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999 ^a
No. Killed	7	3	4	9	28	27	17	28	34	14

a: Figures for 1999 are through September 1; Source: Stolen Lives Project, 1999

The suggestion that ‘excessive force’ had decreased up to the time of the Diallo shooting, reflects an even more egregious manipulation of statistics. Giuliani’s assertion in March 1999 that accusations of excessive force were in decline was technically correct. However by examining the statistics in context it becomes apparent that this fact in no way reflects a decrease in abusive police behavior. Table 3.2 gives statistics for complaints received by New York City’s Civilian Complaints Review Board (CCRB) for 1990 through 2001, sub-divided by category of complaint¹⁰. When Giuliani made his claim in March 1999 about a decrease in excessive force complaints, the most recent data available were for 1998. Although accusations of excessive force were at a low for his tenure, they were still higher than at any time during the previous administration.

Furthermore, the criteria used by the CCRB for allocating allegations to different categories have fluctuated. For instance, ‘pointing a gun’ has, at different times, been classified as ‘force’ or ‘abuse of authority’. This problem of classification may explain data trends such as the increase in ‘abuse’ complaints accompanied by the decrease in ‘force’ complaints from 1998 onwards. Regardless of the explanation, the lauded decrease in allegations of ‘force’ is accompanied by a significant increase in allegations of ‘abuse of authority’. If allegations of force and abuse of authority are grouped into a category of allegations of inappropriate physical behavior (indicated in Table 3.2 as ‘Force + Abuse’) the 1998 figures that Giuliani would have been referring to after the Diallo shooting, conversely reflect the peak of complaints for the 1990s. Moreover, although complaints concerning force and abuse of authority subsequently have fallen

¹⁰ When accusations against officers are filed with the NYPD, they are also recorded with the CCRB. Therefore CCRB figures should be an accurate reflection of accusations against the police.

somewhat from their 1998 high, they are still far in excess of the figures that preceded Giuliani's administration.

Table 3.2: Allegations and complaints against NYPD officers, by type, 1990-2001

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000 ^a	2001
<i>Force</i> ^b	4,276	4,561	4,427	3,686	4,900	5,787	5,174	5,150	4,673	3,489	3,470	3,652
<i>Abuse of Authority</i> ^c	1,656	1,650	1,875	1,809	2,834	3,470	4,228	4,269	5,397	5,310	4,547	4,809
<i>Force + Abuse</i>	5,932	6,211	6,302	5,495	7,734	9,257	9,402	9,419	10,070	8,799	8,017	8,461
<i>Discourtesy</i> ^d	2,178	2,449	2,474	2,286	3,055	3,393	3,417	2,908	2,977	2,810	2,090	2,196
<i>Offensive Language</i> ^e	531	597	652	625	710	728	654	517	545	382	380	367
Total Allegations^f	8,641	9,257	9,428	8,406	11,499	13,378	13,473	12,844	13,592	11,991	10,487	11,024
Total Complaints	3,376	3,379	3,437	3,580	4,877	5,618	5,361	4,768	4,930	4,810	4,097	4,260

Source: 'Table 11 - Allegations and Complaints by FADO Category' Civilian Complaint Review Board Status Report, Vol. VIII, No. 2, January - December 2000, City of New York; 'Table 1A - Total Complaints and Allegations Received January - December 2000 and 2001', Civilian Complaint Review Board Status Report, Vol. IX, No. 2, January - December 2001, City of New York

a: Data for 2000 appear differently in the two sources listed. Given that data are recorded according to the date of the alleged infraction, rather than the date of complaint, it is possible for the number of allegations to increase after data is tallied at year-end. Therefore the data in the later report has been used, because it is more likely to be up to date. Similarly, the figures given for 2001 are liable to have increased by the time reports are issued for 2002.

b: "A CCRB complaint of excessive or unnecessary force can range in severity from a slap to firing of a gun. Some allegations that do not involve contact but imply physical force, such as pointing a gun, are classified as force complaints by the CCRB" Glossary, Civilian Complaint Review Board Status Report, Vol. VIII, No. 2, January - December 2000, City of New York, p215-218. In practice, the criteria for allocating allegations to different categories have fluctuated. For instance, 'pointing a gun' has, at different times, been classified as 'force' or 'abuse of authority'. This problem of classification may explain data trends such as the increase in 'abuse' complaints accompanied by the decrease in 'force' complaints from 1998 onwards.

c: "Abuse of authority includes the improper use of police powers to threaten, intimidate or otherwise mistreat a civilian. Examples include threats of force and improper stops, frisks, and searches" Ibid.

d: "As a CCRB allegation, discourtesy includes rude or obscene gestures and/or language" Ibid.

e: "One of the categories in the CCRB's jurisdiction, offensive language refers to any allegation where an officer used language that was derogatory with regard to race, religion, nationality, ethnicity, gender, sexual orientation, disability, or age" Ibid.

f: "Each individual act of misconduct raised by a complainant, witness, or alleged victim against each officer is called an allegation... Since many complaints have multiple alleged victims, and each alleged victim can make (or have made on his or her behalf) multiple allegations against more than one officer, the total number of allegations is always substantially higher than the total number of complaints" Ibid.

The same trends can be seen, in terms of both the data and its manipulation, for complaints across all categories. In some instances, the administration has simply lied about complaint statistics. Police Department observations on complaints in 1997 and

1998 are thoroughly contradicted by CCRB data. Norman Siegel, then Director of the New York Civil Liberties Union (NYCLU), explains:

The Police Department, through its spokesperson, Marilyn Mode, put out information, reporters called me Sunday night, saying that for the last two years [1997 and 1998] there was a 13 percent decrease in complaints to the Civilian Complaints Review Board. That's not factually correct... we now see in your [CCRB] report that for 1998 there was a 4.3 percent increase. But if the Police Department is playing... with the numbers, that they are engaged in the big spin, you need to correct the record. There wasn't a 13 percent decrease from 1996 until 1998. And there was a slight increase in 1998 compared to 1997.

Norman Siegel, Jan 13, 1999, Minutes of the Public Session of the Civilian Complaint Review Board of New York, p33-4 (CCRB, 1999)

Again, data used to substantiate claims of a decrease in civilian complaints against the police, need to be consciously examined in terms of the time frame they reflect. By 2000, total civilian complaints against the police were beginning to fall, as reflected in CCRB reports (CCRB 2001a,b) but only from the highs they had reached in the middle and late 1990s. When examined over a longer time period the data show remarkably different results than suggested by the claim that complaints against the police are falling. Between 1993 and 1994, civilian complaints rocketed by 36%. Allegations, that had averaged less than 9,000 per annum prior to 1993, leapt to an average of over 13,000 per annum in the latter half of the 1990s. Complaints followed a similar trend, with an increase from an average of less than 3,500 per annum for the early 1990s, to an average of over 5,000 complaints per annum for the second half of the 1990s. While complaint and allegation activity peaked between 1995 and 1998, subsequent declines have not reduced complaints and allegations to the relative lows of the early 1990s. Complaints and allegations for 2001 still stand over 25% above 1990 levels. Furthermore the trend toward

a decline in complaints has not been consistent. Data for 2001 show a renewed increase in complaints over 2000 figures.

The data show a clear distinction between the period up to 1993 and the period from 1994 onwards, with the two periods delimited by Giuliani's election. Abusive police behavior increased dramatically during Giuliani's tenure. Therefore, although the data bears greater scrutiny than the analysis of aggregate numbers given so far, this initial analysis suggests that the impetus behind such trends might derive from policy and practice differences between administrations, rather than the actions of individual personnel, many of who would have worked as NYPD personnel across administrations. Thus it is essential to contextualize further data analysis within an understanding of broader procedural transformations. The remainder of this chapter aims to consider the statistical evidence concerning police brutality and misconduct in greater detail, but further aims to examine identified trends within the context of the broader sets of strategies mandated by the NYPD, and the general ethos advocated by the city.

Brutality, systems of discipline, and civil rights violations

The standard rhetoric of police activity establishes the excesses of brutality as distinct from the everyday standards and practices of police systems of discipline. For instance, an NYPD officer suggested that "Volpe wasn't a cop, he was a criminal in a cop's uniform"¹¹. Similarly, relatively liberal theorists Skolnick and Fyfe suggest that:

One impediment to police progress in controlling use of force is that even the police and some of their most sophisticated critics frequently fail to distinguish between brutality and unnecessary force. Brutality is a conscious and venal act

¹¹Captain James Albert, lecture given to Fulbright scholars, Spring 2000.

committed by officers who usually take great pains to conceal their misconduct... Unnecessary force, by contrast, is usually a training problem, the result of ineptitude or insensitivity

Skolnick and Fyfe, 1993: 19-20

In these understandings of police activity, deaths, injuries and other invasions sustained by civilians are either errors or, presumably in a small fraction of cases, crimes. However, brutality and excess force do not fit into neat, qualitatively discrete categories that can be understood through a crime/error binary. Moreover, contradistinctions between what sort of police behavior is legal or illegal, and what is implicitly, or even explicitly, sanctioned, are ambiguously overlain onto this already complex situation, rendering simplistic understandings of police violence relatively useless.

In reference to the trial of the four officers who shot Diallo, Edward McMellon's lawyer claimed that "Police officers have to be able to do their jobs. When the evidence supports them, a jury will support them" (Stephen Worth, February 25, 2000, cited in Fritsch, 2000: B6). The Patrolmen's Benevolent Association (PBA) president James Savage was even more specific in his assertion that the four officers who shot Diallo were 'just doing their job'. Within a matter of weeks of Diallo's death, and long before the four officers went to trial, he stated: "This is a dark day for the New York City Police Department when four young, eager, aggressive police officers *who have done nothing but serve their city well* are indicted for murder" (James Savage, cited in Waldman, 1999b: B4, my emphasis).

Whether a lawyer's unswerving support of his client necessarily establishes the institutional defense of brutality is debatable. Similarly, although James Savage's defense

of the four officers may indicate what is expected of NYPD officers, it would be unusual for a union president not to support his members. However, the mayor's consistent support for the NYPD following Diallo's shooting suggests that this type of violence is also sanctioned by the administration, and sets very little limit on police behavior. As promised to police who were rioting against the city administration in 1992, Giuliani's automatic defense of NYPD officers started within weeks of his first term in office, when the 17 year old son of a Muslim cleric was shot in a basement while unarmed and, according to an autopsy, kneeling with his arms raised. Despite the fact that some time later the city settled a wrongful death suit with a \$318,000 pay off to the family, Giuliani declared at the time that "The officer reacted both properly and bravely" (cited in Barrett, 2000: 291). Perhaps then, Justin Volpe's decision to abuse Louima in a way that even the NYPD, the PBA, and Giuliani could not defend, is simply a consequence of training police officers in the practice of violence, when some of them are incapable of controlling the instilled aggression to levels deemed 'acceptable', or at least defensible, by institutional leaders.

As violent, reprehensible, and inexcusable as the treatment of Diallo, Louima, Baez , and Dorismond might have been, these cases are only the zenith of repressive control and discipline in New York. As McArdle (2001a: 3) points out "police brutality in New York City is a multidimensional phenomenon referring not only to the hyperviolent responses in the Diallo, Louima, Baez, and Dorismond cases, but to an entire set of public-order police practices directed against homeless people, vendors in Chinatown, and sexual minorities". Moreover, the denial of certain basic liberties and freedoms is not limited to

police brutality, although that particular form of repression and control is perhaps that which most clearly violates basic human rights. Civil rights denials are manifested in a range of activities, most clearly identifiable – but not limited to – police oriented, city-sponsored, systems of discipline.

Rather than assume that inappropriate police behavior derives from an individual officer's predilections or shortcomings, it is useful to examine the systemic impetus for such activity. I suggest that various levels of aggressive behavior reflect different points on the continuum of an authoritarian disciplinary system that trains police officers to deploy aggression, violence and invasion intentionally and selectively. Acts of aggression might be quantitatively different but they derive from the same logic, and are not, therefore, qualitatively different. Moreover, the techniques of authoritarianism mesh with a certain vision of order that ensures intervention will be problematic even before any contact between police and the public takes place. In other words, the version of 'order' that is being pursued by the NYPD is the problematic impetus behind equally problematic police behavior (Erzen, 2001). Given that "the police are getting blamed for enforcing policies that are not theirs but are those of the politicians who run the city" (Chevigny, 2001: xi), it is useful to examine systemic aggression within the NYPD in the context of policy decisions made by their superiors.

Policing strategy: The consequences of 'zero tolerance'

The data in tables 3.1 and 3.2 show two distinct periods of levels of complaints and allegations against the NYPD, delimited by Rudolph Giuliani's accession to power as

Mayor of New York City in 1994. The instant change in policing that arrived with Giuliani and his first appointed Police Commissioner William Bratton is renowned in New York and beyond. In 1990, under the mayoralty of Democrat David Dinkins, then Police Commissioner Lee Brown had attempted to introduce community policing, adding five thousand officers to the NYPD in order to put enough officers on the beat to provide ample community interaction and neighborhood patrols. However, the community policing experiment was never really embraced by the rank and file, and following the Crown Heights riots in August 1991 and corruption exposés in 1992, Brown left the NYPD in August 1992. At the same time, Dinkins proposal for an all-civilian review board led to cop riots that, along with the corruption charges and mismanagement of civil unrest, undermined the argument that NYPD officers had the capacity to engage in community policing (Lardner and Repetto, 2000: 299-310).

When Giuliani was elected Mayor in November 1993, he appointed William Bratton as Police Commissioner. Up until April 1992, when he returned to his native Boston for a brief stint as second in command and then commissioner, Bratton had spent 10 years in charge of the New York City Transit Authority's police force. At that time the subway police were a separate entity from the NYPD, and Bratton answered to the Metropolitan Transit Authority (MTA) rather than Commissioner Brown. Therefore, while Brown had been advancing community policing, Bratton was able to invoke his 'quality-of-life' campaign, premised on the entirely different philosophy of aggressively targeting fare beaters, the homeless, panhandlers, and boisterous youth (Lardner and Repetto, 2000: 316). Bratton, who had renounced the CCRB as "not high-quality people" (cited in

Lardner and Repetto, 2000: 322) and Giuliani, who stood on a flatbed truck at the 1992 anti-Dinkins cop riots to condemn Dinkins community policing as “bullshit” (cited in Kirtzman, 2000:41; Barrett, 2000: 260), together instituted a new set of strategies for policing in New York City that centered on the ‘quality-of-life’ policies that Bratton had been testing throughout the 1980s on the subway.

Fred Siegel, a Cooper Union professor and senior editor at the *City Journal*, a publication of the conservative think tank the Manhattan Institute, introduced George Kelling, a contributor to *City Journal*, into Giuliani’s 1993 mayoral election campaign (Kirtzman, 2000: 39). Along with James Wilson, Kelling had published an *Atlantic Monthly* article entitled ‘Broken Windows’ in 1982, which promoted the twin logics that perpetrators of low-level crime will progress to committing felonies, and that signs of minor physical disorder generate a perception of broader social disorder, and thus encourage an increase in crime (Wilson and Kelling, 1982). Giuliani and Bratton extended the logic of ‘broken windows’ into a ‘zero tolerance’ policy for the quality-of-life crimes that Bratton had already attempted to stamp out on the subway.

Aimed at low-level offenses, as advocated by ‘Broken Windows’, the program of ‘zero tolerance’ for quality-of-life offenses focuses on establishing a certain vision of public order. Thus the definition of crime, and the orientation of crime-control center around preempting minor infractions. This strategy is engineered via the twin tactics of hypersurveillance and an aggressive arrest policy, and is most clearly manifest in ‘stop and frisk’ practices, which in combination institute a new authoritarianism via law

enforcement (McArdle, 2001a). While the quality-of-life program works on the assumption that cracking down on minor infringements is automatically beneficial, some have questioned whose interests are being served by ‘cleaning up’ the city, and what exactly constitutes the ‘disorder’ that is so viciously guarded against (Erzen, 2001). Neil Smith has described the new version of order maintenance as ‘revanchism’; the vengeful basis of the new political order being shuffled into the vacuum left by the demise of liberalism in New York (Smith, 1998, 1999).

The philosophy of zero tolerance for quality-of-life crimes in New York, and subsequent strategies for implementation, are mandated in a variety of documents. Ten documents were released outlining NYPD strategies for dealing with youth violence, drugs, guns, auto crime and so forth, between 1994 and 1997, the first five of which were released between March and July in 1994¹². Among these strategy number five, entitled ‘Reclaiming the Public Spaces of New York’ (Giuliani and Bratton, 1994) was released on July 18, 1994. Chief of Department since August 2000, Joseph J. Esposito, describes strategy number five as “in many respects the linchpin of the other strategies since so many perceptions about crime and public safety are linked to street disorder conditions”¹³.

The function of Police Strategy No. 5 is to target certain individuals, defined by their now-criminalized behaviors as transgressors of public order. Esposito identifies “public disorder offenses” as including “street prostitution, loud boom-box radio playing,

¹² For an overview of all ten NYPD Police Strategies, see the Chief of the Department's home page: <http://www.ci.nyc.ny.us/html/nypd/html/chfdept/strategies.html>.

“squeegee” window washers who harass motorists, drag racing, and other public nuisances”¹⁴. The general policy laid down in the strategy is also reinforced through the ‘NYPD Quality of Life Enforcement Options Reference Guide’ released by Safir in 1996. The behaviors and actions that the guide lists as offenses include panhandling, windshield washing, leaving property or refuse on the street, unauthorized removal of refuse from the street, public urination or spitting, disorderly behavior on Parks Department or Transit Authority property, public consumption of alcohol, unlicensed street vending, various noise violations, public lewdness, erecting of shelters, maintaining an open fire, or using a loud motorcycle (see Erzen, 2001: 35-45).

While not exclusively targeting homeless people, the behaviors classified as impeding the ‘quality of life’ in New York clearly impinge upon the ability of the homeless to carry out their basic daily needs. Moreover, Bratton declared that “Subways are not for living. We’re going to flush the homeless people off the street in the same successful manner in which we flushed them out of the subway system” (cited in Kirtzman, 2000: 85) making it clear that the homeless were a definite target for the NYPD. The sympathy for the plight of the homeless that Giuliani exhibited in his 1989 mayoral candidacy announcement (Barrett, 2000: 189), had evaporated by the time he was in power. Contextualized in the city’s policy of conducting ‘homeless sweeps’ to push the homeless out of the city, and the decimation of funding for programs for the homeless (Smith, 1999: 190; Barrett, 2000: 313-5), the quality-of-life policy managed to both blame the homeless for the city’s ills and produce a method for disciplining them in one discursive

¹³ <http://www.ci.nyc.ny.us/html/nypd/html/chfdept/strategies.html>

¹⁴ Ibid.

maneuver. As Smith (1999:188) notes, establishing a system exemplified by Police Strategy No. 5 as a solution for urban disorder, rests on the perverse logic of blaming the devastation that comes with social disinvestment on its victims. The strategy fits into the widespread use in the United States of legal initiatives to remove, or rather displace, the problem of homelessness, rather than an effort to resolve the problem (Mitchell, 1997).

While the assault on homeless people was a central part of the vengeful new order introduced by Giuliani and Bratton, with Safir succeeding Bratton in 1996 without noticeable change, zero tolerance incorporated a somewhat hidden race dynamic, alongside the more obvious class dynamic. The stereotypical 'quality-of-life' crime offender is rendered virtually transparent in Police Strategy Number 5 and the Quality of Life Enforcement Options Reference Guide. However, beyond the intentions of Giuliani, Bratton, and Safir are the practices of NYPD officers on the street. As the protests following Diallo's shooting show, the perception on the street is that the hypersurveillance and aggressive law enforcement tactics are directed at people of color, especially against young men of color, although the administration has been at pains to suggest otherwise. A number of investigations into NYPD activity have been initiated either as a result of specific incidents of brutality, or of general concern about civilian abuse, and the racialized dimension of this activity within the NYPD. While critical investigations by groups such as Amnesty International (1996, 1999) and Human Rights Watch (1998) are perhaps expected, given the radical purpose of such groups, the last few years have also witnessed considerable attention to NYPD activity from local and federal officials.

Citing the desire to study “the methods used by the city to balance crime fighting with the exercise of appropriate restraint, particularly following the highly publicized tragedies involving Abner Louima and Amadou Diallo” (USCCR, 2000: iii), the United States Commission on Civil Rights (USCCR) conducted an investigative hearing into police practices and their impact on civil rights in New York City. The subsequent report considered recruitment, selection, and training of officers; police-community relations; the monitoring of civilian complaints; and devoted considerable attention to the question of ‘stop and frisk’ procedures¹⁵. Similarly, following his January, 1999 appointment as Attorney General for New York State, Eliot Spitzer initiated an investigation into NYPD stop and frisks because of both the number and the nature of complaints he received from communities of color:

Many of the complaints, if not most, revolved around lower-level police involvement in the everyday lives of minority residents, rather than celebrated cases of extreme abuse. Roadblocks, car stops, “stop and frisk” street encounters, and “order maintenance” law enforcement techniques all were consistently cited as major sources of tension between the NYPD and minority New Yorkers.

Spitzer, 1999: 4

Furthermore, Spitzer’s report recognizes the vast significance of Diallo’s death for many in New York’s communities of color, in terms of its representation of their systematic mistreatment by NYPD officers (Spitzer, 1999: 5-7). The CCRB also formed a Street Encounter Committee “to review complaints filed by people who had been stopped on the street and frequently frisked and/or searched by a New York City police officer” (CCRB, 2001c: 1) in March 1999, one month after Diallo was shot. The reports all point

¹⁵ The complex procedures and legal justifications for 'stop', 'frisk', and 'search' will be examined below. Hereafter "stop and frisks" will be used to denote general reference to any or all of these practices.

to various systemic underlying problems such as inadequate training, and the lack of appropriate disciplinary procedures for police misconduct, but the considerable focus on stop and frisks in the various investigations suggest that this practice, above all others, is the most problematic aspect of civilian abuse by members of the NYPD.

Stop and frisks

According to the NYPD Patrol Guide Procedure (NYPD, 2000b: 1), a stop involves temporary detention for questioning; a frisk is where hands are run over the clothing to feel for a weapon; and a search is where hands are placed inside clothing to determine if an object already felt is a weapon. In 1968 the Supreme Court upheld the ‘stop and frisk’ practice as constitutionally permissible but laid down specific circumstances in which the procedure may be carried out under ‘reasonable suspicion’, surpassing the 4th amendment requirements for search and seizure based on ‘probable cause’ (*Terry v Ohio* 392 U.S. 1, cited in Spitzer, 1999: 15; USCCR, 2000: 86). Also, in accordance with the 14th Amendment’s Equal Protection Clause, which requires that individuals cannot be targeted because of their race, race can be used as part of a description but cannot be the sole basis for a stop (Spitzer, 1999: 41-2).

New York state’s Criminal Procedure Law codifies the *Terry* decision authorizing limited stop and frisks. However state law provides some greater protection for individuals, particularly in relation to officers only being allowed to escalate their level of intrusion as articulable suspicion increases (USCCR, 2000: 89-91). Essentially, a ‘stop’ can only be conducted when there is ‘reasonable suspicion’ that a person has committed, or is about

to commit, a crime. Any subsequent frisks and searches must match the original reason for the stop. A ‘frisk’, can only be conducted if the officer has a reasonable fear that they are in danger because the suspect is armed, and a search is allowed to seize a suspected weapon (Spitzer, 1999: 17; Lynch, 1999: 4, USSCR, 2000: 86, 89; CCRB, 2001c: App. B). Officers also have the right to request information given an “objective credible reason not necessarily indicative of criminality” (CCRB, 2001c: App. B), but the individual is free to refuse response, and to leave.

The *Terry* ruling has been criticized, even by conservatives. Justice Antonin Scalia expressed doubt whether “the fiercely proud men who adopted our Fourth Amendment would have allowed themselves to be subjected, on mere suspicion of being armed and dangerous, to such an indignity” (cited in Lynch, 2000: 4). Moreover, while defending the NYPD, an article in the equally conservative *City Journal* charged that “Unquestionably, the police under Mayor Giuliani have been using their stop-and-frisk power more aggressively than the Supreme Court opinion establishing the power contemplated” (MacDonald, 1999: 12). But although the Supreme Court ruling has given the police sufficient power that, some argue, the right not to be subjected to false arrest or false imprisonment is threatened (Lynch, 2000), analysis of documentation concerning stop and frisks has shown that NYPD officers routinely exceed the bounds of the law.

At the city level, given that civilian complaints often arise from stop and frisks, the NYPD:

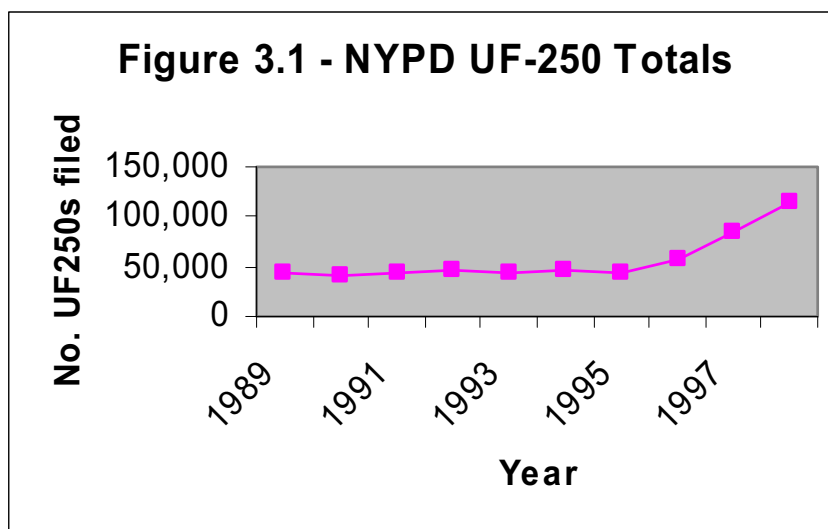
requires officers initiating a ‘Stop and Frisk’ to prepare a report which documents their police action. In addition to informing the court what circumstances led the

officer to believe that a ‘stop’ was necessary, the report also serves to protect the officer and the Department from allegations of police misconduct

Precinct Level Training Instructor’s Guide, (Cycle 91-6), Introduction, cited in Spitzer, 1999: 136

Therefore, although not legally mandated, NYPD policy requires that stop and frisk reports (UF-250 forms) be filed whenever a frisk or search is conducted, or when a person either refuses to identify themselves, or is stopped by force (USCCR, 2000: 91). UF-250s are not mandated when only questioning, either with or without a formal stop, occurs.

The number of UF-250s filed during the 1990s remained relatively steady in the mid 40,000s until 1995, increased slightly in 1996, and then rocketed in 1997 (see Figure 3.1).



Source: USCCR, 2000: 92 n63

However in 1997 Safir made a point of prioritizing UF-250 filing, therefore it is impossible to tell whether the increase in UF-250s filed reflects an increase in stop and frisks, or merely an increase in their reporting (USCCR, 2000: 92). This brings to light a

general problem with stop and frisk data reliability. First, the USCCR (2000: 93-4) investigation uncovered a variety of different practices for maintaining stop and frisk documentation indicating a lack of standardization, and possible miscounting of UF-250s, throughout the NYPD¹⁶.

Regardless, departmental policy does not necessarily dictate individual practice. Spitzer's investigation provided anecdotal evidence suggesting mandated UF-250 forms were filed "fairly regularly", "one in three", or "one in five" of times when they were mandated (Spitzer, 1999: 72). Lieutenant Eric Adams estimated the figure as one in thirty; while another officer testified that the practice was random (USCCR, 2000: 92-3). Regardless of NYPD reaction to these figures, the CCRB study of a sample of complaints concerning stop and frisks found that 54% of complaints that mandated a UF-250 had no corresponding paperwork (CCRB, 2001c: 43). Given a supervisor's contention that officers are most likely to file a UF-250 when a civilian complaint is expected (Spitzer, 1999: 72), the 54% of reports filed in the CCRB sample is probably a generous estimation of department wide practice.

The fact that many stop and frisks are not documented is problematic because it means that the NYPD cannot monitor accurately their own practices, or the sheer volume of stops conducted. More significantly, many of the stops defy legal standards, and it is highly likely that unrecorded stops echo, or even exceed, this trend. In a random sample

¹⁶ The NYPD challenged this contention, claiming that there was a standardized department-wide process for UF-250 filing. Indeed the department challenged much of the report, including the methodology and the data (see NYPD, 2000a). Although the NYPD's criticisms are well countered by the fact that practices in

of 15,000 UF-250s, taken from the 175,000 filed between January 1998 and March 1999, only 61.1% of the reasons given for stops met the standards of reasonable suspicion.

While 23.5% of the forms provided insufficient information to determine the legality of the stop, the facts supplied by officers failed to meet the standard of reasonable suspicion in 15.4% of the sampled UF-250s (Spitzer, 1999: 161, Table II.B.1). Therefore in approximately 1 of 7 cases where an officer recorded a stop, the stop was clearly unconstitutional, and 2 of every 5 recorded cases could not be proven to fulfill the legal mandate. Furthermore, the arrest rate for stops that articulated reasonable suspicion was 7.3, but for stops without reasonable suspicion the arrest rate was 29.3. Stops that were detailed on forms with insufficient information to determine whether there was reasonable suspicion had an arrest rate of 13.6, almost double that where reasonable suspicion was articulated, suggesting that ‘insufficient information’ was not simply a proxy for ‘reasonable suspicion, inadequately articulated’ (Spitzer, 1999: 164-5). Given the extent of under-reporting; the likelihood that legal stops are more likely to be reported than illegal ones; and that, intentionally or otherwise, officers may indicate ‘reasonable suspicion’ for a stop even when there is none, these figures give an optimistic account of the extent to which routine practice in the NYPD includes illegal stops that deny the civil rights of alleged suspects.

In a CCRB study of complaints closed between January 1997 and March 31, 1999 (CCRB, 2001c; see Table 3.3), while the substantiation rate for all complaints was 12%,

the report were uncovered, regardless of NYPD policy, it is still important to recognize the general contention that the report is partial.

20% of street stop complaints were substantiated, implying that stop and frisks are routinely more likely to infringe upon civil liberties than other NYPD behavior.

Table 3.3 CCRB complaints by findings

CCRB finding	% stop and frisk complaints	% total complaints
Substantiated	20%	12%
Unsubstantiated	41%	46%
Officer unidentified	20%	13%
(subtotal)	81%	71%
Exonerated	11%	10%
Unfounded	8%	19%
(subtotal)	19%	29%

Source: CCRB, 2001c: 21

Moreover, the rate at which complaints are deemed erroneous, because the officer's actions are proven either to be legal (exonerated) or to have not occurred (unfounded), is considerably lower for stop and frisks than it is for complaints overall (CCRB, 2001c: 21). These statistics are all the more alarming because, according to the NYPD Patrol Guide procedure 116-33, a supervisor and the commander of the precinct where the stop occurred review all UF-250s (Spitzer, 1999: 64). Therefore, illegal stop and frisks are at least tacitly condoned by those in senior positions. Notably well over half of the total complaints and stop and frisk complaints had indeterminate conclusions (unsubstantiated or officer unidentified), a problem that will be addressed in a subsequent chapter.

Additionally, no contraband was found in 86% of the stops in the CCRB sample (CCRB, 2001c: 39). Considering that seizing drugs and weapons is the mandate for conducting stops, the low proportion of retrievals suggests that stops are frequently conducted without reasonable suspicion. Furthermore, of those who were not charged following a

stop, 64% received no explanation or apology from the officers conducting the stop (USCCR, 2001c: 45).

The problem of these stops is not just whether they are legal or not, or whether they formally deny civil rights. The frequency and invasiveness of stop and frisks in New York establishes an aggressive policing environment, where certain people can never be sure whether they are under surveillance and about to be stopped. Of 45,000 stops recorded in 1997 and 1998, 9,500 – or about 20% – of suspects were arrested (Roane, 1999). Given the extent of under-reporting, it is most likely that the 20% arrest rate is an inflated estimation of how many stops are conducted legitimately, and how many are alternatively used as a method of disciplining selected targets on the street. However, the likelihood of experiencing this treatment is not equally distributed.

Officers can use their own observations and third party information in determining reasonable suspicion. Court decisions have set certain precedents, but the differences are subtle. For instance New York's courts have determined that 'bulge in clothing' alone is insufficient rationale for a stop, whereas 'bulge in waistband' is sufficient. Being in the wrong place, or 'activity deemed suspicious' (such as suspicious clothing, nervousness, being known to police, or possessing a black object) alone are insufficient reasons for conducting a stop (Spitzer, 1999, 139-43). Given these ambiguities and subtleties, it is particularly difficult to determine how far individual decisions by officers are premised on race, even after the fact. As the USCCR report notes, "While police officers and courts infrequently cite race as an element in creating the suspicion necessary to justify police

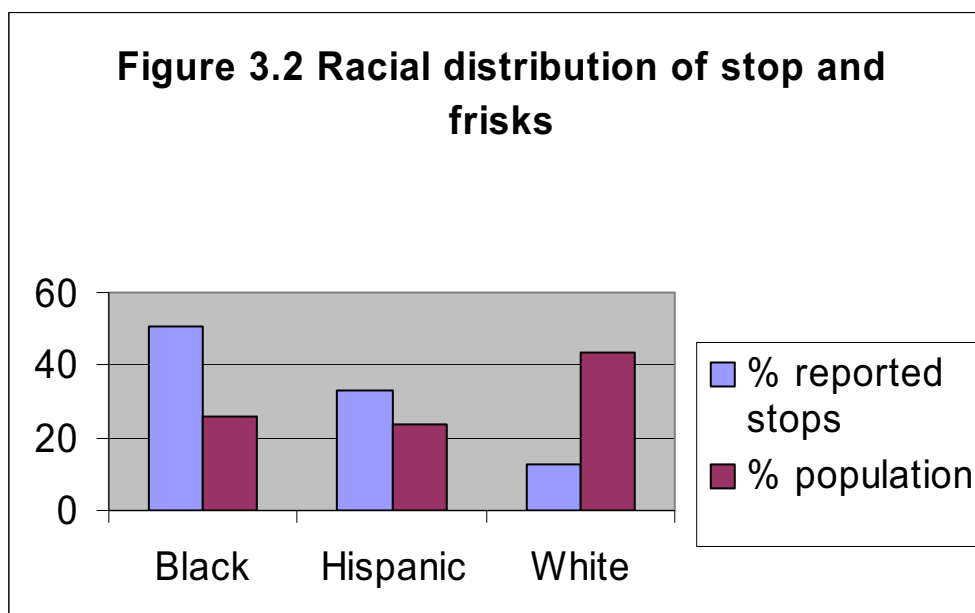
intrusions, evidence of strong disparate impact may indicate that race plays a more important role than may be conceded” (USCCR, 2000: 89).

However, while statistics point to a significant problem in terms of civil rights violations in stop and frisk activity in general, anecdotal evidence abounds concerning the question of racial profiling in stop and frisks. A Lutheran pastor in the Bronx, and a Principal of a boys’ school in Harlem both claim that young men of color in their respective communities are frequently targeted in stops, and fear the police (Spitzer, 1999: 82-7). Hyun Lee, director of the Committee Against Anti-Asian Violence (CAA AV), testified at the USCCR hearings that youth of color are frequently subjected to random stops and illegally photographed for mug shots (USCCR, 2000: 104). At the same hearings a Latino officer from the New York Department of Corrections testified how SCU officers “came out of their vehicles, about three vehicles, like cowboys from the wild, wild west, with their guns drawn” to stop him as he was fetching his daughter from school. He added “Luckily I had a shield... But if it was a regular Latino out there, we might have been a statistic” (Anthony Rivera, cited in USCCR, 2000: 104).

The consequences of these stops extend beyond the immediate fear and humiliation experienced by the subjects. A 50 year old Bronx teacher born in the Virgin Islands was subjected to an inquiry by his employer, the Board of Education, after being stopped, frisked, and then arrested, although all charges against him were dropped (Spitzer, 1999: 80-2). A family in the Bronx missed bill payments and went without electricity after paying legal fees to defend their son who was stopped, arrested and charged with armed

robbery, despite the fact that he did not match the description of the perpetrator (Spitzer, 1999: 86-7). These anecdotal accounts are fully backed up by statistical evidence, which leads to the conclusion that “racial profiling plays some role in the stop and frisk practices of the overall department, and particularly in the SCU” (USCCR, 2000: 106).

While blacks and Latino/as make up approximately half of New York City’s population, they are subject to the vast majority of stop and frisks. Over 85% of reported stop and frisks in 1998 were conducted on blacks and Hispanics (USCCR, 2000: 96). While the NYPD (2000a) have challenged much of the data analysis in the USCCR report, the Attorney General’s study, conducted on UF-250s filed between January 1, 1998 and March 31, 1999, concurs with USCCR findings, establishing that 83.6% of stops had black or Hispanic subjects (Spitzer, 1999: 94; see Figure 3.2). Moreover, racial



Source: Spitzer, 1999: 94-5

disparities are even greater when only stops where a UF-250 is mandated, and which are by definition more intrusive, are considered (Spitzer, 1999: 95). In a review of CCRB complaints concerning stop and frisks closed between January 1997 and March 31, 1999, African Americans were almost six times more likely than whites, and Hispanics were more than twice as likely as whites, to make formal CCRB complaints about street stops (CCRB, 2001c: 10-11). In theory, these figures could reflect a greater propensity among African Americans and Hispanics to lodge complaints. However this possible interpretation is undermined by comparing figures for complaints about stops, with those for all complaints against officers. Table 3.4 shows that while African Americans are over-represented in all CCRB complaints in the sample, they are

Table 3.4 CCRB complaints by race for New York City, January 1997- March 1999

Race/ethnicity	% total stop and frisk complaints	% total complaints	% population
African American	63%	53%	25.6%
Hispanic	24%	23%	23.7%
White	11%	20%	43.4%
Other (incl. Asian)	2%	4%	7.3%

Source: CCRB, 2001c: 10-11; Spitzer, 1999

even more over-represented in stop and frisk complaints, while whites are under-represented in stop and frisk complaints. Thus it is reasonable to assume that African Americans are more likely to endure a stop and frisk that leads to a complaint than are whites.

The rates of stops of blacks and Hispanics alone do not conclusively demonstrate that NYPD stops represent race specific policy and/or misconduct, although they do

demonstrate that blacks and Hispanics are disproportionately stopped. However, additional factors add to the proof of racial profiling to suggest that NYPD behavior is racially biased. For example, in the sample of UF-250s analyzed in the Attorney General's report, the rate of stops to arrests was higher for Hispanics than for whites, but highest for blacks, and particularly high for blacks at night, or blacks suspected of weapon possession (Spitzer, 1999: 111-2). Furthermore, according to the CCRB report sample, three-quarters of all stops on African Americans and Hispanics were conducted with force, whereas less than half the stops on whites used force. African Americans are more likely to be stopped with a gun, than they are by a verbal command, whereas only 6% of stops on whites were conducted with a gun (CCRB, 2001c: 38; see Table 3.5). Recall that these are merely stops based on reasonable suspicion, not arrests, and yet well over one-quarter of the stops on African Americans are conducted with a gun.

Table 3.5 Stop method used in CCRB complaints by race, January 1997 - March 1999

Stop Method	Verbal Command	Physical Force	With Gun (subset of physical force)
African American	26%	74%	29%
Latino	24%	76%	13%
White	52%	48%	6%
Other	63%	38%	0%

Source: CCRB, 2001c: 38

A particularly significant set of statistics concern racial disparity in the percentage of stops that fail to articulate reasonable suspicion, given that the rate of stops to arrests is four times as high in stops that do not articulate reasonable suspicion, as it is for stops that do articulate reasonable suspicion. Citywide, the percentage of stops that do not

articulate reasonable suspicion within each racial group is consistent across races, although because a far higher number of blacks and Hispanics are stopped, absolute numbers of illegal stops are still four times higher for blacks than for whites (Spitzer, 1999: 167; Table II.B.3). When only stops that mandate a UF-250¹⁷ are considered, there is a racial disparity, with a higher percentage of stops on blacks and Hispanics being baseless, than stops on whites (Spitzer, 1999: 170, Table II.B.4). Furthermore, statistics for the disposition of cases (see table 3.6) show that stop and frisk complaints by African Americans and Hispanics are more likely to be substantiated than complaints by whites, and that complaints by whites are much more likely to yield a disposition of exonerated or unfounded (where the complaint is proven to be erroneous), than complaints by African Americans or Hispanics. Therefore, people of color are more likely to be involved in a stop and frisk that can later be proven to be illegal.

Table 3.6 Disposition of CCRB cases, by race, January 1997 - March 1999

CCRB Dispositions	African American	Hispanic	White
Substantiated	23%	26%	19%
Unsubstantiated	55%	49%	43%
(subtotal)	78%	75%	62%
Exonerated	14%	14%	24%
Unfounded	8%	12%	14%
(subtotal)	22%	26%	38%

Source: CCRB, 2001c: 23

While this evidence combines to show racial profiling in individual stops, there is also considerable evidence to suggest that certain neighborhoods are specifically targeted for the hypersurveillance and aggressive policing that comes with heavy use of stop and

¹⁷ These are stops involving force, frisks, and/or searches, and therefore are the stops in which "police

frisks. Over two-thirds of the CCRB complaints closed between January 1997 and March 31, 1999 derived from stop and frisks in the Bronx, Brooklyn North, Brooklyn South and Manhattan North, predominantly black and Hispanic Patrol Borough Commands (CCRB, 2001c: 20). Moreover, from the eight Patrol Boroughs and all the Special Units, over half the substantiated complaints in the sample came from stops conducted in the Bronx, Brooklyn North, Brooklyn South, or by the Narcotics Unit (CCRB, 2001c: 22).

Precinct level analysis gives an even more nuanced spatial impression of racial profiling in stop and frisks. Roughly half the precincts in New York City are majority white, and yet of the ten precincts with the highest rate of stops (stops compared with population), only three are majority white. Moreover two of those majority precincts are in downtowns¹⁸ that have much larger 'daytime' populations, and probably a much higher rate of blacks and Hispanics, than the 'majority white' residential figures suggest. Therefore, excluding these business districts, only one of the precincts with the top ten stop rates is a majority white neighborhood, which shows that 'majority-minority' neighborhoods are thoroughly over-represented in precincts with high rates of stop and frisks (see Spitzer, 1999: 97-9, Table I.A.1). While minority neighborhoods are thoroughly over-represented in stop and frisk rates, the rates of stops of blacks and Hispanics in minority neighborhoods still consistently exceed their representation in the neighborhood population. However these statistics are even more pronounced in white neighborhoods. In the thirteen precincts in New York City where black residents number

should be particularly mindful of the need for 'reasonable suspicion'" (Spitzer, 1999: 169).

¹⁸ These are the 14th precinct, Midtown South, and the 84th precinct, downtown Brooklyn.

less than 10%, and Hispanic residents also number less than 10%, on average black and Hispanic stops still make up over half of all stops (Spitzer, 1999: 102, Table I.A.2.).

Precinct-level statistics also show that predominantly white neighborhoods have the greatest likelihood of stops being legal, and the least likelihood of stops being illegal, with the reverse being true for majority black neighborhoods. In fact, in a sample of 8 precincts there is a direct inverse relationship between percentage of stops which have reasonable suspicion, and percentage of the precinct's population that is black (Spitzer, 1999: 159, 161; see Table 3.7). In the sample the two majority white precincts have illegal stop rates lower than the city average, and legal stop rates considerably higher than the city average. The only other precinct in the sample with illegal stop rates below the

Table 3.7 - Street stops for 8 precincts and citywide sample by legality of stop, and racial breakdown of precinct

Precinct	79 th	42 nd	30 th	43 rd	33 rd	107 th	72 nd	19 th	Citywide
Racial characs.	B: 80%	B: 56%	B: 48%	B: 32%	B: 19%	B: 12%	B: 4%	B: 3%	B: 26%
B: Black	H: 18%	H: 42%	H: 48%	H: 52%	H: 69%	H: 14%	H: 46%	H: 5%	H: 24%
H: Hispanic	W: 1%	W: 1%	W: 3%	W: 12%	W: 9%	W: 59%	W: 37%	W: 87%	W: 44%
W: White									
Reasonable suspicion	59%	57.6%	56.6%	60.6%	62.8%	69.5%	62.2%	75.3%	61.1%
Not reasonable suspicion	20.8%	19.2%	27.7%	12.1%	17.7%	14.4%	20.8%	6.7%	15.4%
Insufficient information	20.2%	23.2%	15.6%	27.3%	19.5%	16.1%	17.0%	18.0%	23.5%

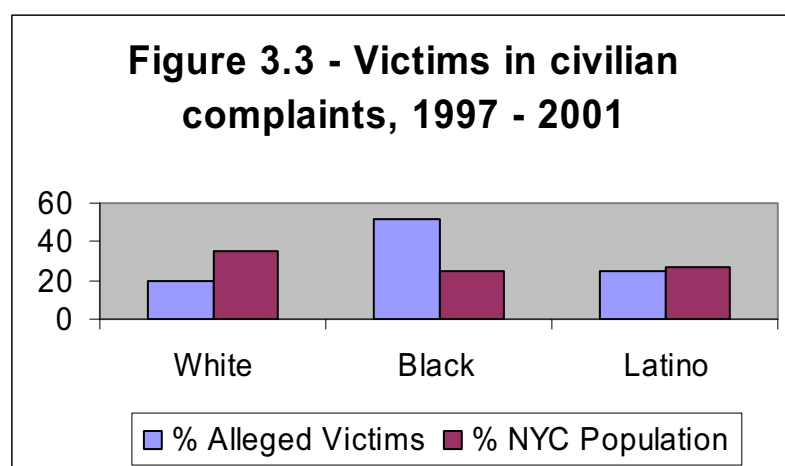
Source, Spitzer, 1999: 159, 161; Tables II.A.3 & II.B.1;

Figures in **bold** are higher than the citywide average

city average, a majority Hispanic neighborhood, has a disproportionately high rate of stops with insufficient information to determine the legality of the stop, as well as a rate

of legal stops that is below the city average. Two other majority Hispanic neighborhoods have legal stop rates above the city average, but also have illegal stop rates above the city average. In the remaining three precincts in the sample, two majority black neighborhoods and one black and Hispanic neighborhood, illegal stop and frisks are well above the city average, and legal stop and frisks are well below the city average.

Racial disparity in stop and frisks is echoed in complaints made to the CCRB concerning all forms of police misconduct. The percentage of FADO complaints made by blacks consistently runs at double their representation in the city's population, whereas complaints by whites amount to approximately half of their representation in the city's population (see Figure 3.3). Therefore, it is reasonable to assume that general NYPD misconduct targets people of color more than white New Yorkers. However, the lynchpin of zero tolerance policing is really the heavy presence of police in communities of color,



Source: CCRB, 2002a, p82, Table 32

and the stratified hypersurveillance of people of color in white neighborhoods. Together they combine to form a different experience of the state for New York City residents, depending on their race. Moreover, the targeting of specific communities of color intersects a class dynamic into the racial demographic, such that aggressive policing is specifically experienced by poor people of color in New York City. While the results are usually not as disastrous as they were the night Diallo was shot, people of color still live with the knowledge that they have a far higher chance of being the next victim of police brutality and misconduct than have their white neighbors.

Beyond zero tolerance: NYPD strategies for street surveillance

Although these statistics point to general problems in routine NYPD activity that transcend the behavior of one or two ‘rogue cops’, beyond the general collectivity of officers lie the practices and policies established by the NYPD’s administration, frequently in concert with the Mayor’s office. At one level, problems abound in terms of everyday practice, such as the lack of co-operation with communities of color in minority recruitment drives that yield little change in the under-representation of black, Hispanic and Asian officers (USCCR, 2000, 15-18), or the “negative and potentially offensive stereotypes of minority ethnic and religious groups, and women” (USCCR, 2000: 28) that litter NYPD training materials. However, beyond the white male dominance of NYPD culture that has persisted throughout the department’s existence, certain problematic policies are particularly from the Giuliani era.

Stop and frisks preceded the advent of the Giuliani administration, and yet the procedures, which were initially outlined in *Terry* to provide guidelines for officers who conduct searches to preserve their safety in street encounters, have become the basis of hypersurveillance for certain members of the public during the 1990s. The Attorney General's report on stop and frisks asserts that:

Although rarely referenced in publicly-disseminated Departmental strategy documents, the role of "stop and frisk" in furthering the Department's goals of order maintenance, deterrence, crime prevention, and a direct attack on gun violence is clear. Given the Department's focus on apprehending violent criminals and preventing more serious crimes by aggressively enforcing laws aimed at low-level criminality, "stop and frisk" serves as an important wedge into the criminal element.

(Spitzer, 1999: 56-7)

Thus the increase in problematic stop and frisks in the 1990s is specifically linked to the policing style mandated in zero tolerance and broken windows. For example, officers have testified that stop and frisk quotas exist. In fact, the police officers union (PBA) cast a unanimous vote of no confidence in Safir six weeks after Diallo's death, claiming that pressure to make arrests and issue summonses harmed public perception of officers (Cooper, 1999d). Although the NYPD have denied such policy (NYPD, 2000a), it is entirely possible that quotas are instituted by middle management, who are held accountable for crime levels within their precincts, and who are expected to produce strategies for reducing such crime.

The NYPD focus on stop and frisks as part of a broader crackdown on quality of life crimes has been a basic strategy since the start of Giuliani's tenure. Early in his second term as mayor he instituted a 'civility campaign' "to further militarize the streets of minority communities while eschewing efforts to improve relations with the people who

lived there” (Kirtzman, 2000: 23). In this vein, one of the central pillars of Giuliani’s strategy has been the deployment of the SCU, the unit that contained the team who killed Diallo. Critics have labeled the SCU focused operation, and the shooting of Diallo specifically, as “the worst-case scenario of a dangerous and reckless style of policing. Policymakers should dispense with confrontational stop-and-frisk tactics before more innocent people are injured or killed” (Lynch, 2000: 1)

In 1994, James Wilson asserted that:

the most effective way to reduce illegal gun-carrying is to encourage the police to take guns away from people who carry them without a permit. This means encouraging the police to make street frisks... Innocent people will be stopped. Young black and Hispanic men will probably be stopped more often than older white Anglo males or women of any race. But... we must get illegal guns off the street.

Wilson, 1994: 46

Almost immediately, Bratton implemented Wilson’s recommendations, establishing an SCU mandate for *Getting Guns off the Streets of New York* (Police Strategy Number 1), and he started to increase the size of the SCU. The SCU cultivated a militaristic quality, establishing themselves as NYPD ‘commandos’, and adopting the motto “We Own The Night” (Lynch, 2000). Safir followed Bratton’s lead, and with “Strategy ‘97” he tripled the number of officers in the SCU, reasserting the existing policy and strategy that positioned the SCU as the spearhead of the quality-of-life offensive.

Although the SCU comprised 1% of all NYPD officers, they filed 19.4% of UF-250s in 1998, the greatest number generated by any unit, and a 37% increase over 1997 figures. Less than 7% of these stops were conducted on whites (USCCR, 2000: 99). Given that

the SCU was most frequently deployed in African American and Hispanic neighborhoods it is not surprising that their stops were more likely to be conducted on black or Hispanic subjects. However SCU officers stopped blacks and Hispanics at a rate that far exceeded their representation, even in minority communities (USCCR, 2000: 99). Furthermore racial profiling by the SCU is even more evident in predominantly white neighborhoods. For example, blacks and Hispanics accounted for less than 10% of the population, but over 75% of SCU stops in West Greenwich Village in 1998; in the 104th Precinct in northwest Queens, blacks make up 0.5% of the population, but accounted for 44% of SCU stops; and in 2 precincts in Queens where Hispanics accounted for far less than half the population, they contributed approximately three-quarters of all SCU stops (USCCR, 2000: 100).

The SCU rate of stops per arrest was 14.9, as opposed to 9.0 for all NYPD units in 1998. While this is perhaps expected, given their mandate, the difference is almost exclusively accounted for by stops of blacks and Hispanics. The SCU rate of stops per arrest for whites was 9.6, barely higher than the overall rate for all units. However the rate for Hispanics was 14.5, and for blacks was 16.3 (Spitzer, 1999: 117). Moreover while blacks accounted for 54.7% of all stops that did not articulate reasonable suspicion, they accounted for 65.7% of all SCU stops that did not articulate reasonable suspicion (Spitzer, 1999: 173, Table II.B.6); in other words, blacks are over-represented in unconstitutional stops by the SCU, even in relation to their over-representation in SCU stops in general.

While data for recorded stops show that the extent of racial profiling by the SCU is worse than for the NYPD as a whole, the data for illegal stops are also worse: 23.2%, or almost 1 in 4, of stops recorded by SCU officers between January 1998 and March 1999 did not meet the standards for reasonable suspicion, compared with 15.4% for all NYPD stops (Spitzer, 1999: 173, Table II.B.6). Under-reporting probably means that the statistics are a favorable reflection of SCU activity, and that the reality is considerably worse.

Moreover, anecdotal evidence suggests that SCU behavior may be more problematic than statistics show. SCU officers have claimed that they make anonymous 911 calls, describing a person that they have stopped as armed, if the person complains about their treatment (Parascandola and Celona, 1999), although the NYPD claim that this evidence is unsubstantiated (NYPD, 2000a).

In October 1999, the SCU was decentralized into Patrol Borough Commands (Blair, 1999), but by January 2000 Operation Condor had superseded the SCU as the spearhead of the attack on street crime (Flynn, 2000c). In the first few months of the \$24 million drug operation, 84% of arrests were for misdemeanors or violations, leading to questions over whether the operation was either cost-effective, or making the streets of New York safer (Bastone, 2000). The NYPD admitted that most arrests were ‘low-level collars’ rather than an effective mechanism for catching dealers, and Commissioner Kerik briefly halted the procedure in October 2000 for an investigation into its efficacy (Rashbaum, 2000b, c). However Giuliani re-started the program after a 10-day break. Justifying the vast expense of Condor, which took up 17% of the NYPD’s overtime budget, Kerik claimed that quality of life operations pay for themselves, through “increased tourism –

that doesn't happen by accident, it happens because streets are safer, and the environment is safer" (Kerik, cited in Rashbaum, 2000d: B8).

The problem of unwarranted stops and arrests is compounded by the question of for whom the streets are supposed to be made safer. Unfortunately, Patrick Dorismond wasn't a tourist. On March 16, 2000 a Condor operation led to Dorismond being shot to death on 8th Avenue, when he responded aggressively to an undercover narcotics detective who suspected him of being a dealer (Flynn, 2000c). Beyond this specific incidence of extreme violence, Operation Condor was even targeted at young people, staking out high schools in high-crime areas to catch truants, and sweep up latecomers, booking them and giving them Desk Appearance Tickets simply for being late to school (Noel, 2000). Neighborhood residents, such as those from Brooklyn's Rugby Road, have complained that it is not their neighbors that frighten them, but the officers "swooping into the neighborhood like urban warriors, watching residents from rooftops, circling in unmarked cars and surveillance vans" (Barstow, 2000: A1+B6). Lieutenant Eric Adams of '100 Blacks In Law Enforcement Who Care' noted that while drug related misdemeanors and violations happen all over the city, Operation Condor is targeted almost exclusively at minority neighborhoods (Flynn, 2000c). Condor has exerted the same pressures, and exacted the same price, that the now dispersed SCU were noted for prior to Diallo's death.

Regardless of whether the SCU, or the Narcotics Division in Operation Condor are the spearhead of NYPD strategies against street crime, COMPSTAT ("Compare Statistics")

has been used since 1994 to record the locational distribution of crimes. Computer generated maps are then used to demand accountability for crime statistics from Precinct Commanders, and to target policing efforts at certain neighborhoods (Spitzer, 1999; Silverman, 1999). While COMPSTAT is routinely lauded as the central, crucial component in the reduction of crime in New York, it has been used to target at specific neighborhoods, most often the communities of color declared as 'high crime' areas, those policies, procedures, and practices that have been identified throughout this chapter as highly problematic (Erzen, 2001; Spitzer, 1999). While the technology itself is not inherently problematic, it has become synonymous with the aggressive style of policing that has been deployed against quality-of-life crimes. Moreover, it has helped to foster the targeting of quotas for stops, and for arrests, that have led to criticisms from those in marginalized communities, and even police officers themselves (Barstow, 2000; Cooper, 1999d).

In terms of targeting certain neighborhoods, and unleashing problematic crime control strategies on them, both SCU and Operation Condor unit deployment have been explicitly connected with COMPSTAT. Moreover, while COMPSTAT was originally used to record serious crime – robberies, shooting, grand larcenies, and murders – in November 2000, Giuliani expanded COMPSTAT to track quality-of-life crimes as the basis for targeting policing (Lipton, 2000b). There is a general tautology to quality-of-life policing, where the criminalization of certain behaviors facilitates the pre-selection of criminals, who are targeted, apprehended, and removed, thereby justifying the strategy by reducing the number of 'criminals' on the street (Harcourt, 1998). Now that tautology has

a spatial component. The strategy of using quality-of-life arrests to establish where further policing should be directed, relies on the tautologous logic to define criminals, and then exploits the resultant arrest statistics to justify further surveillance of the areas where those arrests are made. Hypersurveillance of an area both compounds and justifies itself.

Justifying racial profiling

In response to public pressure, Giuliani and then Police Commissioner, Bernard B. Kerik, released NYPD stop and frisk data in 2000. When the data was released on the city's website¹⁹ it was largely superficial. Moreover, data for stop and frisks subdivided by race and ethnicity was presented alongside data for victims and perpetrators of violent crimes, similarly subdivided. The explicit message presented to the public was that although stop and frisks were disproportionately conducted on blacks and Hispanics, this only reflected the racial distribution of perpetrators of violent crimes. In other words, the stop and frisk data reflect profiling, but only because criminals can be racially profiled. Presenting data that showed how blacks and Hispanics were disproportionately victims of violent crime, alongside the stop and frisk data, reinforced the message that not only was racial profiling in stop and frisks necessary because of the racial makeup of criminals, but that these strategies were in the interests of communities of color, because of their preponderance among victims.

These interpretations are supported by both Giuliani's and Safir's statements that disproportionate targeting of blacks and Hispanics derives from officers stopping

individuals based on victims' descriptions, and actually benefits people of color. For instance, Safir testified that:

We do not select our suspects, as they are identified not by us but by the victims. We deploy our officers where violent crime occurs, and we question individuals who fit the description of crime suspects. This is basically strategy implemented without regard to race or ethnicity but, rather, as a part of our commitment to eradicate crime in every neighborhood in our city.

Safir, USCCR hearing, cited in USCCR, 2000: 105

However, there is evidence to suggest that this argument does not reflect actual street level practice. A sergeant testifying at the USCCR hearings claimed that stop and frisk subjects are not based on victim identification, and that specialized units, including the SCU, do not respond to radio calls providing physical description. He claimed that “Street Crimes rides around the city. And they stop individuals with no complainant, with no victim. They arbitrarily, of their own initiation, stop individuals...” (testimony by Sergeant Noel Leader, cited in USCCR, 2000: 105). Again, anecdotal evidence is backed up by statistics. In the CCRB report sample, third party information was given as a stop rationale in only 33% of the cases (CCRB, 2001c: 31). Moreover, many stops arise from ‘victimless crimes’ including quality-of-life violations (USCCR, 2000: 105) and therefore could not rely on a victim’s description.

Regardless of the actual practice of officers on the street, the justification for racialized disparate treatment is both illogical and illegal. The implied correlation between percentages of violent crime perpetrators and stop and frisk subjects is spurious, and at its logical extension would attempt to justify , for example, that any black person could be stopped because a certain number of black people are criminals. By the stop and frisk

¹⁹ <http://www.ci.nyc.ny.us>

numbers, the same logic is not extended to white people. This logic is also illegal, given the constitutionally guaranteed standards for conducting stop and frisks. A general demographic of criminality is insufficient to establish the standard of individual suspicion required to justify a stop. Again the argument is tautological and circular, because the increased surveillance on people of color is likely to result in a greater rate of detention of criminals who are black and Hispanic, effectively pre-determining who is criminal, and justifying their even greater surveillance. Finally, even if the administration's logic was acceptable, statistical testing shows that crime rates do not account for the higher rate at which blacks and Hispanics are stopped (Spitzer, 1999: 121-35).

The original response to Kelling and Wilson's 'broken windows' theory was to expand community policing, and "cities around the country devised programs that were meant to put the police in closer touch with neighborhoods" (Lardner and Repetto, 2000: 296). As part of this nationwide trend, the community policing program that Commissioner Lee Brown thoroughly embraced in the early 1990s drew impetus from the same logic that Bratton and Giuliani used later to institutionalize zero tolerance for quality-of-life crimes. In other words there is no automatic intellectual justification for zero tolerance, even if the criminological logic of 'broken windows' is accepted. In fact, subsequent work on broken windows has emphasized how the persistence of low-level disorder is most likely to be undermined by the community policing style strategy of officers being immersed in the communities and neighborhoods that they patrol (Kelling and Coles, 1996). Then Police Commissioner Raymond Kelly aggressively criticized the Giuliani administration

for the way its stop and frisk operations had undermined the police-community relations established through community policing (Flynn, 2000d).

The proponents of zero tolerance vindicate the strategy by citing the drop in crime in New York City since Giuliani and Bratton took charge. Certainly the crime statistics are impressive. Overall crime rates dropped by over 35%, and homicides declined 73% in the 1990s (Grabosky, 1999). However, crime was already dropping prior to Giuliani's election and the advent of zero tolerance; for instance the city's murder rate had already dropped by 14% between 1990 and 1993 (Silverman, 2001). Crime has dropped nationwide since the early 1990s regardless of whether zero tolerance or far less punitive policing strategies are followed (Leary, 2000; Butterfield, 2000). After Chicago introduced community policing initiatives in 1994, robberies and gun crimes fell by 53% and property crime by 40% through 2001 (Silverman, 2001), and throughout the 1990s San Francisco's crime rates have dropped more than New York's, even though the city has frequently been derided for advocating 'alternative' crime strategies (Taqi-Eddin and Macallair, 1999). Crime figures have also varied despite constant adherence to zero tolerance; the 1999 murder rate in New York City was up 6% over 1998, but had flattened back out by 2000 (Gootman, 2000). Moreover, criminologists also argue that aggressive policing of minor offenses establishes the basis for recidivism, thereby potentially exacerbating, rather than reducing crime rates (Sherman, 1993).

Even William Bratton has criticized the expansion of the SCU, claiming that crime strategies fit for the early 1990s, particularly racial profiling in stop-and-frisk tactics,

were barely applicable by the end of the decade, and only served to inflame police-community relations (Bratton, 2000: A18). James Savage, president of the Patrolmen's Benevolent Association, also questioned the relevance of zero tolerance following the drop in crime, claiming that "an adjustment of strategy is required. If we don't strike a balance between aggressive enforcement and common sense, it becomes a blueprint for a police state and tyranny" (Savage, cited in Cooper, 1999d: B6). However, Bratton's defense of zero tolerance during his own tenure barely coincides with criminologists' assertions that crime rates vary with societal conditions, and are almost independent of policing strategies (Cole, 2000). Instead they attribute the late 1980s and early 1990s cresting in violent crime, and the subsequent slump, to a number of socio-economic factors, including unemployment rates (Herbert, 2000a), but particularly the peaking of the crack epidemic around the turn of the decade (Grabosky, 1999). Furthermore, while some have advocated combining aggressive zero tolerance strategies with community policing initiatives (see Bratton, 2000 for example), criminologists assert that the two are incompatible, given that zero tolerance is inconsistent with the exercise of police discretion, and that time spent arresting and processing petty offenders could be much better used in community policing (Grabosky, 1999).

Conclusions

Certainly the task of policing in New York City is difficult, and the line between effective policing, which in itself is a service to citizens, and invasive hypersurveillance is a thin one. The SCU officers who killed Diallo were, purportedly, searching for a serial rapist who had been terrorizing women in the Bronx, and his eventual capture was indeed a

service for citizens who live there. However, the right to have effective policing and relative safety in predominantly black and Hispanic neighborhoods should not come at the price of citizen's fear for their lives, or for the lives of their children. Communities of color in New York City should not have to accept the disbenefits of aggressive policing, simply to experience the benefits of effective policing. However the statistics show that that is exactly what happens. The success of other modes of policing in other U.S. cities suggest that New York's strategies are unnecessary.

With respect to civil rights and equal access to citizenship, the most egregious aspects of policing in New York is the prevalence of discriminatory practice. Moreover, these problems do not stem from inadequate training or from individual acts of racism, although undoubtedly these factors contribute to the public's experience of NYPD officers. The problem is systemic. It stems from the policies and procedures mandated by the NYPD, in a response to broader citywide policy. Thus "the killing of Amadou Diallo was neither a premeditated racist crime nor some fluke accident. It was, rather, the worst-case scenario of a reckless, confrontational style of policing" (Lynch, 2000: 2). Although the city fails to attend to problems in terms of the relatively isolated acts of hyperaggression that result in the deaths of members of the public, the routine sanctioning of behavior that falls somewhere between legalized aggression and formally unconstitutional misconduct has a far wider effect on communities of color in New York.

In this context, theories that suggest immigrants can access certain citizenship rights fail to wrestle with the question of how far the quality of citizenship that is available is

fundamentally stratified according to dimensions of race, class, and gender. The evidence presented here does not consider immigrants specifically, but Diallo was not killed because he was an immigrant. Rather by the intersection of their immigrant status with their race and class position, immigrants become enmeshed in the process of disenfranchisement that is meted out to communities of color in New York. Thus, arguably, the emphasis in new theories of citizenship on the possibility of accessing certain aspects of citizenship without formal membership in the state, may be valid. However given the decimation of the condition of that citizenship, the 'rights' afforded are relatively meaningless in New York City.

However, this experience of 'citizenship', or at least the relationship between civil society and the state, reflects more than just the unequal access to rights that cultural pluralist and feminist theories historically have recognized. The stratified denial of civil rights through unequally distributed hypersurveillance, discipline, and control, reflects more than an unequal access to the rights of citizenship. Rather it reflects a fundamental transformation in the quality of the relationship between the state and its disenfranchised population. The unequal imposition of systems of control reflects the transformation of the condition of citizenship itself. Elsewhere I have referred to this condition as the 'activity' of citizenship. To understand this changing activity of citizenship, theories need to consider more than just the new possibilities for access to citizenship that contemporary globalization has produced. The next chapter considers the extent to which the globalization and transnational immigrations that inspired postnational theories of citizenship have also established a new set of relationships between capital, labor and the

state that should cause us to re-evaluate our ontological assumptions about what constitutes the activity of citizenship.

Part II: Theorizing citizenship under global conditions

CHAPTER 4

HIERARCHICAL SOVEREIGNTY AND THE FRAILTY OF POSTNATIONAL CITIZENSHIP

For at least 200 years, the relationship between capital, the state, and labor has been organized at the national scale. Therefore it is almost inevitable that intellectual interest in the question of citizenship has been inspired by the social and political transformations emerging over the last twenty years or so as ‘globalization’, with intensification of process and practices occurring beyond the nation at the global scale. Understandings of the attendant ‘new geography’ of citizenship emerging under global conditions are, perhaps, as contested as versions of the geography of globalization itself. Various categories of ‘globalized citizenship’ have been identified in the diffuse and expanding literature of the globalization/citizenship debate, resulting in the development of sometimes contradictory terminologies. For Delanty (2000: 52), for example, ‘cosmopolitan citizenship’ subsumes the forms emerging from internationalism, largely interpreted as international relations of states; globalization, as the emergence of a global civil society; transnationalism, as the cross-border movement of people; and post-nationalism, where subnational and supranational governance have transformed national membership. Perhaps a more universally accepted categorization derives from classifying the new approaches that have emerged to comprehend these phenomena, rather than the phenomena themselves. As such, Murphy and Harty (2003: 181) identify liberal-nationalism, cosmopolitanism, and postnationalism as the “three new approaches for conceptualizing relations between states and members of the polity”.

The divergences between these three theoretical groupings occur in such a way that each could be productively compared and contrasted with any other. However, here I consider the liberal, rights-based focus of postnationalism, leaving for the next chapter normative discussion over the feasibility of operationalizing global membership that tends to dominate the debate between cosmopolitanists and their liberal-nationalist challengers. Although cosmopolitan and postnational sets of theories differ in their focus, their mutual pre-occupation is with the ramifications and possibilities of global scale processes, based on their common contention of the declining significance of the nation-state. For postnationalists, the consequent destabilization of the relationship between national subjects and the nation-state manifests in the shift towards deterritorialized identity and political membership. The feasibility of postnational citizenship is premised on the existence of rights-giving supranational institutions such as the United Nations and the European Union and their concomitant instruments, broadly understood as ‘international human rights’.

The recognition of the deterritorialized subject, whose residence, participation, identity and sense of belonging is no longer attached to the nation-state where they hold formal political membership, is a central component of postnational citizenship. However, it is my contention that the question of deterritorialization is inadequately theorized within the postnationalist thesis. The most useful understandings of deterritorialization are not without merit. Certainly, there is evidence to suggest that the nation-state as a coherent synchronicity of territory, state, and homogenous ethnic nation that has underpinned the

concept of territorial sovereignty since the Peace of Westphalia was signed in 1648, has been undermined by the processes of transnational immigrations and identifications, the emergence of postnational social formations, and the globalized production of localities (see Appadurai, 1990, 1993, 1996a, 1996b, for perhaps the most useful consideration of deterritorialization). However, although the nation-state has much to negotiate as the cultural assumptions of national territorial loyalties are forced to cede ground to the growth of translocal affiliation, there is a certain impetuosity involved in drawing the consequent notion that the nation-state is at an end (Ohmae, 1995). The problem for postnational citizenship theory is the uncritical way in which it has absorbed confident ascriptions of such a demise, based on the apparent alignment of cultural identification and institutional provision emergent beyond the nation, with scant attention to the response from the nation-state.

There is no doubt that the presumptions of nationalism endemic to the organization and operation of formal citizenship are neither responsive to, nor sufficient enough to contain, what Bosniak (2001, 2006) refers to as the ‘decoupling’ of political identities from the nation-state. However, my response to the postnationalist thesis is not limited to the matter of the formal political rights and structures bound up in national citizenship. Rather, following Matt Sparke’s (2005) excellent examination of *reterritorialization*, the aim of this chapter is to show how rather than a supposedly liberating, and border-troucing, deterritorialization, the reterritorializing process has emerged to shape the context of claims based on international human rights.

The chapter is organized largely around a discussion of the treatment of prisoners from the ‘war on terror’ held by the U.S. military at Guantánamo Bay, Cuba²⁰. Despite the myriad international human rights available to these prisoners, through the very instruments and institutions lauded by postnational citizenship theorists, the conditions of rights access for the Guantánamo prisoners is determined by their relationship with the U.S. state. As the presiding officer at Feroz Ali Abbasi’s military tribunal at Guantánamo Bay declared to him: “I don’t care about international law. I don’t want to hear the words ‘international law’ again. We are not concerned with international law” (Ahmad, 2006). As such, rather than postnationalism’s notion of waning sovereignty, I consider the power of the U.S. state not only to circumnavigate its international obligations, but also to shape the postnational order that establishes these international imperatives, and so reconfigure the state/subject relation. Moreover I argue that the practices of the nation-state in the production of space and social arrangement beyond its territorial borders, take place through the thoroughly adaptive assertion of the sovereign order, by reshaping its own national space, and by intervening in the organization and practices of other nation-states.

The chapter starts with an overview of postnationalist theory and the empirics of the U.S. activities in Guantánamo Bay. There is insufficient space here to contend fully with a complex subject that is already the subject of multiple volumes and investigative reports and that continues to unfold, often in surprising directions, at the time of writing.

However, the detail given here is limited to that which is useful for subsequent discussion

²⁰ Various terms have been used to describe the men held at Guantánamo Bay, and there is inadequate space here to consider the legal significance of seemingly innocuous variations. However, without needing to make a declaration concerning the guilt or innocence of those held at Guantánamo, it seems fairly

of the nation-state's capacity to condition the access to rights for prisoners at Guantánamo. I then consider insights from Jim Russell's (2005) important discussion of the U.S. government's strategically selective deployment of territorial sovereignty to limit international rights at Guantánamo Bay, but suggest that this work highlights just one aspect of the U.S. government's strategic spatiality. I proceed to consider first how the U.S. has created Guantánamo as stateless space and the prisoners held there as 'non-persons' in a rights-denying, legislative double-helix. I then focus on the matter of indefinite detention to consider how the subjectification of Guantánamo prisoners has evolved through the reassertion of sovereignty against international law, but also through the redefinition of the U.S. state itself. Finally, I consider how the U.S., as a hegemonic state, has limited the capacity of other nation-states to provide citizenship rights and, via a brief examination of the subject of torture, show how the U.S. has exported its processes of subjectification into other sovereign states. I conclude that even though human rights are theoretically available from the supranational scale, the reterritorializing process reconfigures the state-subject relationship by limiting rights held *against* the nation-state. Thus the apparently deterritorialized subject becomes reterritorialized.

Postnationalist theory

While some argue that postnationalism "is a decidedly ambiguous term since it can mean any form of citizenship that is not exclusively defined by the nation-state" (Delanty, 2000: 64-5), within citizenship debates the term is most commonly used in reference to a

obvious to all (except the U.S. government) that Guantánamo Bay contains prisons, and those held there are prisoners.

much acclaimed body of work originating from Yasemin Soysal (1994, 1997, 1998)²¹. Examining the experiences of temporary guestworkers in Europe who have formed permanent and significant foreign communities with access to social and economic institutions, Soysal finds the national model of in/exclusion to be an inadequate indicator of access to rights. Thus, under postnational conditions, global immigration flows and newly emerging scales of social and political organization have combined to complicate the formal systems of membership on which citizenship status has traditionally been predicated. As such, the nation is no longer the inevitable scale of citizenship, at least in terms of adherence to the traditional model where full membership in the nation operates as the pre-requisite for accrual of all citizenship rights.

Soysal proposes an alternative understanding of contemporary citizenship, whereby rights inhere in the person *qua* person rather than via their status as a national citizen, such that “individual rights, historically defined on the basis of nationality, are increasingly codified into a different scheme that emphasizes universal personhood” (Soysal, 1998: 189). Universal personhood is predicated on international human rights, organized and exercised through instruments and conventions including the United Nations’ Universal Declaration of Human Rights, International Conventions on Civil and Political Rights, and Protection of the Rights of All Migrant Workers and Members of their Families, and guaranteed by supranational institutions such as the United Nations (UN), the European Union (EU) and particularly the European Court of Justice (ECJ), and NATO (Soysal,

²¹ The notable exception is Jurgen Habermas’ (2001) use of the “postnational constellation” which situates his discussion of whether the interwoven collective political identity and democratic process that characterizes his earlier work on discursive democracy can emerge in a cosmopolitan form via the institutional elements of globalization.

1994, 1997; Basok, 2004). In effect, where Brubaker (1989b) is concerned with the limitations of partial membership offered by 'denizenship', Soysal understands it as an inevitable element of the shift to international human rights, and postnational citizenship. Underpinned by the expanding legitimacy of the discourse of international human rights (Cohen, 1999; Yuval-Davis, 1999), postnational theorists effectively determine that citizenship rights have become de-territorialized (Soysal, 1994, 1997; Bosniak, 2001).

The emergence of postnational citizenship reflects more than a shift to a global-level organizing principle that challenges the pre-eminence of the nation-state as the locus of sovereignty. Rather, it fundamentally blurs the distinction between citizenship rights and international human rights, establishing national sovereignty and international human rights in constant tension, and effectively signaling the end of national citizenship as its logical conclusion (Delanty, 2000: 79). However, within the liberal-nationalist tradition, international human rights are far from adequate replacement for citizenship rights (Kymlicka, 2001), and even sympathizers who claim overlap between nationalist and postnationalist traditions assert that the ability to exercise universal human rights is enmeshed with the political rights that derive from national memberships (Shafir and Brysk, 2006). The blurring of the sources of rights in postnational theory is accompanied by an equal blurring of the status distinction between citizens and non-citizens, which eradicates any clear line of demarcation determining access to at least certain rights (Jacobson, 1996; Bloemraad, 2000; Basok, 2004). While some theorists understand the apparent postnationalization of rights as the basis of new opportunities, for immigrants in particular, (Soysal, 1994, 1997, 1998; Sassen, 2003b) others identify the uncertainties

generated as a threat to both national identity and citizenship (Jacobson, 1996). However, postnational rights are not as strong as has been suggested, even in the model European Union. The mere presence of supranational regulation is not inherently equivalent to the strengthening of immigrant rights (Koopmans and Statham, 2003), and while individual agents may have exercised political leverage by appeals to supranational institutions, there are still considerable limitations to the system of international human rights which fails to yield a consistent, universal application of either rights or citizenship (Bosniak, 2001).

Beyond the theoretical or normative feasibility of postnational citizenship, its assertions have generally derived from observed conditions that can be tested empirically. Studies consistently find *against* evidence of postnationalism in Germany and Great Britain (Koopmans and Statham, 1999); in the United States (Aleinikoff, 2003); and in Canada (Bloemraad, 2004). However, regardless of similar findings, these studies can be distinguished by what they employ as evidence of postnationalism. For example, while Koopmans and Statham (1999) look for supranational or transnational activity in immigrants' demands on institutions, deployment of legal instruments, or political organization, Bloemraad (2004) examines immigrant claims for formal citizenship on the grounds that, under postnational conditions, immigrants will eschew as irrelevant formal citizenship in the receiving country. Leaving aside questions concerning empirical validity, this methodological difference draws attention to epistemological uncertainties concerning the nation-state within the postnational debate, that threaten the veracity of its conclusions.

While recognizing cultural and political reassertions of national borders, Soysal is adamant that postnational citizenship transcends the nation-state: “the incorporation of guestworkers is no mere expansion of the scope of national citizenship... a new mode of membership, anchored in the universalistic rights of citizenship, transgresses the national order of things” (Soysal, 1994: 139, 159). However, postnational membership in the EU, which serves as the empirical model for Soysal’s work, is reliant on national citizenship in a member state (e.g. Geddes, 2000). Furthermore, the version of ‘postnationalism’ searched for by Koopmans and Statham (1999) is perhaps better defined as transnationalism. As rights claims are made in more than one nation-state²², transnationalism asserts the significance of the nation-state for the accrual of rights, rather than following the postnational path of finding it increasingly irrelevant. In practice, rather than eschewing new membership, Canadian immigrants in Bloemraad’s (2004) study became naturalized or adopted dual citizenship. Similarly, European citizenship has been recognized as a somewhat adapted form of dual citizenship, rather than postnational citizenship (Faist, forthcoming). This speaks to the strategic acquisition of multiple memberships (Painter, 2002) or the formation of what Yuval-Davis (1999) refers to as the ‘multi-layered citizen’, rather than a necessary transgression of the national order.

The confusion here over questions of dual/post/trans-nationalism is more than a problem of misdefinition. Postnational citizenship theory is largely silent on questions of space

and the legacies of the national-state system, beyond recognizing its codification in international treaty. The explicit assumption that national sovereignty falls away is predicated on little discussion of the actual condition of the nation-state. The apparent emergence of a direct relationship between deterritorialized cultural and political identities and international human rights regimes is considered sufficient to render national sovereignty irrelevant. Certainly, cultural and political identities are increasingly subject to the process of deterritorialization and the emergence of transnational identification and belonging (Basch *et al*, 1994; Appadurai, 1996b), and the civic community that provides political identity need not be co-terminus with the national territory. However, the principle of democratic self-governance requires boundaries and rules of membership, and “the normative problems of articulating boundaries will not disappear as a result of deterritorialization” (Benhabib, 2001: 38). Moreover, regardless of how far political identities fail to be served by membership in the nation-state, the structure of sovereign states still governs accession to formal political rights.

Saskia Sassen, who works at the edges of postnationalism, is more explicit on the question of sovereignty, specifically with reference to U.S. immigration policy. For Sassen (1996c, 2000a, 2003a, 2003b) the internationalization of the state system via the creation of a range of bi- and multilateral agreements, and the state’s participation in the global economic system, combine to limit the state’s capacity in controlling its own immigration policy. Some specifically interpret this as a trend toward diminished sovereignty. For Jacobson, transnational migration and the possibility of securing rights

²² Because ‘transnational citizenship’ is not necessarily formal, it can be held distinct from ‘dual citizenship’. However, dual and transnational citizenships retain similarities in terms of their assertions of

without citizenship reflects a fundamental devaluation of citizenship, as the state becomes increasingly accountable to all its residents, and "the 'pact' between state and citizen is broken" (Jacobson, 1996: 9). Schuck and Smith (1985) venture the further argument that a nation should hold full sway over who is admitted in its borders, on the assumption that free admission threatens national autonomy, and therefore the entire premise of the Westphalian system.

However, Sassen's assertions rest on economic arguments that establish practical obstructions imposed by the operation of the global political economy and its associated instruments as indicators of diminished sovereignty, even when the authority to determine rules of in/exclusion and the capacities to enact those rules still firmly reside in sovereign states (Freeman, 1998). Sassen's later work, especially (e.g. Sassen, 2002a, 2003a, 2003b), hints at the new roles for the nation-state and other spatial transformations emergent under globalization. However the intrinsic economism consistently threatens an understanding of the nation-state as a persistent political agent. Understanding the issue politically instead, we see that:

sovereignty is not being fundamentally transformed by globalization. Globalization has challenged the effectiveness of state control; although it is not evident that contemporary challenges are qualitatively different from those that existed in the past. Globalization has not, however, qualitatively altered state authority which has always been problematic and could never be taken for granted.

(Krasner, 1999: 34)

Therefore, while in practice sovereignty has always been subject to compromise in its operation within a system of interdependent states (Joppke, 1998; Benhabib, 1999;

Krasner, 1999, 2001), much of the political order is precisely governed by its logic (Krasner, 2001: 22).

Explicitly on the question of universal rights within the globalization/citizenship debate, it is hard to tell how far global or international norms – the basis of postnationalism – shape actually existing citizenship, or the citizenship practices of states. As Faist (2000: 207) points out "A competing and much simpler explanation holds that virtually all nation-states have enshrined civil rights in their constitution". In other words, it is not that post-national citizenship has asserted rights for immigrants that previously did not exist; rather nation-states tend to contain basic human rights within existing, and often longstanding frameworks (Aleinikoff, 2003). After all, the Universal Declaration of Human Rights adopted by the United Nations in 1948 drew impetus from the Declaration of Independence and the U.S. Constitution (Jacobson, 1990).

Postnational theory, then, raises a number of issues for the globalization/citizenship debate, but claims that we are witnessing postnational citizenship are overstated. I suggest that this problem stems in part from an almost exclusive empirical focus on individual rights and the subject's relation with supranational instruments, which largely ignores the context of how the nation-state has been integral in the reframing of global political order and the relations both between states and between the state and the subject. Through a discussion of the relationship between the U.S. state and prisoners from the 'war on terror' held at Guantánamo Bay, the rest of the chapter examines the matter of the ongoing role of the nation-state and the persistence of the sovereign order, in the

context of postnationalism's understanding of international human rights and deterritorialized identities.

Guantánamo: International human rights vs. the nation state

Given the activities at Guantánamo Bay, it is hardly a site that theorists would use to make the assertion that citizenship is increasingly postnational and, presumably, many would argue that the organization of Guantánamo and other sites created with similar motive does not refute claims for postnationalism elsewhere. However, the assumption herein is that citizenship is most crucial, and its value is most significant, precisely at moments such as these, where the coherence of the individual subject *as* a citizen is threatened by its relationship with capital, or the state. As Margulies (2006: 8, original emphasis) notes in relation to the application of the rule of law, it is “a virtue in its own right, a virtue that becomes *more* important, rather than less, as the stakes increase”. In other words, it is precisely at the edges of the social order that the protection of law is most crucial.

This appeal for the protection of law can be logically extended to citizenship where, theoretically, the state acts as a buffer from the excesses of capital, and protections from the state itself are written into conventions of citizenship. Arguably, of course, for most subjects the apparent success of those protections is due to the perseverance of formal citizenship. However, the premise of the universalism of citizenship is tested precisely at its boundaries, where the already-marginalized are most liable to suffer the consequence of the sharp in/exclusion divide. Postnationalists suggest that this divide is increasingly

obsolete in practice, and that theory should follow the contemporary experience of deterritorialized rights and a depreciation of national sovereignty. Rather than resting my argument on a tautological insistence that postnationalism must be universally applicable to be legitimate, the body of this chapter aims to expose the weaknesses within the foundational elements of postnational theories of citizenship.

Guantánamo: indefinite detention and torture

Two primary elements of the relationship between prisoners at Guantánamo Bay and the U.S. state raise questions for postnational citizenship, and constitute the main focus of this chapter. These are the torture of prisoners, and their legal status and access to legal rights. While, to date, only one of the Guantánamo prisoners – Australian citizen David Hicks – has been tried²³, considerable conflict over the nature of his trial process suggests that future matters will focus on adequate access to rights within trials. Currently, however, the majority of the legal argument is based on challenges to the denial of petitions for constitutional protections made in U.S. courts by Guantánamo prisoners, particularly writs of *habeas corpus* that proceed to inquire over the legitimacy of a prisoner's custody either after the imposition of a sentence or, as in this case, during pre-trial detention. While a series of cases have been presented to the U.S. courts since detentions at Guantánamo began in early 2002, the legal premises are exemplified by the first *habeas corpus* claims filed on behalf of prisoners Rasul, Hicks, Habib, and Iqbal, in the U.S. District Court in Washington D.C. in February 2002 (*Rasul v. Bush*), and a related case with which it was subsequently consolidated, *al Odah v. United States of America*, filed in May 2002. The petitions challenged the exercise of indefinite detention

without due process of law, as authorized in the Presidential Executive Order of November 13, 2001 (Bush, 2001). The various petitions were dismissed by the district court in July and August 2002, on the grounds that *habeas corpus* rights are not available to non-U.S. citizens detained outside U.S. jurisdiction (Center for Constitutional Rights, 2004). That dismissal was the start of a protracted legal wrangle that continues to unfold today, and comprises the bulk of the remaining discussion in this chapter.

While indefinite detention deriving from *habeas corpus* denials is the determining element of the relationship between the U.S. state and its prisoners, routine existence at Guantánamo also comprises rights denials in ways that, while still unfolding at the time of writing, have been made clear in personal testimony from released prisoners and the lawyers of those still imprisoned (e.g. Ahmad, 2006; Margulies, 2006) and increasingly from ‘more official’ sources including military interrogation logs and eye-witness accounts from military personnel (Mora, 2004; Zagorin and Duffy, 2005). A myriad accounts provide graphic detail of the unspeakable treatment meted out to prisoners (see, for example, Amnesty International, 2004, 2005; Human Rights Watch, 2006a) including to young men who were legally children when they first arrived at Guantánamo and thus are subject to extra protections through Geneva Conventions and international customary law (Ahmad, 2006). There have been no deaths of prisoners in custody at Guantánamo directly inflicted by U.S. military personnel although that is perhaps a fortunate statistic, given that some of those subjected to similar methods in Afghanistan and Iraq have died (Human Rights Watch, 2004). Moreover, the extremely high percentage of prisoners who have attempted suicide, committed self-injurious acts or suicide, undertaken hunger

²³ David Hicks was tried under the Military Commissions Act of 2006 (MCA).

strikes, or developed psychological disorders – sufficient to open a psychiatric wing at Guantánamo – are testament to the severity of treatment sustained (see Olshansky & Gutierrez, 2005; Amnesty International, 2005; Margulies, 2006: 138-40; Zagorin and Corliss, 2006).

The legal wrangle between the military and the Bush administration on one side and human rights advocates and counsel for the prisoners on the other, over what constitutes legal interrogation techniques, and whether prisoners are entitled to protection from cruel, inhumane, and degrading treatment – torture – has continued since the Guantánamo camps were opened (Stolberg, 2007). Although the public outrage that followed publication of the torture photographs from Abu Ghraib prison in Iraq yielded official investigations that asserted an obfuscated chain of command, effectively absolving members of the Bush administration of any accountability, the journalist Seymour Hersh famously uncovered the extent of the administration’s involvement – particularly that of Defense Secretary Donald Rumsfeld – in the Abu Ghraib scandal (Hersh, 2004a, 2004b, 2007). Leaked documents show that the manner of interrogations conducted throughout the war on terror – whether in Iraq, Afghanistan, or at Guantánamo – has been clearly delineated in directives from the White House and the Pentagon.

In 2002, a memo from the Office of Legal Counsel to the Justice Department, responding to Attorney General Gonzales’ concern whether U.S. agents were subject to the federal anti-torture statute, defined torture as “equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even

death. For purely mental pain or suffering to amount to torture under Section 2340, it must result in significant psychological harm of significant duration e.g. lasting for months or even years” (Bybee, 2002: 172). The Justice Department issued a secret memo directing application of “the harshest interrogation techniques ever used” approved by Alberto Gonzales shortly after his appointment as Attorney General in February 2005, but renounced by his deputy on the grounds that the department would be “ashamed” when their sanctioning was revealed (Shane *et al*, 2007). Further, the ‘Mora Memo’ a memorandum from the outgoing general counsel of the United States Navy, made it clear that the administration’s policy of authorizing cruelty toward terror suspects had led to abuses at the U.S. detention facility at Guantánamo Bay, and was both disastrous and unlawful (Mora, 2004).

Limiting international human rights with territorial sovereignty

This brief account of detentions, legal processes and treatment of prisoners at Guantánamo both stretches the credibility of notions of universal personhood and global democracy, and raises the question of exactly how the state reproduces these conditions in the context of international law and its intersection with domestic law. Within the field of international law, the International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols. Of these, the ICCPR, adopted in 1966, is the most important international human rights treaty, providing a range of protections for civil and political rights. The U.S. fulfills some of its obligations under the ICCPR via its

constitution and, theoretically, it is this overlap between international and domestic law that determines the conditions for access to due process for the Guantánamo Bay prisoners (Russell, 2005). In addition to the guarantees of freedom from arbitrary detention and the right to a fair trial covered by due process in the U.S., the ICCPR obligates signatories, including the U.S., to protect other basic human rights including freedom from torture, the right to life and to human dignity, and so forth (OHCHR, 1966). Further, of the myriad human rights treaties and other universal instruments relating to human rights, Humanitarian Law – the so called ‘laws of war’ – pertaining to the treatment of individuals during war is laid down in a set of conventions and protocols, popularly known in the collective as the Geneva Conventions²⁴. The ICCPR and the Geneva Conventions theoretically provide exactly the international human rights codes of behavior that postnational theorists suggest govern interaction between the state and the subject – in this case the U.S. state and Guantánamo prisoners.

In an important discussion of the ‘geographical limits of international human rights law’, Jim Russell (2005: 29) claims that “The case of detainees held by the U.S. at Guantánamo Bay, Cuba, brings to the fore questions about the relationship between territorial boundaries and human rights”. Russell notes that the evolution of immigration law has established the location of the non-citizen (defined in formal terms) as crucial in determining access to rights, as the judicial branch of government has no power to implement the constitution – and thus limit the actions of the executive and legislative branches – beyond the territorial borders of the U.S. There is a “U.S. tradition of

²⁴ The laws of war also comprise the Hague Conventions of 1899 and 1907, but these are specifically concerned with the principles for the just conduct of war (particularly the use of weaponry), rather than the

strategically limiting the geographical scope of the constitution. Where U.S. sovereign territory ends, unchecked legal state power begins” (Russell, 2005: 34). Thus in the *habeas* claims made in *Rasul et al.* and *Odah*, the July 2002 U.S. District Court ruling that Guantánamo Bay is outside U.S. territory was sufficient to deny access to constitutional rights for the prisoners held there. Directly *contra* postnationalist assertions of the increasing irrelevance of the nation-state with the emergence of deterritorialised rights premised on universal personhood, Russell shows that the persistent significance of territory, in the form of national identity and physical location of the subject, is crucial in determining access to rights. In the Guantánamo case, the lack of formal U.S. citizenship and their apparent location outside U.S. sovereign territory cast the prisoners as outside U.S. jurisdiction. Therefore the U.S. state claims that it is not *constitutionally* obliged to furnish the prisoners with their international human rights.

Following the rejection of *habeas* claims in the D.C. District Court in 2002, and over the objections of the Bush administration, the decision went through the appeals process up to the Supreme Court where it was decided in June 2004 that Guantánamo prisoners *did* have the right to challenge their detention in U.S. courts (*Rasul v. Bush, al Odah v. US*) (Center for Constitutional Rights, 2004). For Russell (2005), this decision to grant the right of *habeas* regardless of the national identity and the physical location of the subject suggests the possibility of a movement toward the conferral of postnational rights.

However in both the majority decision in favor of the prisoners and in the dissent, the Supreme Court was inconsistent, remaining thoroughly unresolved on questions of

just treatment of individuals that is considered in the Geneva Conventions.

whether sovereignty extended to Guantánamo Bay, and whether aliens held rights against the U.S. government beyond its territory. The possibility of postnational rights that Russell identifies comes from Justice Stevens' opinion that the U.S. has domestic legal obligations for its own conduct, dictated by Federal Statute, regardless of whether it acts inside or outside U.S. sovereign territory. However, this is barely an indication of postnationalism, given that Stevens' argument is centered on the state's obligation to *itself*, rather than to the subject's international human rights.

Russell understands the original denial of *habeas corpus* and the subsequent ambiguity over sovereignty in the Supreme Court's discussion of the Guantánamo case as questioning the postnational citizenship thesis. His contention that "There is a tension within the understanding of universal human rights, between the ideal of personhood and the practical application of international human rights law via territory" (Russell, 2005: 32) reflects how the U.S. circumnavigates its obligations laid down in international treaty by producing the space of Guantánamo Bay as beyond U.S. jurisdiction. As such, he claims that "debates over post-national citizenship misconceptualise the relationship between international human rights law and state territory" (Russell, 2005: 29). In other words, despite claims to the contrary, when the new form of spatial organization claimed in postnational theory butts up against the legacy of the Westphalian sovereign system, the latter prevails.

Russell's argument points to a weakness in postnational citizenship theory in terms of its inattention to the persistent role of the nation-state. This question has been raised with

respect to the European basis of the postnational model. Much of that critique has concerned the fact that European citizenship, despite its formalization of membership and rights beyond the nation (O’Leary, 1996), is dependent on citizenship in a national member state (e.g. Geddes, 2000) effectively limiting EU citizenship to the addition of “an increasingly significant European dimension” (Meehan, 1997: 69) with the corollary exclusion of ‘third country nationals’ to whom benefits are denied (Atikcan, 2006).

However, beyond this formal obstacle to postnational theory, the question of the implementation of international human rights by the nation-state provides an informal obstacle that is equally relevant inside and outside the EU. In the European version the quality of citizenship is remarkably ‘thin’ (Martiniello, 1994; Tilly, 1997), and unfolds differentially across the Union due to both varying capacities of nation-states to respond (de Swaan, 1997), and the persistence of built in civic stratification (Kofman, 1995; 2005). On these grounds Tambini (2001: 201) determines European citizenship to be “nominally postnational” but I suggest that these obstacles, in the form of a persistent nation-state, raise the question of how far this model version of citizenship is truly *postnational*, or at least problematizes the definition of postnationalism as existing beyond an increasingly irrelevant nation-state (Soysal, 1994). Theoretically, these weaknesses are only liable to be exacerbated outside the EU, where postnational rights have far more limited formal underpinning, and institutional obligation. In practice, the case of the strategic production of Guantánamo Bay as beyond U.S. jurisdiction exhibits both the intent and the capacity of nation-states to circumnavigate their international obligations.

However, while Russell's argument remains valid, his discussion of rights at Guantánamo only offers part of the possible critique of postnationalism that the case allows. By examining the extent to which the U.S. elects to respond to its international obligations Russell effectively works tautologically by starting his empirical investigation within the theoretical critique of postnationalism. In other words, where the postnational thesis posits the deterritorialised subject's direct access to international human rights with an increasingly irrelevant nation-state, Russell's examination tests the extent to which the nation-state fulfils its international obligations. The findings of the continued significance of territoriality then necessarily derive from the formation of the argument as a test of the nation-state's actions. This critique is not intended as a refutation of Russell's conclusions. Rather, I suggest that the mediating intervention of the nation-state is larger than a simple lack of fulfillment of its own obligations, and therefore more significant than Russell's investigation suggests.

This is a nuanced distinction that can be elucidated with reference to Russell's (2005: 35-6) discussion of Justice Stevens' application of the federal statute. Russell finds the possibility of a move towards postnationalism because Justice Stevens asserts the state's obligations to the subject, regardless of their location or national identity, "out of respect for U.S. domestic law" (Russell, 2005:36). However, given that the state's responsibilities are dependent on its obligations to its own domestic law, rather than to international law, there is no indication of diminished sovereignty. Following Stevens' argument to its logical conclusion, then, postnational rights would be fully revocable dependent on the trajectory of U.S. law, rather than being guaranteed by international

law. As Russell clearly shows with the Guantánamo case, dependence on a benevolent state to grant rights to non-citizens beyond its borders has been proven to fall foul of the nation-state's own interests.

This point of distinction raises a larger question concerning what is meant by *detrterritorialized* rights. If access to rights is not determined by territory (territorial membership or physical location), but the decision to grant those rights is based on a sovereign nation-state's obligations to its own statutes rather than international obligation, have detrterritorialized rights been exercised? The point is perhaps made moot in terms of precedent deriving from the Guantánamo case, given the opposition to Stevens' opinion from all sides. However, there remains a question over whether rights granted to the detrterritorialized subject are necessarily detrterritorialized (postnational, international human rights) in themselves, or whether they are still firmly dependent on the nation-state. Theoretically, the answer varies with the definitions of 'detrterritorialized'. However, in practice, the granting of *habeas* rights in *Rasul* in 2004 remained dependent on the U.S. nation-state rather than the power of international human rights themselves. As I shall argue throughout the rest of this chapter, the ability to exercise rights determined in the international arena still remains firmly within the power of nation-states, and in larger ways than Russell exposes here.

Reterritorializing the subject

Russell's argument that national identity and location of the subject are determining regarding access to rights at Guantánamo, is based on the different abilities of individuals

to place themselves under U.S. jurisdiction, as subjects before the U.S. district courts. U.S. citizenship automatically grants that right to individuals, but the Guantánamo *habeas corpus* case shows how non-citizens need to be located within the territory of the state to exercise rights, undermining the postnationalist claim that rights inhere in the subject regardless of their location. It is, of course, reasonable that the U.S. state should not be responsible for providing the full benefits of U.S. citizenship to non-citizen subjects who are resident beyond its borders. However, with the partiality of the shift away from the Westphalian order, states are now able to enter into a spatial manipulation of the border and concomitant definitions of jurisdiction, in order to encounter subjects in new ways, that invoke new processes of subjectification. This raises the question of the difference between rights *from* the state, and rights *against* the state. The lack of attention to this distinction is the core of my critique of postnational citizenship theory, and is the focus of the remainder of the chapter. The central theme that I explore is the way in which the U.S. state has intertwined traditional understandings of sovereignty with the mechanisms of the incipient global order to facilitate its exercise of power over subjects, alongside its denial of their rights claims. In other words, Guantánamo prisoners are in a relationship with the U.S. state that comprises a set of obligations and restrictions without recourse to that relationship to secure rights, in contrast to the state-subject relationship projected by postnational citizenship theory.

The inherent spatiality of the Guantánamo Bay arrangement is clearly strategic. Decisions concerning where to locate prisoners from the ‘war on terror’ were made specifically to limit their legal opportunities. Camps at Guantánamo Bay were opened to hold prisoners

after it became apparent that holding prisoners on Guam, or using an offshore Navy brig would not support the legal argument that prisoners were being held outside U.S. territory, and therefore beyond U.S. jurisdiction (Seelye, 2001; Margulies, 2006: 47). In delivering the dissenting opinion as the Supreme Court granted the right of *habeas* claims in *Rasul* (2004), Justice Antonin Scalia tautologically contended that the Executive's position to deny right of due process should be upheld precisely because the prisoners were sent to Guantánamo Bay in order to deny them constitutional protections (Russell, 2005: 37). Therefore, beyond Russell's (2005) recognition that the U.S. courts were able to circumnavigate their obligations by imposing territorial limits on sovereignty, the location of prisoners within this ambiguously defined space was specifically orchestrated to deny prisoners access to the U.S. courts. The spatial ambiguity is made even more apparent when considered alongside the decision by the Department of Justice, without challenging the sovereignty argument, that Guantánamo was *inside* the U.S. (by virtue of the 'complete jurisdiction' held by the U.S.) in order to circumvent the U.S. Code's implementation of the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, governing conduct of interrogations *outside* the U.S. (Gregory, 2007).

The legal expedience of defining Guantánamo Bay as beyond U.S. sovereignty belies an imperialist history that even pre-dates Cuba's late 19th century wars of independence against Spain. U.S. involvement in those wars led to its occupation of Cuba, and the colonial relationship was then cemented with the Platt Amendment to the Cuban Constitution (1901), which prevented the Cuban government from entering into treaties

with other nations, and the Permanent Treaty of 1903 ceding a permanent lease of the Guantánamo Bay naval base to the U.S. Although President Roosevelt repealed the Platt Amendment in 1934, the lease arrangement at Guantánamo was not lifted. Now infamously, Cuba has not cashed the nominal U.S. Treasury lease payments for Guantánamo since 1959, but the U.S. has continued to use the naval base as the command center for operations in the Caribbean and Latin America for half a century, and shows no signs of relinquishing such a strategic foothold in the region (Lievesley, 2006). This imperialist history has allowed the U.S. to create a condition of ambiguity over sovereignty at Guantánamo, whereby Cuba retains ‘ultimate sovereignty’ in the lease agreement but no control over practices conducted in that territory. The Cuban government has protested U.S. activities at Guantánamo, condemning human rights violations and demanding a UN investigation into interrogation practices conducted there but to no avail (Center for International Policy, 2005).

The ambiguity of the term ‘ultimate sovereignty’ is a considerable contribution to the legal basis behind the detention without trial of prisoners at Guantánamo (Neumann, 2004). In a memo written before the first prisoners arrived at Guantánamo, lawyers from the Office of Legal Counsel at the Justice Department argued that future *habeas* writs filed in the U.S. courts by prisoners at Guantánamo would fail because of Cuban retention of ‘ultimate sovereignty’ even while the U.S. has jurisdiction and control over the naval base (Margulies, 2006: 49). As such, the ambiguous sovereignty of Guantánamo allows the U.S. to retain control over practices conducted on the territory, without enforcing responsibility for such practices. In terms of state-subject relations, this

complex colonial history has made it possible for the U.S. state to render the prisoners effectively stateless, slipping them between U.S. and Cuban jurisdiction in a manipulation of international sovereignty for which pre-conditions were established well before assertions of postnational rights.

The condition of statelessness means that Guantánamo prisoners are unable to secure rights from the U.S. or from Cuba, but this strategy of denying rights *from* the state is twinned with mechanisms limiting rights *against* the state. The treatment of foreign nationals captured in combat is governed by the Geneva Conventions, parts of which establish rules for signatory nation-states with respect to the treatment of individuals captured outside national territory, including regulations concerning indefinite detention, and demanding the exercise of humane treatment and the prevention of torture. However, the Bush administration effectively classified Guantánamo prisoners as ‘non-persons’ in order to limit the deployment of the protections in the Geneva Conventions against the U.S. state (Ahmad, 2006). The separation of prisoners from these international human rights turned on a discursive maneuver that complemented the legal ramifications of the state’s manipulation of territorial sovereignty, that in combination creates a broader ‘ambiguous spatiality’.

Prior to the opening of the camps at Guantánamo, then Defense Secretary Donald Rumsfeld had already claimed that the prisoners “do not have any rights under the Geneva Convention”, as allegedly having contravened the international rules of war, the Guantánamo prisoners were to be classified as “unlawful combatants” (Rumsfeld,

2002a). Directly rescinding the order of the coalition commander in Afghanistan to comply with Geneva Conventions in the treatment of captives, Rumsfeld restated his position that “Al Qaeda and Taliban individuals under the control of the Department of Defense are not entitled to prisoner of war status for purposes of the Geneva Conventions of 1949” (Rumsfeld, 2002b: 80). In a memo dated February 7, 2002 President Bush clarified that prisoners who were members of al Qaeda were ineligible for the protection of the Geneva Conventions because Geneva only applies to ‘High Contracting Parties’ (i.e. signatory states), and members of the Taliban were ineligible because they were “unlawful combatants” (Bush, 2002: 134-5).

Shortly thereafter, the Administration deployed the tag “enemy combatants” in taking the unprecedented position that the prisoners could be held for the duration of hostilities without rights or protections (Margulies, 2006: 84). Having pre-determined the legal status of the prisoners, George Bush attempted to bolster his administration’s argument that they were ineligible for the protections afforded by international human rights law by reminding us that they were “killers. Terrorists. They don’t share the same values we share” (Bush, cited in Eaglesham, 2003). The context is especially significant here; recall that nearly all of these ‘killers’ and ‘terrorists’ have never been charged with any offense, let alone tried in criminal or military courts. Further, many of those who have been released from Guantánamo have been released without charge on return to their native country (see, for example, Center for Constitutional Rights, 2004), rendering the presumption of guilt even more questionable.

The legal flaws in the arguments to deny Geneva-based rights are irrefutable. Appropriate treatment of lawful combatants, commonly referred to as POWs²⁵ and defined as ‘lawful’ because of their compliance with treaty-defined and customary international laws of war, is defined in Geneva III²⁶. However, anyone falling outside the POW category – including those ‘unlawful combatants’ who are non-compliant with the rules of war – are automatically recognized as civilians, and therefore subject to the protections of Geneva IV (Margulies, 2006: 53-5). Thus *every* person captured during conflict is necessarily afforded protections by Geneva. According to the International Committee of the Red Cross (ICRC), whose status is codified in Geneva and thus recognized by all signatories including the U.S.: “There is no intermediate status; nobody in enemy hands can fall outside the law” (ICRC, 1958: 5). The Conventions require that those captured during armed conflict be treated as POWs until such time that their status can be satisfactorily resolved via a ‘competent tribunal’. Traditionally, U.S. military regulations implement this tribunal requirement through ‘Article 5’ hearings. Further, Common Article 3 that prohibits the torture, cruelty, and degrading treatment of prisoners is identical across the Conventions, and therefore renders illegal the brutality meted out at Guantánamo, regardless of the formal status of the recipient. (Margulies, 2006: 55-6). Thus, assuming it is applied, international law contains sufficient statute to protect the Guantánamo prisoners from indefinite detention and from torture during their incarceration.

²⁵ In the U.S., POWs are also referred to as ‘EPW’s – Enemy Prisoners of War.

²⁶ Often referred to as ‘the Geneva Convention’ and assumed to pertain to POWs alone, there are actually four Geneva Conventions. Geneva III (for the protection of POWs) and Geneva IV (for the protection of civilians) (Margulies, 2006: 53-5) are applicable in my argument.

The Guantánamo case shows how, in defining the borders of the nation-state, the U.S. state has deployed various spatial practices underpinned by discursive ambiguity to establish the subject position of prisoners. State strategies actively blur national borders to effectively cast Guantánamo prisoners as simultaneously inside and outside the U.S., and therefore beyond the purview of rights obtainable through national law, while still under U.S. jurisdiction. Thus the U.S. state was able to define itself as simultaneously absent and present in the relationship with the prisoners, being fully in charge of their location, treatment, and access to rights, and yet absent from the relationship in terms of having obligation or responsibility for even their most basic human rights.

I suggest that this subjectification process redefines citizenship, by disaggregating its constituent elements: the membership/ identity element of citizenship which casts individuals and groups in a relationship with the state, is separated from the rights and participation element which provides those subjects with some form of influence over the condition of the relationship. Furthermore, the subject's diminished influence over this relationship derives precisely from the 'decoupling' (Bosniak, 2001, 2006) or 'deterritorialization' (Soysal, 1994, 1997, 1998) of the subject from territorial membership, as individuals are left without appeal to a formal political identification or membership in the state that is controlling the conditions of their existence. In effect, as the relationship between the state and the subject that is contained by citizenship at the national scale disaggregates, its constituent parts dissolve²⁷. Postnationalism posits a situation where both membership and rights become deterritorialized as they are decoupled from the nation-state. I suggest that the Guantánamo case shows how the U.S.

state has reterritorialized subjects by re-engaging them, but has done so without the protections afforded by formal political membership. The fact that the U.S. nation-state holds sway over the conditions of existence of the Guantánamo prisoners shows how access to rights is still determined by sovereign states, which extends Russell's (2005) contention that rights have not been deterritorialized.

All this points to a critique of the oversimplistic understanding of deterritorialization deployed in postnational theory. Postnationalists identify deterritorialized rights at the global scale that are accessible to all by virtue of universal personhood. That universal personhood is found in the deterritorialized subject, who can access rights regardless of their location or identity. The function of an apparently weakened nation-state is limited to its implementation of internationally determined rights. The limitations of the postnationalist understanding of the nation-state in the global order go beyond the fact that, as Russell shows, the nation-state can thoroughly circumnavigate its function as the vector of international rights. I suggest the Guantánamo case shows that the foundational thesis of the deterritorialized subject misses the way in which this process of deterritorialization – or the separation of political identities from formal political membership in a territorial nation-state – fails to account for the persistence of the nation-state. Thus deterritorialized subjects might assert political identities beyond their own ties to a nation-state, but they cannot escape the relationship with states in general. Moreover, rather than being weakened by globalization, certain nation-states are instrumental in its formation. As such, we can speak of the global order being shaped by a *reterritorialization*, rather than the deterritorialization emphasized in pro-globalization

²⁷ The matter of citizenship not shifting scale 'intact' is taken up further below.

‘end of geography’ arguments (Sparke, 2005). Therefore, there is no need to appeal to a static vision of the Westphalian order to recognize that the incipient global order remains thoroughly shaped by powerful nation-states.

This process of reterritorialization shapes the geography of the global order in general, but I suggest it also determines the possibilities for postnational citizenship because the apparently deterritorialized subject has been reterritorialized. What is of particular relevance here, with respect to the transformation of citizenship under global conditions, is the way that the U.S. state is able to exercise its interests within the incipient global order. Thus, as opposed to the postnationalist idea that individuals can exploit changes in the global order to circumvent the nation-state and alter their subject position, the Guantánamo case shows that it is certain nation-states that are most likely to be able to exploit the recent developments of globalization.

Given that international human rights, as the lynchpin of postnational citizenship, remain subject to implementation by nation-states, the quality of those rights is determined by the interests of states. Thus, going beyond Russell’s thesis and taking postnationalism on its own terms, I will proceed to consider the ways in which the reterritorialization of the subject is engineered. As such, I suggest that the Guantánamo Bay presents far more implications for citizenship than the simple withholding of rights guaranteed under international law. Moreover, in response to those who claim the strength of universal human rights based on their normative qualities as a rejoinder to the suggestion that inclusionary universal personhood is antithetical to, and inherently weaker than,

exclusionary citizenship (Shafir and Brysk, 2006), I suggest that the theoretical quality of universal rights is largely irrelevant to the substantive condition of citizenship if nation-states simply elect to ignore them.

Reterritorializing practice: Redefining the sovereign nation

In the previous section I argued that the U.S. administration has routinely denied Guantánamo prisoners access to rights via the production of specific spatialities, where the state is simultaneously absent and present. First, and following from Russell's insights into the persistent significance of territory, I suggested that prisoners are rendered effectively stateless by the creation of their physical location as an extra-territorial space. The second strategic formation is less conspicuously spatial, because the question of territory remains incidental. However, I suggested that the construction of prisoners as 'non-persons' is equally the result of the production of a specific spatiality. The absence/presence of the U.S. state that, I have argued, constitutes the reterritorializing processes unfolding at Guantánamo, is entirely dependent on an explicit exertion of sovereignty.

In this and the following section I explore further this reterritorializing process as it pertains to citizenship, by examining the manifestations of that exertion of sovereignty in terms of the efforts deployed to deny the rights of *habeas corpus* to Guantánamo prisoners. I suggest that the spatio-temporal specificity of the sovereign order that has always been hierarchical, emerges as a transformed understanding of the nation in terms of both the construction of the U.S. as a legal body, and the limitations it places on the

sovereignty of other nations as legal bodies. Rather than implying a demise in sovereignty, as identified by postnationalists, I suggest that the process of reterritorialization comprises a reconstitution of hierarchical sovereignty which, in the intersection with citizenship, yields new forms of state-based subjectification. Moreover, as I will suggest in chapter 6, the ramifications herein go far beyond Guantánamo, to threaten longstanding domestic configurations of the state/subject relationship. The consequences for citizenship are recognizable in terms of the capacity for subjects to exert rights and in the institutional condition of citizenship itself, as well as the theoretical understandings offered by postnationalists.

As already discussed, the question of *habeas corpus* is one of the most significant questions concerning the condition of the Guantánamo prisoners because its denial has been the basis of their indefinite detention. Further, the practicalities of the execution of *habeas corpus* are even more relevant in the Guantánamo case, because even while its intended purpose is to ascertain whether a detention is legal, its enactment is thoroughly intertwined with the question of torture. First, indefinite detention without trial is considered to be torture in itself, but further, presentation before a judge can determine whether or not a prisoner is being tortured, or even if they are still alive (Amnesty International, 2003: section 4.8). Legal experts note that *habeas corpus* – effectively the right to question the legality of a detention – is the basis of liberty in the North American juridical system, drawn from British law where it was declared in the Magna Carta of 1215 and subsequently enshrined in the U.S. constitution. Former Attorney General Alberto Gonzales drew much ire with his testimony that American citizens are not

entitled, inherently, to the rights of *habeas corpus* (Egelko, 2007), based on his interpretation of Section I Article 9 of the constitution which prescribes that ‘the privilege of the Writ of *Habeas corpus* shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it’ (Parry, 2007). With respect to international law, according to the UN Human Rights Committee (UN HRC, 1982) the right of *habeas corpus* is guaranteed by the declaration in Article 9(4) of the ICCPR which states that “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.” (UN, 1966: 9(4)).

Despite the clear legal framework written into both domestic and international law, the Bush administration consistently denied that Guantánamo prisoners were entitled to the rights of *habeas corpus*. This position, which was determined even prior to the prisoners being sent to Guantánamo was based first, as Russell (2005) shows, on the claim that their location is physically outside sovereign territory and therefore beyond the purview of the U.S. state, but also on the assumption that executive policy exceeds congressional authority at Guantánamo (Toobin, 2006) allowing presidential declaration of the prisoners’ status and of consequent entitlements. On June 28, 2004, after protracted resistance from the U.S. government and over two years after the initial claims for *habeas corpus* were made by counsel for Guantánamo prisoners the Supreme Court determined that the prisoners were eligible for their *habeas* claims to be heard in U.S. District Court (*Rasul*, 2004). However, almost immediately after the Supreme Court’s decision was

handed down the U.S. government initiated a multi-pronged approach to circumnavigate the prisoners new found rights, including military commissions, Combatant Status Review Tribunals (CSRT), the Detainee Treatment Act (2005) (DTA), and the Military Commission Act (2006) (MCA).

The Presidential Military Order of November 13, 2001 declared the Guantánamo prisoners to be ‘unlawful combatants’ (rather than POWs) and eligible for trial by military commission (Bush, 2001). The military commissions process started in July 2004 with the commencement of the trial of Salim Ahmed Hamdan, a Yemeni citizen, just one month after the Supreme Court’s decision on *habeas* in favor of the Guantánamo prisoners. Hamdan’s trial was halted by a decision in U.S. District Court which recognized that, according to the Geneva Conventions, prisoners are classified as POWs and are to be granted the full rights associated with that status – including entitlement to trial in a full military court rather than a military commission – until a ‘competent tribunal’ determines their status to be otherwise (Margulies, 2006). Subsequent appeal by the U.S. government was initially successful and led to the resumption of the military commissions, but a landmark decision by the Supreme Court on June 29, 2006 (*Hamdan*) rejected executive authority for trial by military commission operated beyond the laws of war²⁸.

²⁸ The Supreme Court’s decision explicitly avoided the question of whether the president had the power to convene military commissions, asserting instead that congressional approval (via the Authorization for Use of Military Force, the Uniform Code of Military Justice and the Detainee Treatment Act) “at most acknowledge a general Presidential authority to convene military commissions in circumstances where justified under the “Constitution and laws”, including the law of War” (Supreme Court, 2006: 30).

A further component of the Supreme Court's decision in *Hamdan* rejected the restriction to the D.C. District Court of jurisdiction to review cases tried before military commissions. This feature of the Detainee Treatment Act (DTA) was intended to prevent *habeas* claims being presented to the Supreme Court. The question of the DTA is of particular interest because, although the Act was introduced to Congress as a measure to prohibit torture, by the time it was signed into law, the incorporation of an amendment²⁹ effectively removed *habeas* decisions from the jurisdiction of the federal court system (ACLU, 2006)³⁰. Although the Supreme Court's decision in *Hamdan* struck down the DTA's limitations on *habeas* claims, the overwhelming intent of the U.S. government to maintain prisoners beyond the purview of the Supreme Court is clear. This intent was further echoed in the executive's response to the *Hamdan* decision. The same day that the Supreme Court handed down its decision damning the military commission process initiated at Guantánamo, Sen. Arlen Specter (R-PA) read the first version of what was to become the Military Commissions Act (2006) (MCA) on the Senate floor (Toobin, 2006). The act was designed to reinstate the military tribunal process, overturning the Supreme Court's decision in *Hamdan* that the tribunals were unconstitutional, and in effect authorizing executive decisions made by Presidential Military Order by retroactively establishing congressional authorization.

In practice, the MCA goes beyond establishing procedures for military tribunals, and serves as a 'catch-all' to deal with the various legal obstacles the Bush administration has

²⁹ The Graham amendment

³⁰ The extent to which the DTA would actually facilitate the prohibition of torture is subject to further scrutiny, as it was signed into law along with a Presidential signing statement that gave executive authority to ignore the legislation therein.

encountered in its efforts to secure indefinite detention and to treat prisoners as it chooses, without being impeded by legal checks. First, the Act establishes a sweeping classification of who its legislation applies to, expanding ‘unlawful enemy combatant’ status to individuals who would be considered prisoners of war or protected persons (and thus eligible for broader rights) under the Geneva Conventions. This process of reclassification was another retroactive maneuver that established ‘unlawful enemy combatant’ in expansive terms in order to encompass all those held at Guantánamo. Second, the Act establishes further and severe limitations on the exercise of *habeas corpus*. Third, the MCA institutionalizes extended governmental powers by redefining torture such that interrogative methods can be used, literally with impunity, as the Act also limits the scope of the 1996 War Crimes Act that theoretically had held agents of the state accountable for their use of torture (Center for Constitutional Rights, 2006a; Amnesty International, 2006a; Human Rights Watch, 2006b).

With the passage of the MCA, new charges were laid and trials initiated for Hamdan and Omar Khadr, a Canadian citizen who was taken to Guantánamo as a child. However, in a move that surprised the executive, the commissions were halted by presiding officers Army Colonel Peter Brownback and Navy Captain Keith Allred on the grounds that the MCA referred to ‘unlawful enemy combatants’ whereas the status of Hamdan and Khadr was only ‘enemy combatant’ (Wood, 2007a, 2007b). The executive appealed this decision to the Court of Military Commission Review (CMC), a body within the Department of Defense mandated in the MCA to hear appeals on questions of law. The CMC was not even in existence at the time of the appeal but was hastily convened, and in

September 2007 found that there was a significant distinction between the statuses of ‘unlawful enemy combatant’ and ‘enemy combatant’. However, the Review also decided that, under the MCA, the military commissions had the right to re-assign the status of the prisoners thus enabling the commissions to proceed. The use of the Military Commissions Act has been legally challenged since its earliest applications in late 2006. Despite initially being upheld by both the D.C. District Court and the Supreme Court’s initial decision not to hear the challenge, the higher Court reversed its decision in June 2007 determining that it would hear two cases, consolidated, in its next term (Barnes, 2007). That process is on-going at time of writing.

As with other legal challenges made on behalf of the Guantánamo prisoners, with regard to the MCA much turns on the formal definition of the status of the prisoners. One of the more significant developments from the Supreme Court’s 2004 decision on *Rasul*, was that the Guantánamo prisoners became entitled to file *habeas corpus* petitions in U.S. courts, with adequate access to legal counsel to facilitate this process. On July 30, 2004, the Defense Department began conducting Combatant Status Review Tribunals (CSRTs) as a direct response to the Supreme Court’s ruling (HRF, nd-b). The Bush administration contended that the hearings, where Guantánamo prisoners could challenge the ‘enemy combatant’ status that was the legal basis of their indefinite detention without trial, fulfilled the Supreme Court’s instructions given in *Rasul* and a related case, *Hamdi*, and thus that *habeas* proceedings pending in the District Court need not recommence, regardless of the Supreme Court’s ruling (Denbeaux and Denbeaux 2007). However “The

status hearings – which provide neither for review in federal court nor for assistance of counsel – do nothing to satisfy this ruling” (HRF, nd-b).

CSRTs have been critiqued with respect to both judicial procedure, particularly that prisoners have no counsel and are unable to see the secret evidence used against them, and their expansion of the definition of ‘enemy combatant’ (see, for example, Margulies, 2006: 160-4; Amnesty International, 2005). By admission of their own documentation, the Government did not produce witnesses in any of the hearings; denied requests for witnesses with the exception that some ‘detainee-witnesses’³¹ were permitted in some cases; provided prisoners with only cursory detail of evidence against them and almost never in advance of the hearing; withheld evidence from prisoners; produced evidence and admissions secured under torture which, as for all Government evidence, was assumed to be true and valid even though such information has been proven to be unstable; limited what evidence prisoners could present and denied presentation of evidence in well over half the cases; denied access to legal counsel; convened new tribunals in the very rare case that the result was found in the prisoners favor; and withheld from prisoners the results of decisions in their favor (Denbeaux and Denbeaux, 2007; HRF nd-b).

Although the MCA has been critiqued for institutionalizing the broadened criteria for classification as ‘enemy combatant’, the CSRT process was already working with an expanded definition. One prisoner, who the military conceded was force conscripted into the Taliban, and worked for them only as a cook, was determined to be supporting enemy

forces in hostilities, because “Whether or not the detainee was forced to join the Taliban, or in what role they served the Taliban, is not relevant” (CSRT presiding officer, cited in Jacobs, 2004). It is unsurprising, then, that ‘enemy combatant’ status was confirmed in 93% of the 558 cases held between July 2004 and January 2005 (Czajkowski, 2007) with all but 38 prisoners having their enemy combatant status upheld (Melia, 2007).

Moreover, all except 6 of the cases in which the status was revoked were heard after a federal judge in a DC District Court decreed the CSRT process unlawful, but before its legality was reinstated in the government’s appeal (Amnesty International, 2005).

In October 2007, the U.S. military announced that it was reviewing its classification of enemy combatants, possibly leading to new hearings (Czajkowski, 2007; Melia, 2007). The decision came after Army officers asserted that CSRTs were unfair and that some results in favor of prisoners had been reversed. It also followed the Supreme Court’s announcement that it was to review the MCA. The official position of the Defense Department was that the process might be re-opened to consider previously overlooked evidence, or changes in circumstance that rendered prisoners no longer a threat (Melia, 2007). However, given that the supposedly all-encompassing MCA was challenged on its first application and that the Supreme Court is considering its constitutionality, it is possible that the apparent re-evaluation of the CSRT process is designed to serve parallel to the MCA as an added layer of justification in the government’s effort to maintain indefinite detention.

³¹ ‘Detainee-witnesses’ are witnesses imprisoned at Guantánamo.

Since the Supreme Court's 2004 decision in *Rasul* undermined the strategy of declaring the prisoners to be beyond U.S. territorial responsibility the executive, abetted by the largely compliant assistance of Congress and the Military, has implemented a series of legislative maneuvers to create a new category of 'rights-less' persons – or 'non-persons' (Ahmad, 2006) – who can be excluded from the protections of existing laws. Certainly, the conventional, and existing, 'alien' status of the prisoners has smoothed that process, and caused less difficulties for the government than the subjectification of U.S. citizens, as exemplified in the case of José Padilla³². From Rumsfeld's first declaration that the Guantánamo prisoners were unlawful combatants and therefore ineligible for the protections of the Geneva Conventions (Aldinger, 2002; Margulies, 2006), the state has consistently defied its international obligations. As such it has effectively intervened in the direct relationship between the subject and international order, to resist those rights lauded in postnational citizenship theory. However the legislative changes undertaken by the U.S. government in order to establish 'non-persons' have not only involved resistance to international law, but also have manifested as the redefinition of the nation-state as a legal body³³. As such, *contra* postnationalist claims of a demise in sovereignty, I suggest that the U.S. state is engaged not only in a thorough reassertion of its sovereign authority,

³² Padilla is a U.S. citizen who was arrested in 2002 and held without trial and in solitary confinement for 3 years, and without legal representation for two of those years. He was detained as an 'enemy combatant' for 'engaging in war-like acts' via presidential order which, under the Authority to Use Military Force, allows the executive to use 'all necessary force' against individuals, as well as states and organizations. However Padilla's detention drew considerable attention from human rights groups concerned with the implications for U.S. citizens. He was eventually removed to a civilian prison and convicted in a civilian court on far lesser charges of conspiracy, exacerbating concerns over his lengthy detention without recourse to the normal legal avenues afforded to U.S. citizens (Democracy Now, 2005; Abrams, 2006; Goodnough and Shane *et al*, 2007).

but also in an active reconstitution of itself, expressly designed to respond to its changing interests. In the abstract, this redefinition could be understood as the routine evolution of the state, but as the empirics of the ‘war on terror’ have shown, both intent and means have threatened notions of justice on domestic and international stages.

The attack on *habeas corpus* has been a pervasive strategy in the government’s war on terror, and a central element of the re-writing of the legislative nation-state. Enshrined in the constitution, *habeas corpus* is “the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action” (*Harris v. Nelson* 1969, cited in Margulies, 2006: 46). As such it is a crucial instrument that underpins the state’s responsibility for enacting civil rights and citizenship. To limit the prisoners’ access to the right of *habeas corpus*, the executive has had to surmount repeatedly the Supreme Court’s protection of the Constitution. Abrams (2006) notes, however, that the Supreme Court has made very few decisions on the government’s anti-terrorism efforts, and that the supposed system of checks and balances between different branches of the state has actually been characterized by an avoidance of decision making. Nevertheless, when the Supreme Court has made decisions in the prisoners favor, the executive has failed to comply with the practical applications of the ruling, and has been swift to identify new ways to circumnavigate the Supreme Court and the constitution.

For example, when the Supreme Court ruled in *Rasul* that the Guantánamo prisoners were entitled to the rights of *habeas corpus*, the executive determined that the flawed

³³ The developments made during the government’s ‘war on terror’ have significant domestic consequences. However, here I limit my discussion to the question of the Guantánamo prisoners and

CSRT process fulfilled the state's legal obligations. This tactical deployment of the mandated 'competent tribunal', in a form that serves only as a means to preserve indefinite detention without recourse to legal rights, is unprecedented. During Operation Desert Storm – the 1991 Gulf War – the U.S. processed 69,822 Enemy Prisoners of War (EPW) and displaced civilians. Where, under interrogation, it became apparent that EPW status was questionable, 'Article 5' hearings (so named for the mandating Geneva Convention article) were conducted. As a result of 1,196 tribunals, 310 subjects were granted EPW status and the remaining subjects were deemed to be displaced civilians and released to refugee camps (Raach, 1992). As such, all captives held a status recognized under the Uniform Code of Military Justice and access to associated legal rights, defined in accordance with the requirements of the Geneva Conventions. By contrast, the current executive's method of determining status of the Guantánamo prisoners has invented a status not recognized in international or domestic law in order to deny associated legal rights.

To the extent that the Supreme Court has acted as a barrier to the unchecked avoidance of legal obligation, the sometime stand-off between executive and judicial branches has led to successive attempts to secure congressional authority via a transformation of domestic law, rather than an attempt to uphold international legal rights. Professor of Law and co-counsel to Omar Khadr, Richard J. Wilson (2006), notes that the administration simply deploys a new justification whenever one of its legal premises begins to flounder. The 'catch-all' MCA is the apex of this strategy, as it seeks to over-ride constitutional obstacles raised by the Supreme Court by establishing a broad definition of 'unlawful

enemy combatant' and proscribing access to courts for *habeas* challenges, and serves to impede international legal obligation by literally prohibiting courts or claimants from appealing to the Geneva Conventions. At the same time the MCA re-writes domestic law concerning the capacity of the state, by redefining torture to allow the application of coercive interrogations and further limiting constraints written into the existing War Crimes Act (CCR, 2006a). As such, the apparent elasticity of the law facilitates a condition where executive policy drives the law, rather than vice versa, (Amnesty International, 2006a: 2) and manifests not just as the manipulation of the law, but also as the re-definition of the U.S. as a legal body.

Finally, and beyond the reconfiguration of the nation as a legal body, constructs of law decided in Washington can be distorted by the time they are imposed on the prisoners' bodies in Cuba. Richard J. Wilson describes 'commission law', where Presiding Officers Memoranda "can be changed at any time at the whim of the military officers who preside at trial" and in certain cases have been "written after the fact to justify a particular course of action, to increase the likelihood of conviction" (Wilson, 2006: 68). Similarly, Wilson's co-counsel Muneer Ahmad relates how prisoners have been subjected to the lack of access to an array of rights such as the use during Military Commissions of evidence gained through torture; the exclusion of defendants from portions of trials; the withholding of evidence from lawyers; and eavesdropping on conversations between lawyers and clients (Ahmad, 2006). In other words, where the executive's formal manufacture of law is insufficient for the task, its informal implementation by the military succeeds in denying rights to the Guantánamo prisoners.

The administration's actions embody the interpolation of what Gregory (2007) refers to as the 'war *on* law' (such as persistence in attempting to negate *habeas* claims) with the 'war *through* law' (establishing CSRTs to achieve pre-determined ends while claiming constitutional compliance, or passing the MCA), where the administration's partial lawlessness governing its conduct in certain situations is complemented by its tactical construction and deployment of law in others. The efficacy of the *war through* law is facilitated by the writing of new law, specifically orchestrated to engender desired outcomes in existing situations³⁴. As the legal and executive functions of government converge, the conventional instruments and mechanisms of law are retained but the law itself is manufactured to achieve the desired, and pre-determined outcomes (Butler, 2004).

Returning to the question of postnational citizenship, this 'manufacturing' of the law and legal process involves a re-definition of the nation; a method of re-inscription that is both inside (*war through* law) and outside (*war on* law) the democratic process. In other words, rather than the mechanisms of international human rights impinging on national sovereignty, the nation has been strategically rearticulated to make inscriptions on the bodies of subjects both legally and extra-legally. Agamben (2005) argues that a 'state of exception', which is produced in extra-normal circumstances and serves as the basis for the extension of the sovereign power, has achieved the unprecedented condition under the Bush administration of being normalized into a 'technique of government'. While

³⁴ For a far more nuanced discussion of the relationship between war on law and war through law, and the limitations of this approach, see Nisa (2007).

Agamben understands the ‘state of exception’ as part of the ‘war on law’, I suggest that its normalization is precisely what establishes the slippage between legal and extra-legal in this re-writing of the nation. Thus the standardization of lawlessness emerges from its own legitimizing strategies, which cite extra-ordinary circumstances as if they were sufficient to suspend law, but actually serve to establish a new base-line for rights, and the state-subject relation.

Beyond the direct implications for rights and citizenship, however, the assault on *habeas corpus* is embedded in a broader extension of executive authority that has played a crucial role in the redefinition of the nation as a legal entity. For example, in response to the first *habeas* petitions filed at Guantánamo Bay by lawyers from the Center for Constitutional Rights, one of the major arguments in the government’s motion to dismiss was premised on the fact that the detentions and designation of ‘enemy combatant’ status were “not based on military orders, but on the President’s common law war powers” (CCR, 2004). Similarly, the ‘Torture Memos’ – a series of internal Defense Department documents that in concert prescribe ways to engage in torture without falling foul of the law – assert that the president is not constrained by existing legislation because congress may not interfere with the president’s ability to wage the ‘war on terror’ (Department of Defense, 2003; Department of Justice, 2002).

Part of this presidential authority derives from the broadly written Authorization for Use of Military Force (AUMF), which allows that “the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he

determines planned, authorized, committed or aided the terrorist attacks...”

(Authorization for Use of Military Force, Public Law 107-40 [S.J. RES. 23] Sep 18, 2001). Devins and Fisher (2004: ch5) argue that the request for congressional authorization during the build-up to the 2002 congressional elections meant that congress voted on the AUMF with inadequate information and under partisan pressure, effectively undermining the process of placing congressional limitation on the extension of executive authority. Moreover, the AUMF is rendered almost obsolete by then White House counsel Alberto Gonzales’ ‘back up plan’ of applying congressional authorization from the 1991 Gulf war to the ‘war on terror’. Deploying this logic, the president can unilaterally determine when the U.S. is at war, at which point he is able to exercise whatever powers he deems necessary to ‘wage war on terror’ (Healy and Lynch, 2006: 10).

Meanwhile, congressional authority has been diminished still further with the extensive use of Presidential ‘signing statements’. These statements, issued as the president signs a bill into law, give him authority to interpret the law based on the power of unitary executive which, according to the White House’s legal interpretation, effectively allows him to uphold the Constitution however he interprets it. The appendage of a signing statement to the Detainee Treatment Act, for example, effectively obliterated congressional efforts to delegitimize the use of torture. This expansion of executive authority has been the source of much consternation in Congress and among legal scholars (American Bar Association, 2006).

The question of what exceptional powers the executive holds, and *should* hold, is a matter of much debate, but the crucial point here is not only that the nation-state is being reorganized through dubious methods into Agamben's 'state of exception', but that the conditions of that state can be so thoroughly orchestrated by a single authoritative figure. Sandra Day O'Connor wrote in her opinion on *Hamdi* (a *habeas* case, related to *Rasul*): "We have long since made clear that a state of war is not a blank check for the President... It is during our most challenging and uncertain moments that our Nation's commitment to due process is most severely tested; and it is in those times that we must preserve our commitment at home to the principles for which we fight abroad" (Justice O'Connor, cited in Toobin, 2006; Amnesty International 2007a: 17). However Bush's presidency has been characterized by an expansion of executive authority, which suggests O'Connor's admonitions have not had their intended impact.

Hierarchical sovereignty and the expansion of territorial reach

The exercise of the singular, presidential authority is the absolute confutation of the assertion that deterritorialized subjects can exercise postnational citizenship by recourse to rights premised on universal personhood. The creation of the 'non-person' category then involves both the redefinition of the nation-state as a legal body, but also the exercise of authority gained through the apparent immunization of presidential authority from external controls. In this way, the reterritorialization of the subject limits postnational citizenship not just by establishing subjects in a relationship with new states, but through individual, authoritative figures acting with impunity. The characterizing moment here, then, is not the exertion of authority – history provides us with far worse

examples – but the claim to legitimacy of unchecked use of power. In this section, I argue that this power has not only re-shaped the nation, but also exceeds the territorial confines of the nation-state. However, rather than undermine the sovereign system, I suggest that the expansion of territorial reach relies on the persistence of the bequeathed, hierarchical sovereign system in two ways. First, rights denied to the prisoners by the U.S. are also largely unavailable elsewhere within the sovereign system. Second, the relationship between the hegemonic state and the deterritorialized subject is extended into new territory. As such, the condition of the relationship between the U.S. state and prisoners is both dependent on, and extended by, the system of hierarchical sovereignty.

I have already argued that the U.S. maintains its relationship with Guantánamo prisoners by denying rights *from* the international order and *against* the state, and that this works by a process of disaggregation that reintroduces only parts of the relationship between subject and state. I suggest that this practice is necessarily facilitated by the U.S. state preventing prisoners from forming productive political relationships with other states, that might facilitate the deployment of rights. The Cuban government has attempted to assert the rights of the Guantánamo prisoners, protesting U.S. activities at Guantánamo, condemning human rights violations and demanding a UN investigation into torture (Center for International Policy, 2005). However, Cuba's position within the state hierarchy, which also facilitates the creation of ambiguous sovereignty at Guantánamo, renders its weak in international relations and with the UN.

Especially during this ‘war on terror’, most of the home states of the Guantánamo prisoners are poorly positioned within the sovereign order to assert or provide political rights for their citizens, but the few cases where the home states are U.S. allies provides interesting contrast. The general indifference of the Australian government to its citizen David Hicks, and the active hindrance from the Canadian government in the case of its citizen Omar Khadr, left both men imprisoned at Guantánamo³⁵ without any apparent advantage from their formal citizenship (Amnesty International, 2007b; MacCharles, 2007). However the British government secured the relatively quick release of its citizens in March 2004 (Department of Defense, 2004), while continuing to oppose the release of those who are British residents, but not citizens, until August 2007 (Bonner, 2007). The postnationalist assertion of an increasingly irrelevant nation-state is certainly undermined by the way in which the fortunes of Guantánamo prisoners appear to be most dependent on the actions – or the inability to act – of their respective governments. And yet membership in an allied nation is insufficient to guarantee rights on the global stage. As Castles (2005) notes, the hierarchy of nation-states that grants different grades of citizenship for their populations by virtue of their national membership, overlays differentiated citizenship within nation-states.

There is little doubt that the U.S. military has engaged in torture of the Guantánamo prisoners, despite the fact that it is known to generate false confessions that are useless

³⁵ Hicks was tried under the MCA and is currently serving his sentence in Australia (Amnesty International 2007b). Khadr remains imprisoned at Guantánamo.

for military purposes and therefore is recognized as a ‘poor technique’ in the U.S. Army Interrogation Field Manual (CCR, 2007a). The government has attempted to distance itself from such activities, with President Bush asserting, for example, that the photographs of torture conducted at Abu Ghraib were abhorrent and the work of individuals rather than systemic (Cowell, 2004), and that the U.S. has a “commitment to the worldwide elimination of torture... [and] support[s] the work of non-governmental organizations to end torture and assist the victims” (Bush, 2004). However a myriad reports from human rights agencies such as Amnesty International, Human Rights Watch, and the ACLU, and first hand reports from prisoners and, increasingly, from officials within the U.S. military suggest otherwise (see for example, Amnesty International, 2005; ACLU 2006; Margulies, 2006). Moreover, if there was any doubt, recent revelations have made clear that the White House was fully aware of, and sanctioned, torture (Shane *et al*, 2007) although, following these revelations, President Bush defended the methods used and claimed that they do not amount to torture (Stolberg, 2007). The signing statement that Bush attached to the Detainee Treatment Act (2005) – the measure designed to prohibit torture – allowing him to waive its restrictions (Savage 2006) resolves any lingering doubt over the intent of the executive.

The assertion that the torture of prisoners is legal, points to questions raised by the Wall Street Journal’s uncovering of an internal Department of Defense document (Department of Defense, 2003) that considers how to circumnavigate the legislative restrictions on the use of torture methods. Secrecy, denial, and attempts at justification of torture have been standard during the war on terror. However, with the Supreme Court’s ruling that

Guantánamo prisoners are protected under the Geneva Conventions, those engaged in torture are subject to the U.S. War Crimes Act of 1996, which states that violating Common Article 3 of the Geneva Convention (that prohibits torture among other things) is a felony offence (CCR, 2007a). In a tactic that echoes the government's stance on avoiding legislation of indefinite detention, sections of the Military Commission Act are specifically designed to circumnavigate the limitations placed by the Geneva Conventions by re-writing legislation. Within the MCA, torture is redefined according to the now infamous 2002 Yoo/Bybee memo that expands the types and extent of treatment legally permissible. Moreover, the Act limits the scope of offenses prosecutable under the War Crimes Act, exempting officials from prosecution and making such exemptions retroactive so that past illegalities could not be prosecuted in federal court. With the passage of the MCA, then, torture, or at least what Washington Post columnist Dan Froomkin (2006) refers to as torture "by any normal human standard", is now both legal and, retroactively, non-punishable.

However, even prior to the legal safety net deployed in the form of the MCA, the state had generated a number of measures that facilitated the continuation of torture, while creating a strategic distance between itself and the prisoners. First, and most familiarly, the export of torture methods from Guantánamo to Abu Ghraib military prison was a direct result of communiqués and the transfer of personnel between the two bases (Margulies, 2006; Gregory, 2007). Although this allowed the displacement from U.S. territory of much of the torture being conducted by the U.S. military, outsourcing the violence by contracting security firms to conduct the interrogation process allowed the

state a further level of removal from the torture process. This security contracting is now a \$4bn a year industry in the war on terror, although recent revelations of atrocities committed by personnel of private security firms has drawn calls for greater scrutiny of the strategy (Broder and Rohde, 2007). Finally, the question of CIA conducted 'extraordinary renditions' to secret prisons in undisclosed locations casts an additional layer of concealment over the torture process and, at least discursively, removes the U.S. state still further from responsibility for the activity of torture. Although the Bush administration has long obfuscated the renditions process since it was discovered in 2005, the process was confirmed when certain 'high value detainees' were returned to Guantánamo from secret CIA prisons in September 2006 (Shaw, 2006; Center for Constitutional Rights 2007b).

By removing the labor of torture both from U.S. shores and from U.S. military personnel, a distance is maintained between the state and the subject that serves to obfuscate questions of responsibility and culpability. However, to achieve this distancing, the state-subject relationship defined by the U.S. is exported into new territories, and as such involves a spatial re-organization of the sovereign order. In other words, beyond the processes of reterritorializing the subject that have redefined the U.S. nation in terms of its formation as a legal body and the limitation on the sovereignty of certain other nations, the U.S. is actively involved in determining the conditions of state-subject relations within other sovereign states. This spatial displacement is dependent on the hierarchical sovereign order. The British government, for example, although certainly likely to have been complicit with U.S. renditions at some stage, most probably through

allowing flight transfers through British airports, quickly renounced the practice when the illegality was made apparent (Bright, 2006).

While still cloaked in subterfuge, the CIA network of secret prisons for the renditions process has been found in Afghanistan, Thailand, Egypt, Jordan, Syria, and some Eastern European countries (CCR, 2006b; Amnesty International, 2006b; ACLU, 2006). These practices serve both “to transport people to locations where torture is a common government practice” (CCR, 2006b) and “where physical and psychological brutality feature prominently in interrogations” (Amnesty International, 2006b: 2). Moreover, ‘renditions’ have also delivered ‘ghost prisoners’ to the CIA at ‘black sites’, where they can ‘be disappeared’ without ever formally being connected to the U.S. state. Thus, in order to preserve its displacement strategy, the U.S. has relied on private contractors and forging dubious relationships with states with problematic records. While designed to limit the connections drawn between the U.S. state and the practices of torture, as the tactics deployed by the current U.S. executive are discovered they increasingly contribute to its waning legitimacy.

Conclusions

Postnationalist theories of citizenship are premised on empirical identification of socio-political identities forming above the national scale, which purportedly affects the underlying logic for accessing citizenship rights, and the ways in which those rights might be accessed. The first theoretical problem with postnationalism appears in its lack of distinction between post- and trans- nationalisms. These two sets of theories are often

lumped together, but retain entirely different understandings of the roles for national space and the nation-state in their understandings of citizenship. Transnational citizenship specifically relies on the continued significance of the nation, such that subjects are able to assert rights in more than one state. While the erroneous sometime conflation of these two sets of theories does not undermine the coherence of postnational theory, it does point to a problem in postnationalism whereby the function of the nation-state is not clearly defined. The assumption that postnational political identities can persevere premised on universal personhood implicitly identifies an unproblematic waning of the nation-state. The empirical detail in this chapter shows how nation-states are not slowly fading into insignificance. This conclusion is borne out mainly by the operation of the hegemonic U.S., but also by the relative weakening of those nations lower in the hierarchical sovereign order. In other words, whether the nation-state is strong or weak, both the logic and the ordering of citizenship are still firmly bound up in matters of national sovereignty. Universal personhood and international rights are not irrelevant, but are far from determining in the condition of the state/subject relation.

A recent trend in the literature that attends to matters of universal personhood has focused on the question of whether universal human rights are substantively comparable to citizenship rights (see for example, Basok *et al*, 2006; Shafir and Brysk, 2006). Much attention has been given in this debate to whether the comparative depth of citizenship rights can be replicated through universally applicable rights, but this chapter shows that the more important question revolves around the implementation of such rights. As the Guantánamo case shows, the theoretical substance of human rights does not

automatically translate into their determining actually existing conditions in the state/subject relationship. I have suggested here that this problem is grounded in the way that rights *from* the international scale can be subverted by the denial of rights *against* the national scale. In part, this problem derives from postnationalism's focus on rights in isolation. Without incorporating the broader elements of citizenship – membership and participation – the quality of those rights remains weak, simply because they are inherently revocable, rather than because of any substantive quality of the rights themselves. However, as the next chapter will consider, there is limited feasibility for that global participation, which potentially threatens the broader project of 'global citizenship'.

The specificity of the conditions of rights at Guantánamo is clearly not a reflective marker for the immediate quality of citizenship for everyone, everywhere. However I suggest that the relative ease with which rights can be thoroughly and dramatically denied and a new state/subject relationship imposed is perhaps more of an indictment for citizenship than is popularly recognized. This question turns not so much on the implementation of a vicious regime as it does on the assertions of democratic legitimacy that are exercised with that implementation. The key to understanding the mechanisms through which the U.S. has operationalized rights denials for the Guantánamo prisoners, is spatiality. From invoking ambiguous sovereignty over a portion of Cuba that allows the U.S. to be both absent (without responsibility) but present (in control) in space, through redefining the legal body of the U.S. nation, to working within a system of hierarchical sovereignty to control the capacities of other states to engage in a relationship with the

subjects imprisoned at Guantánamo, the activities of the U.S. state have been thoroughly spatialized.

This spatiality also works more directly on citizenship. The disaggregation of the constituent parts of citizenship and their shifting across the scales of socio-political organization is precisely what allows the U.S. to engage with the Guantánamo prisoners in a way that imposes rights conditions without the resistance of accountability generated in a formal political relationship. Attempts to secure rights for the prisoners have been implemented, with varying degrees of success, where the U.S. *does* have formal political relationships – with other nation-states and within its own system of checks and balances. However these relationships derive from the international sovereign order, rather than any postnational formulation. By asserting universal personhood, postnationalists necessarily accept this disaggregation of citizenship, as international human rights are not directly linked to accessible, and meaningful scales of democratic political participation, influence, and rights, or to membership in any robust sense. The question then becomes one of how political communities might emerge in a newly global order. David Chandler (2007: 116) argues “that the lack of purchase of traditional territorial constructions of political community does not necessarily indicate the emergence of new post-territorial forms”. This is the problem for postnationalism – the mere existence of deterritorialized subjects and international human rights does not necessarily bring them together, unimpeded by legacies and new formations of state space. Rather, under current conditions it seems that the act of being deterritorialized simply leaves subjects open to being reterritorialized by the hegemonic state.

CHAPTER 5

HEGEMONIC COSMOPOLITANISM AND THE CHIMERA OF COSMOPOLITAN CITIZENSHIP

Within traditional, national understandings of citizenship, liberal versions have long been critiqued for their limited focus on rights and duties, which, for some, fails to give due consideration to questions of identity, community membership, and democratic participation. This critique is no less applicable in the global arena, where the fragility of ‘postnational rights’ (as discussed in chapter 4) is, at least in part, attributable to the inadequacies of the institutional framework that is required to secure the rights of some form of guaranteed citizenship. Questions concerning how rights are campaigned for, emerge, develop, and are sustained, and how they fit in relation to the larger democratic agenda are largely eschewed by postnational theory. Conversely, the underlying quality of cosmopolitan citizenship is its attention to moral-ethical matters, deriving from obligations extending beyond the borders of the nation-state, that engender a commitment to individual and collective responsibility to a common humanity. Cosmopolitan theories, then, concentrate on the institutional framework of citizenship, but with the somewhat alternative, and broader, objective of considering the structural organization of democracy within the global order as a whole, rather than rights and duties in isolation.

As such, theories of cosmopolitan democracy encounter more complex questions concerning globalization than postnationalists routinely attend to, namely the formation of global community, the global interdependence of phenomena, and the development of

effective, democratic institutions for tackling global problems. Within this thematic genre, many recognize cosmopolitan citizenship as the “key element in the quest for a new language of politics which challenges the belief that the individual’s central political obligations are to the nation-state” (Linklater, 2002: 317). While this aspect of cosmopolitanism provides an alternative, globalized logic for many of the elements of citizenship – identity, membership, participation and duties – the additional sphere of cosmopolitan rights closely echoes the postnational model of universal human rights, although cosmopolitanism affords a greater emphasis to normative application of cosmopolitan law and institutions that could act as the guarantor of such rights. Combining these foci, cosmopolitan citizenship theories propose a citizenship that operates beyond the traditional confines of the nation-state, and can be effective in the social, economic and political arrangements emerging through global processes, with new sets of opportunities for subjects to exert global forms of citizenship. In this context, the objective of this chapter is to understand whether cosmopolitan citizenship actually manifests in some form more endurable than that proposed by postnationalists.

Part of the impetus behind cosmopolitan democracy and citizenship comes from the assumption that global processes have undermined the significance of the nation-state, and therefore its capacity to tackle global matters and problems, and provide democratic solutions for its membership. The dominant critiques of cosmopolitanism come from nationalists (from liberal and communitarian traditions) who argue that the nation-state is the only scale adequate to provide citizenship, and from realists who contend that political power is held in nation-states and are skeptical about the feasibility of

humanitarianism superseding self-interest in the contemporary state-system of international competitiveness. These theoretical antagonists have effectively achieved an impasse concerning the relationship between national and global scales, which underscores their limitations. By default, normative cosmopolitan theory focuses on what the global scale *might* be, whereas realist and traditionalist support for a cherished nation-state pays scant attention to the extent of the necessary transformation of the nation-state via the expansion and intensification of global processes and practices.

I suggest that these divergent theoretical contributions are underpinned by the classic misunderstandings of 'space as container' that is of so much concern in critical geopolitical thought (Taylor, 1994). By abstracting social phenomena from their spatial form, even as those aspects of globalization that generate scale change are supposedly the fundamental matters attended to by those considering the shift to some globalized form of citizenship, the logic, intent, and agents of these changes are obscured. In other words, by failing to attend to the strategic practices that comprise state spatiality, theories of cosmopolitan citizenship miss how global conditions, including the inter-relations among states and between states and global institutions, remain thoroughly influenced by powerful nation-states, that act with specific intent. This lacuna in cosmopolitan citizenship theory allows normative possibilities to be identified that do not reflect contemporary conditions, but also that are unlikely to emerge while international history follows its usual trajectory of successive hegemonic states.

Given the suggestion that the national – global interaction tends to remain undertheorized in cosmopolitan theories, this chapter mines the possibilities of the proposed cosmopolitan citizenship, by examining the inter-relations between the nation-state and the global order in the case of the unilateralist war waged by the U.S. in Iraq. This case exhibits a widening gap between the goals of global governance (human security and development) and the reality of contemporary international relations (militarism, inequality and social exclusion) that cosmopolitanists have recognized as the dilemma for cosmopolitan democracy (Held and McGrew, 2002b). Cosmopolitanists hold out hope for the efficacy of ‘more and stronger’ cosmopolitanism for providing democracy, equality and rights. However I suggest that the production of space executed by the U.S. state dominates the configuration of the global order, and resists the implementation of a cosmopolitan ethos.

This chapter proceeds with a brief consideration of the central tenets of cosmopolitanism, cosmopolitan democracy and cosmopolitan citizenship, and then identifies the ‘scale impasse’ between normative cosmopolitanism and entrenched statism. The third section examines how the purportedly global interests that have been used to justify war against Iraq actually reflect a system of U.S. geopolitical support for its own geoeconomic endeavors. I then consider, in the fourth section, how this hegemonic ordering of the international order is actually cast *as* cosmopolitanism. The ready co-optation of the discourse of cosmopolitanism leads me to a conclusion that questions not only whether it makes sense to talk of cosmopolitan citizenship under contemporary conditions, but also

whether the cosmopolitan ethos can be imagined as ever exceeding its current, normative state.

Cosmopolitanism, in theory

The idea of a specifically global or cosmopolitan citizenship has a far longer history than the recent revivification of the subject. Martha Nussbaum (1996: 4), for example, traces her widely cited “old ideal of the cosmopolitan, the person whose allegiance is to the worldwide community of human beings” to Diogenes (to whom “I am a citizen of the world” has been attributed) and the Ancient Greeks, and the Kantian Enlightenment tradition. Certainly, Greek stoicism recognized the implications of humanity beyond membership in the city-state (Delanty, 2000; Dower, 2003). However, in its most recent, post Second World War guise, the ethical focus of responsibility beyond the scale of immediate membership, that has habitually shaped the notion of cosmopolitan citizenship, is specifically complemented with collective theoretical attention to the ways in which global institutions might develop to support the moral-ethical cosmopolitan perspective (Dower, 2000: 553).

Within this theoretical context, ideas about cosmopolitan citizenship are not necessarily co-terminus with theories of cosmopolitan democracy, which emerged as a specific post-cold war political project during the 1990s. However the narratives of their contemporary conditions are closely intertwined, overlapping, and mutually constitutive, with their difference measured more in emphases than in substantive thematic divergence. The theoretical premise examined in this chapter, then, is that the cultural ideal of

cosmopolitanism, as global scale identification and responsibility, has provided impetus for working toward the political project of cosmopolitan democracy, neatly defined by Archibugi, (2004b: 438) as the intention “to globalize democracy while, at the same time, democratizing globalization”. In turn, cosmopolitan democracy is a necessary condition for, but also a product of, the emergence of a specifically cosmopolitan form of membership, rights, duties, and participation – of citizenship.

Liberalism / libertarianism

This working definition of the relationship between cosmopolitanism, cosmopolitan democracy, and cosmopolitan citizenship reflects a ‘new’ liberal³⁶ conceptualization that dominates academic discussion of cosmopolitanism, at least in social and political scientific debate. However, the emphasis on global awareness, responsibility, and empathy contrasts with a libertarian understanding of global citizenship as the source of international freedom, mobility and competitiveness (Schattle, 2005). The archetypal libertarian cosmopolite is the elite constant traveler, whose ‘tourist gaze’, and mobility ensure detachment, rather than democratic engagement (Lasch, 1995). With its origins in traditional liberal theory, libertarianism extols an individualism that is perhaps further indication that the classical liberal virtues of justice and fairness are insufficient basis for establishing community even within formal, national citizenship. More specifically to the argument herein, given that no notion of community is posited when this liberal form is extended to the global arena, some theorists question whether libertarian

³⁶ By ‘new’ liberal, I mean the dominant version of liberalism that has emerged from the liberalism-communitarianism debate, as discussed in chapter 1. Despite theoretical differences, these two perspectives have moved closer together such that popular liberalism now attends to questions of community in ways previously considered to be the domain of communitarian and civil society theorists.

cosmopolitanism can be considered to be producing the conditions necessary for 'citizenship' at all (Falk, 2004).

For some, cosmopolitanism inherently weakens local solidarities without establishing new communities (Calhoun, 2002). This argument is the basis of a traditionalist rebuttal to cosmopolitanism, from both liberal and communitarian / republican perspectives, of which more below. However far from reasserting national citizenship in this traditionalist guise, the libertarian form of cosmopolitan citizenship exploits the detachment and weakening of community. Disengagement is not inherently elitist, but to recognize elite, libertarian activity as the exercise of cosmopolitan citizenship, threatens the meaning and value of citizenship in its entirety by relinquishing the condition of the capital – state – labor relationship to the market. Given that my broad objective is to consider whether its coincidence with globalization might move citizenship toward a more just, egalitarian form, libertarianism is not theoretically useful here and therefore remains absent from the remainder of these discussions. However, as will become apparent in the conclusions to this chapter, it is crucial to recognize the differences between the model of cosmopolitan democracy where liberal individualism is held in check by partial acceptance of the significance of global civil society, and the individualism of libertarian cosmopolitanism that thrives on global freedoms, even though both are labeled 'cosmopolitan'.

Global civil society

In the context of the global-ethical ideal of cosmopolitanism, the origins of cosmopolitan democracy go beyond the aspirational ideal and consider which is the most appropriate

scale for democratic, political organization. The explicit assumption is that the globalization of activity and processes has realized a global interdependence of phenomena, which are neither produced, nor experienced, nor resolvable, solely within one nation-state. Thus rather than discrete national communities, we now exist in an amalgamated “community of fate” (Held and McGrew, 2002a). Moreover certain ‘problems’ that are ripe for political resolution are either emergent under conditions of globalization such as the consequences of economic globalization (e.g. Newlands, 2002), or newly recognized as global, such as degradation and protection of the environment (e.g. Attfield, 2002).

The idea that awareness of ‘global problems’ has brought disparate and distant individuals and groups together, politically organized around certain issues, rather than through common formal membership, underpins the empirical argument that a global, or transnational civil society is emergent (Anheier *et al*, 2001). The normative version of the argument is that global civil society provides the ‘political character’ of global citizenship, and as such “represents the most likely vehicle for the emergence of a global, democratic citizen politics” (Armstrong, 2006). Both empirical and normative facets of the argument for global civil society tend to develop from the premise that the power of the nation-state is eroding and being replaced by international political organizations and transnational economic actors (see, for example, Held, 1995). Thus, for global civil society theorists, national citizenship is no longer the most effective site for securing democracy, and political activity must be organized instead at the same, global scale at which powerful agents operate. However, even advocates of global civil society

recognize that its participants are predominantly Western in ideology and location, and therefore are barely global (Anheier *et al*, 2001: p7; Baker, 2002). Moreover, international nongovernmental organizations that make up much of the ‘political character’ of global civil society are far from being democratic, representative institutions (Baker, 2002).

Beyond these substantive critiques, theories of global civil society also have been critiqued with respect to their theoretical premises, on the grounds that global identification and consciousness cannot replicate the coherent membership on which citizenship depends, and which is the basis of national civil society. From the republican / communitarian tradition, Miller’s (1999) oft-cited argument for ‘bounded citizenship’ claims that constituencies organized around particular issues cannot develop the level of community necessary for fostering participation and responsibility, nor is there adequate framework for reaching compromise. Therefore, for Miller, cosmopolitan citizenship will necessarily take a weakened, ‘liberal’ form, where individuals can claim rights but not participate in their production through law-making and consensus building. From the opposite end of the theoretical spectrum, the liberal nationalist argument is equally concerned with the lack of community at the global scale, but is more concerned with “how we can develop the sort of common identity and solidarity needed to establish and sustain this sort of cosmopolitan democracy” (Kymlicka, 2001: 240). Following classical liberal thought, only identification with, and commitment to, a common national culture is seen as the basis for sufficient solidarity to foster the sacrifice necessary for the social programs that bring social justice and the equality of opportunity; the trust and cultural

commonality necessary for faith in a system of deliberative democracy; and the strong national culture required to facilitate and defend the exercise of individual freedoms (Kymlicka, 2001: 224-9).

Effectively, then, traditionalist arguments do not reject the cosmopolitan notion that practices and processes have become globalized, and that internationalization of politics is both real, and potentially beneficial. However it is the notion that democratic participation can, or should, be shifted to the global order promulgated in the cosmopolitan model, that concerns those advocating nationalist arguments. Still others have been concerned to refine global civil society arguments, rather than reject them in favor of nationalism. For example, some suggest that the values of global justice and solidarity traditionally attributed to cosmopolitanism are developed within the civic processes of the nation (Delanty, 2000; Turner, 2002), and that virtues fostered within national civil societies might transition to a broader scale via a bottom-up creation of a network of relationships, rather than global civil society relying on a pre-given universal humanity for its existence (Honohan, 2002). These perspectives fit with the broader theoretical contentions that the spaces of cosmopolitanism overlap and potentially reinforce the nation-state (e.g. Appiah, 1998; Cheah, 1998; Robbins, 1998, 1999; Delanty, 2000; Puar, 2002), which questions those theories that work from the premise that cosmopolitanism transcends the nation, and exacerbates waning allegiances to previously robust national communities. This matter of the spatial arrangement of socio-political order is crucial to the production of actually existing conditions, while only hinted at here, the theoretical tendency to oversimplify spatial re-organization of the

relations between national and supranational spaces will be a dominant theme of this chapter.

Cosmopolitan democracy

While global civil society theories concentrate on the emergence and organization of the global *demos*, some theorists of cosmopolitan citizenship are particularly concerned with how these “alternative forms of political community can institutionalize the principles of world citizenship” (Linklater, 2002: 24). Again, cosmopolitan democracy and cosmopolitan citizenship are not identical, but their interpenetration is evident here in Linklater’s assertion that for world or cosmopolitan citizenship to be effective, global civil society needs to be attached to some form of institutionalized, transnational public sphere. The existing empirical impetus for the cosmopolitan democracy project is the gap between the goal of a humanitarian global order and the reality of contemporary international relations, in part deemed to be a consequence of globalization’s impact on the nation-state’s capacity to act (Held, 1995; Held and McGrew, 2002b). Its theoretical counterpart is the ‘democratic deficit’ that undermines the legitimacy of existing structures of global governance, given that there is no system to parallel the state-based accountability that governs the international system of sovereign states (Archibugi, 2003, 2004b). The question for theorists of cosmopolitan democracy, then, is how to achieve effective, democratic accountability that can move toward addressing international inequalities under newly global conditions (Held, 2004).

Cosmopolitans are often understood to be proponents of a world state (Hayden, 2005: 21), but while some might advocate for exactly that arrangement, it is not an inherent feature of cosmopolitanism. The idea of a formal, institutionalized world citizenship, in the sense of global membership and a world government, gained popularity as an antidote to the destruction of two world wars, and has had popular moments historically (Korab-Karpowicz, 2005). More recently, theorists such as Petersmann (1997, 1999) have proposed a global constitution that, by extension, implies a formal government. However, the idea has largely been eschewed as both unworkable and tending towards totalitarianism, following Kant's critique of the 'soulless despotism' of world government. For those accepting Kant's premise, a wealth of opinion exists on how best to organize global governance, but perhaps the most sophisticated argument for cosmopolitan democracy, propounded by theorists such as David Held and Daniele Archibugi among others, campaigns not for the wholesale replacement of the nation-state but for cosmopolitan principles to be applied at all scales of governance, including an emergent global scale. Thus, rather than replacing democracy at the national scale, cosmopolitan democracy theorists claim that "Democracy as a form of global governance needs to be realized on three different, interconnected levels: within states, between states and at a world level" (Archibugi, 2003: 8). For Held (1995, 2002) the goals of participation, accountability, and the concomitant move toward redressing inequalities require strengthening and expanding existing supranational institutions and practices, and developing a cosmopolitan democratic law to be applied at all scales to ensure free and equal access to political participation.

Held's model of cosmopolitan democracy raises questions concerning both the practicality and the efficacy of global participation. Why, for example, is the global scale inherently more conducive to democracy and democratic participation than the nation-state (Pensky, 2001)? However, the overall logic of global democracy is subject to the realist critique that the global system is characterized by competition between states, and thus humanitarianism-led proposals for cosmopolitanism, global civil society, and global citizenship reflect the "empty rhetoric" (Zolo, 1997: 133) of utopian thought. Contrary to cosmopolitan assertions that global forces have diminished sovereignty, realists contend that nation-states are the only entities with real political power, and thus they suggest that the best prospect for an equal world order derives from empowering weaker states by protecting their sovereignty and autonomy via the application of existing international law (Zolo, 1999).

An impasse has thus appeared between cosmopolitanists who argue that democracy must shift to the global scale to encounter and manage global problems, and realists who, along with those espousing traditionalist understandings of membership and community, insist on the continued political primacy of the national scale. Cosmopolitanists admit the emergent version of the system they advocate has not generated post-cold war democracy, peace and egalitarianism (Held, 1995), nor have Western liberal democracies rushed to establish a global democratic order (Archibugi, 2004b) and therefore their claims remain premised on normative assertions rather than empirical evidence. Furthermore, arguments concerning the erosion of state power frequently are not borne out by empirical evidence. However, in its outright denial of the potential for some form

of democratic global governance the realist position exceeds healthy skepticism. The argument for strengthening national sovereignties is weakened both by the reality of continuing domestic inequalities, and its lack of adaptation to consider processes that exceed and impact upon its cherished nation-state, including the formation of global civil society, global political institutions and transnational corporations. Regardless of where formal political power lies, as globalization expands in extent and complexity, the system of Westphalian sovereignty cannot be preserved in the pristine condition that served under a truly international order.

Neither of these approaches, then, is sufficient to explain the contemporary context of, and therefore the possibilities for, global citizenship. I suggest that the problem lies in inadequate attention to the logic behind emergent socio-spatial transformations. While most theoretical interventions accept the relevance of global and national scales, only disputing their relative significance rather than their co-existence, there is a general inattention to the production of their mutual constitution that necessarily shapes their respective qualities and conditions. Rather than seeking to resolve the conundrum of whether democracy is a cosmopolitan or a national affair, I suggest that to understand the condition of, and possibilities for, global citizenship it is necessary to foreground the conflicts inherent in the mutuality of sometimes co-operating, sometimes conflicting scales of organization, which is precisely where politics emerges.

In context of the aim here -- examining the possibility of global citizenship -- the realist rejection of the global order is useful only in terms of its countervailing arguments. Thus,

the remainder of this chapter examines the possibility for cosmopolitanism, as the precursor to cosmopolitan citizenship. In the context of the still developing inter-relations between the national and the global scale, I specifically aim to foreground the social theoretical axiom of space as a produced phenomenon rather than a container that cosmopolitan democracy seeks to fill with humanitarianism. As such, I aim to uncover the extent to which cosmopolitanism can usefully describe current conditions and, thus, what it means to identify cosmopolitan citizenship and its impact on the contemporary, substantive form of citizenship. Further, I examine whether a theory of cosmopolitan democracy could be expected to advance beyond its current, normative form, and generate a future cosmopolitan citizenship.

Defining global interests in national terms: Prospects for global democracy

While the Guantánamo Bay case (as examined in chapter 4) showcases the extent to which the U.S. can exert specific state-spatial configurations in order to secure its own interests on the global stage, the role of the U.S. in contemporary global geopolitics reflects more than a simple exertion of U.S. sovereignty. Rather, I suggest that the U.S. is instrumental, if not the sole hegemonic force, in the definition of the ‘global interest’ that determines the broad context for particular material conditions, including the politics of Guantánamo. In a further spatialized exercise ‘global interests’, then, become about the global expansion of U.S. national interests³⁷, and their associated forms and systems of legitimation, rather than about an attempt to establish and execute an essentially ‘global’

³⁷ The question of what exactly constitutes ‘national interest’ and how it relates to difference within the U.S. will be examined, in part, in chapter 6. Suffice to recognize here that, even as they are contested, hegemonic forces within the U.S. have specific interests that they work to produce through processes organized across multiple scales, including the global.

set of interests. The presence of an hierarchical order within the sovereign order, as suggested in realist documentation of a system of states in competition, threatens the notion of democratic global governance with respect to the operation of global institutions and co-operation between states. Simultaneously, the imposition of a discourse of 'global interests' entirely disregards alternative, 'bottom-up' perspectives from global civil society. In combination, these mechanisms undermine important bases of an anticipated global citizenship. Moreover, where discursive maneuvers fail to take hold, and yield pre-determined outcomes for global democracy, the U.S. has routinely abandoned the global order where interests begin to escape those of its foreign policy. In the rest of this chapter I aim to show how, in combination, these efforts by the U.S. to produce global space in its own interests limit the operation of cosmopolitanism in practice, and question the entire project of building cosmopolitan citizenship.

Global interest, National interest

After the terrorist attacks of 9/11, U.S. bombing raids on Afghanistan in October 2001 were followed by a ground force invasion, which was professed to be a response to the Taliban's harbouring of, and support for, the proclaimed 'evil-doers': Osama bin Laden and al Qaeda, the Islamic fundamentalist terrorist organization. Subsequently, the U.S. has deployed universal discourses of the 'war on terror', 'freedom' and 'human rights' to justify the invasion of Afghanistan and the ongoing assault on Iraq against, variously, al Qaeda led terrorism; an apparently immediate threat to allied nations from Iraqi weapons of mass destruction; and the exercise of Saddam Hussein's menacing regime against the Iraqi people. Iraq's fate was no doubt sealed long before the 2002 State of the Union

address, which extended the focus from the ‘evil-doers’ to a broader ‘axis of evil’ that included North Korea and Iran as well as Iraq, and which was supplemented soon after with the ‘rogue-states’ of Syria, Libya, and even Cuba, sending a not particularly clear geopolitical message to a swath of states with supposedly anti-American agendas. That the ‘war on terror’ was swiftly translated into war, or the threat of war, against certain nation-state targets (N. Smith, 2002a) raises questions about its very rationale.

Criterion for accession to the ‘axis of evil’ was cited specifically as the active attempt to develop weapons of mass destruction (Krauthammer, 2004). However it was the distinctly imprecise nature of the rationale for, and objective of, the ‘war on terror’ that facilitated the strategic conflation, specifically fashioned and promulgated by a collaboration of Western media and politicians, of the interests, objectives and tactics of the al Qaeda terrorist organization with those of various anti-imperialist entities. This flexibility provided the self-fulfilling logic for the non-sequitur expansion of action against al Qaeda into war, or the threat of violence, against these non-compliant nations. In particular, the U.S. government, ably assisted by deliberate misinformation from British intelligence, used fabricated evidence concerning weapons of mass destruction and connections between al Qaeda and the Iraqi leadership to establish a geopolitical discourse of fear that fuelled the existing orientalist popular emotion already heightened by the events of 9/11 (Gregory, 2004; Hannah, 2006; Sparke, 2007). Moreover, the alternative legitimating discourse, that centered on the protection of Iraqi human rights, as humanitarian duty, falls foul of the U.S. government’s relatively recent history of propping up other governments with equally insidious human rights records, including

China and certain Latin American states, as well as the Taliban (via Pakistan and Saudi Arabia) and direct support for Hussein's dictatorial regime in Iraq.

Some dissonant voices suggest that war in Afghanistan reflected longer-term antagonisms over Central and Western Asian oil resources (e.g. Martin, 2001), and certainly the vast oil resources have endowed the region with considerable geopolitical significance.

Others, however, recognise the push for 'regime change' in Iraq as the intersection of geopolitics and geoeconomics, providing even more impetus for the argument that war in the Middle East pursues geopolitical strategies determined long before 9/11 (Sparke, 2007). In popular neoliberal rhetoric, with the implosion of communism the end of the cold war ushered in an era of unfettered global capitalism and its associated 'freedoms'. However an alternative modernity in the Middle East, in particular that offered by Islam, threatens this vision of truly global neoliberalism. As Neil Smith (2002a, 2005) puts it, spreading capitalism to this last resistant region is the 'endgame of globalization'; the end of the long term project of U.S. global ambition. It is perhaps not surprising, then, that the 9/11 attacks focused on the iconic geoeconomic center of global capitalism (the World Trade Center), as well as its geopolitical counterparts (the Pentagon and the White House). The 'freedom' focused response from the U.S. is, then, as much about the freedom of the market as it is about freedom from the sort of terror inflicted on 9/11 (Harvey, 2002).

Thus the national interest in the U.S., of threatening militarist discipline against those states considered as opposition to the U.S. regime and its implementation of the

Washington Consensus³⁸, has been projected in terms of the apparent global interests of securing freedom, with an in-built slippage between freedom from terror and freedom of the market. Moreover, legitimation for militarist actions articulated the explicitly cosmopolitan discourse of humanitarian intervention and the preservation of Iraqi human rights, such that the explicitly anti-cosmopolitan act of war could be placed as a necessary evil rather than a tool of U.S. imperialism. Finally, this strategy of co-opting the ideals of cosmopolitanism and replacing them with a hegemonic version is premised on a good/evil binary that relies on an accepted understanding of tribal particularism resisting homogenizing global capitalism, exemplified by Benjamin Barber's (1995) "Jihad vs. McWorld". However this belies the reality of the dependence of U.S. political and economic interests on, and its cooperation with, authoritarian governments and conservative religious movements in the Middle East (T. Mitchell, 2002). In the face of explicit hegemonic activity, the question becomes not so much about what cosmopolitan democracy might be in theory, but the form it takes in actually existing conditions.

Cosmopolitan democracy vs. Unilateralist war

Much has been made of the debate between cosmopolitanism and patriotism as the appropriate base model for identity, membership, and participation in the public sphere, and the necessary consequences for democracy. Exemplified by Martha Nussbaum in debate with her critics in the much acclaimed *For Love of Country* (Nussbaum, 1996), advocates of a 'strong' form of cosmopolitanism reject nationalist patriotism as

³⁸ The Washington Consensus is the post-cold war Washington-divined doctrine, endorsed by dominant interests, that determined neoliberal capitalism as the most appropriate form for the global political-economy, with concomitant assumptions that the exercise of the 'free-market' would serve a host of

inherently ethnocentric and particularistic, citing instead the need to educate people into an allegiance “to the worldwide community of human beings” (Nussbaum, 1996: 4) as the necessary start point for commitment to ideals of justice and equality. Given the appeals to patriotism rife among rebuttals of Nussbaum’s argument (see Cohen, 1996), at first glance it appears that the choice falls between American nationalism, and the somewhat uncritical universalising tendencies of Nussbaum’s version of cosmopolitanism (Robbins, 1999).

However recognising the presence of a milder ‘actually existing cosmopolitanism’, that appears as co-existent and potentially conflicting cosmopolitanisms in the form of multiple, particular, constructed re-attachments rather than a pre-given universalist detachment (Robbins, 1998), this caricaturish straw-man argument falls away. Here, despite the extent to which politics and political identities exceed national borders, cosmopolitanism remains thoroughly intertwined with the national form, with the state jockeying for control within the international system (Colás, 1994; Cheah, 1998; Robbins, 1998). In this context, then, if war in Iraq is so much machination of the geopolitical wing of neoliberal expansion, with the U.S. articulating global interests in its own, militaristic terminologies, then it seems more likely that expansionist American hegemony, rather than insular, nationalist patriotism, is the real enemy of cosmopolitan democracy. This debate, over the location of democracy under global conditions and its empirical operation – its ‘actually existing’ form – provides the context for understanding

interests including the spread of democracy, rights and development. This apparently unfettered liberalization of everything, however, has been supported by considerable state intervention.

cosmopolitan citizenship and its possibilities in light of my earlier argument about the continued significance of the nation-state and its production of global space.

Although theorists differ in their interpretation of this relationship, most versions of cosmopolitan citizenship contain some notion of the operation of global civil society. In a broad, descriptive definition, global civil society is “the sphere of ideas, values, institutions, organizations, networks, and individuals located *between* the family, the state and the market and operating *beyond* the confines of national societies, polities, and economies” (Anheier *et al*, 2000: 17, original emphasis). As such, the dominant ideal of global civil society³⁹ represents the global consciousness and connectedness that first, underpins a societal infrastructure that facilitates the extension of democratic participation and, by extension, encounters global problems⁴⁰ at the scale at which they develop, and offsets the excesses of global capitalism. As such, perpetuating a long-standing theme of citizenship theory, ideas of global citizenship that rely on a vibrant global civil society particularly advocate citizenship as an active mode of participation, engagement, and often contestation rather than a status that is passively bestowed by the state.

Global civil society theories have been critiqued with respect to both the feasibility of establishing sufficient global consciousness to develop a robust, meaningful

³⁹ The majority of advocates for global civil society operate from a critical political position, however some understand its possibilities in terms of its benefits for the operation of global capital (see Anheier *et al*, 2000: 10). Despite differences in political perspective, theories of cosmopolitan citizenship fall into the former category, emphasizing to varying degree the extent to which global civil society can operate as an antidote to capitalism.

cosmopolitanism (Cheah, 1998), and the extent to which the operation of global civil society approaches democratic participation – particularly with regard to the dominance in global civil society of increasingly powerful, but unelected International Non Governmental Organizations (INGOs) (Chandhoke 2005). However, the matter of the organization and operation of the unilateral U.S. war on terror raises the larger question of how effective global civil society can be in translating interests articulated within global society into actions, especially in the face of sovereign nation-states. The U.S. war on terror has proceeded unimpeded, despite sustaining the largest domestic protest since the U.S. war in Vietnam, and never enjoying global popular support. Moreover, the appeal from the U.S. for multilateral support that yielded the pitifully weak ‘coalition of the willing’ centred entirely on gaining support from states, with concern for popular opinion limited to that expressed through formal representation via nation-states. Similarly, at Guantánamo Bay, established groups that represent civil society with recognized, legitimate voices, including Amnesty International, Human Rights Watch and the International Committee of the Red Cross (ICRC) have been effective in publicizing atrocious conditions and U.S. legal transgressions, but have been unable to implement serious change and, in the case of the Red Cross, allegedly have been denied internationally mandated access to Guantánamo prisoners (Lewis, 2004) although the ICRC has neither confirmed nor denied the claim (ICRC, 2004).

Much of the relevant debate in the national context has focused on the extent to which a vigorous civil society requires a strong state (Muetzelfeldt and Smith, 2002). However

⁴⁰ The classic ‘global problem’ is the environment, given that local experience of environmental problems – that have no respect for national borders -- rarely derives from local causes alone. However matters such as

the argument is altered in the global sphere, as the fundamental question increasingly concerns what civil society might be able to achieve, given that it is not formally attached to an accountable state. In other words, rather than its cultivation of civil society, the state's responsiveness becomes paramount in the relationship between civil society and state power. And yet there is considerable doubt concerning the capacity of global civil society to hold any sway over formal political decision making (Chandler, 2003). Cheah (1998: 36) asks "even if a popular global consciousness exists, is it or can it be sufficiently institutionalized to be a feasible political alternative to the nation-state form? Or is it merely a cultural consciousness without political effectivity?" Although the flexibility of global civil society allows political action at the appropriate level for 'global problems', without a system of accountability global civil society advocates rely on a munificent state, under conditions that do not necessarily even make clear which scale of state should, ideally, respond to demands. Current U.S. international relations expose the weakness of this dependence, showing how global discourse has had little impact on material conditions. Thus global civil society is subject to the long-standing political problem of difficulty for interests with diminished political power in being considered a legitimate voice. As such, limits are placed on who defines global interests.

This sort of critique has been levelled at global civil society theories in the abstract as well as from empirically-grounded work. For many, a global ethos and commitment provide an ineffective mechanism for establishing cosmopolitan citizenship unless they are attended by some form of institutional expression (Linklater, 1998; Dower, 2000; Shaw, 2000; Muetzelfeldt and Smith, 2002). In this context, theorists usually attend to the

security, technology, and trafficking are equally 'global' (see, for example, Dower and Williams, 2002).

possibilities of governance organized beyond the nation state. These institutions and their concomitant instruments include intergovernmental organizations; regional organizations, which usually refers to the emblematic European Union, but also includes forums such as NATO and ASEAN; and global scale institutions including the UN, the IMF and the WTO. However some carefully considered treatises have understood global governance more broadly, in terms of the impact of cosmopolitan democracy on all scales of governance – including local and national – as well as the inter-relations between them (Archibugi, 2004b).

What is striking about these theoretical interventions, however, is that they largely comprise normative statements arguing, for example, that “democracy *must* transcend the borders of single states and assert itself on a global level” (Archibugi, 2000: 144, my emphasis). Laudable as these aspirations may be, they are not accompanied by empirical examples of global governance working to secure global citizenship. In fact, on examining the relationship between global governance and global civil society, Muetzelfeldt and Smith (2002: 66) note that “global civil society thrives when it interacts with strong facilitating institutions of global governance”, but that “examples are regrettably scarce”. Instead they find that the vast majority of the institutions are either obstructive, or too weak to impact the operation of global civil society, or both. Discussions of global governance in broader cosmopolitan democracy theories, therefore, do not overcome the weaknesses of global civil society theories, in terms of matters of accountability, state capacity, and enforcement. In practice, because of the absence of a global institutional framework, cosmopolitan citizenship, as much as postnational

citizenship, relies on the nation-state to respond to the interests of global civil society (Stammers, 1999; Chandler, 2003).

Returning to the question of U.S. hegemony and the production of global space in U.S. interests exposes the weakness of relying on national states to expound a cosmopolitan ethos or implement cosmopolitan democracy. According to Bruce Robbins (1998: 13), an advocate of internationalism although not an uncritical sponsor of cosmopolitanism, “American policy remains a version of *realpolitik*, dedicated to a defense of the national interest – a national interest that gives much to the rich and little to the poor, of course, but that still favors the national poor over the nonnational poor and has some real success in exporting social problems beyond our national borders”. In this context, rather than following the cosmopolitan ideal model, the contemporary system can be characterised far more accurately as a system of global antagonisms, barely kept in check by an interdependent militarism that is dominated by U.S. panopticism and surveillance (Brennan, 2003) and technological superiority, while relying on what Gusterson (1999) refers to as “nuclear orientalism” to cast the associated accumulation of weaponry and technologies as only dangerous when in the hands of certain ‘irresponsible’ nations.

Again, the case of the Iraq war is instructive in exposing the ways in which U.S. policy and strategy remain untouched by the institutions of global governance, as much as it has fundamentally disregarded opposition from global civil society. Beyond, and increasingly within, the borders of the U.S., it is increasingly accepted that the invasion of Iraq without UN mandate and against the expressed beliefs of most nations comprised an

illegal war of aggression (Archibugi, 2004a). Contrary to global civil society, there was little formal resistance from other nation-states. However when opposition did manifest, it was quickly undermined, allowing hierarchical sovereignty to be restored. The vilification of the French was perhaps the most obvious manifestation of the Bush government's admonition that all nations should "stand with the terrorists, or stand with the civilized world" (cited in McCaughan, 2001: 39). Again, the deployment of this binary opposition of terrorist / civilized world ignores the extent to which terrorism has been spawned within, rather than in spite of, the violent history of the West's civilising project. And it also failed as a convincing discourse, with the 'coalition of the willing' being alarmingly small and, with the notable exception of the UK, largely comprising militarily insignificant states. However the lack of international consensus and the absence of a UN mandate did little to alter the trajectory of U.S. foreign policy decisions.

Co-opting cosmopolitanism: U.S. values as universal values

Hegemonic cosmopolitanism

The definition of global interests in terms of U.S. national interests is only part of the story of the failure of cosmopolitanism to restrain a hegemonic U.S. state. What is more telling than the inability of a cosmopolitan ethos or the global institutions on which cosmopolitanism relies to prevent illegitimate hyperviolence, is the ability of the U.S. to construct itself, its interests and its actions in cosmopolitan terms. The Bush administration secured 'cosmopolitan, democratic legitimacy' for incursions into territories in the Middle East by strategically recognizing that "Arab Americans, Muslim Americans and Americans from South Asia play a vital role in our Nation" (U.S. Patriot

Act, cited in Olund, 2007: 62). This assertion of U.S. assimilation of ‘otherness’ follows a familiar narrative, historically established in relation to immigrant America as an inherently cosmopolitan nation. Such narratives have been deployed specifically at crisis moments, as Olund notes in regard to Woodrow Wilson’s affirmation of friendship for the German people and German immigrants as the U.S. entered the fray of World War I, but also shape the ongoing imagination of a multicultural America. However, Bush’s discursive strategy advanced an artificial cosmopolitanism. The uneasy slippage between race, nationality, and religion (Arab / Asian / Muslim), allowed an expression of unity through an asserted common interest of respect for freedom of religion, thus deploying tolerance to obscure the reality of militarism. This strategic deployment of multiculturalism at its most feeble hints at valorizing difference but has actually “explicitly adopted antiracism in its pursuit of racist public policy and warfare” (Olund, 2007: 64).

As with other interests in the ‘civilizing project’ of the West, the U.S. has a long history of hyperviolent invasion and occupation predicated on racialized constructions of an uncivilized ‘other’ (McCaughan, 2001). The synthetic form of cosmopolitanism recently offered up by the Bush administration is as much about marking the foreign, terrorist ‘other’ as it is about containing, and exploiting the containment of, domestic difference. The same problematic conflations and confusions, then, operate in the militarist interests of the U.S. administration. The slippage between 9/11, al-Qaeda and bin Laden, the Taliban, Saddam Hussein and since his demise the remnants of the former Iraqi administration, and now also Iran and Syria, has generated a flexible iconography of

terror that has allowed switching from one disastrous foray to another, by relying on “the common geographical and anthropological conflation by many in the United States of Middle Easterners, South Asians, Arabs, Muslims, and terrorists” (Olund, 2007: 58). This maneuver is buttressed by the thorough de-historicizing process that, by disavowing the historical context of 9/11, allows any attempt to consider the extent to which U.S. imperialism is implicated in generating the necessary conditions for terror to be met with hysterical claims of unpatriotic behavior (Butler, 2002). As such, the purportedly cosmopolitan, American values of global freedom and rights are held distinct from the messy business of actually existing geopolitical and geoeconomic arrangements that thoroughly entwine U.S. fortunes with the supposed enemy of authoritarian governments and conservative religious movements in the Middle East (T. Mitchell, 2002).

Assertions of an inherently cosmopolitan U.S., established in opposition to parochial terrorism, are the basis of casting U.S. interests and actions, as well as the national identity, in cosmopolitan terms. By obfuscating the historical conditions of its production, the denial of any U.S. culpability for terrorism underpins the ideology of the U.S. as a peaceful nation, responding with violence only when intolerably provoked (Engelhardt, 1995). Delegitimizing the 9/11 attacks through their classification as ‘acts of terror’, successfully served to intensify public outrage, but simultaneously labelling the attacks as an ‘act of war’ allowed the contorted justification of the invasion of apparent rogue nations as a rational response (Butler, 2002; Lutz, 2002). The binarizing us/them moment is crucial in casting the righteous resistance of terror as an American value, but simultaneously as a universal value (Butler, 2002). Thus, more than strategically

projecting the common identity of a cosmopolitan nation, the U.S. has adopted the role of defender of cosmopolitan values. According to George Bush in an address to Congress, no less than “The advance of human freedom” (cited in Olund, 2007: 61), depended on U.S. performance in the ‘war on terror’. From the perspective of the U.S. version of cosmopolitanism, the removal of illegitimate regimes serves as the basis for making Afghanistan and Iraq safe for their citizens, and the world safe for democracy (Olund, 2007).

Democracy, humanitarian style

Casting U.S. values as cosmopolitan, universal values, and the U.S. as an inherently cosmopolitan nation, lends a veneer of global legitimacy to U.S. actions and interests, via an understanding of resistance to terrorism as the necessary base for providing global freedom, democracy, and human rights. However the story of whose interests are actually served by implementation of universal values remains unconvincing. Daniele Archibugi, one of the strongest advocates of the possibility of cosmopolitan democracy, recognizes what he describes as the ‘schizophrenia’ of an American democracy that clings to democratic principles in domestic policy, but “incessantly violates these rights in foreign affairs” (Archibugi, 2004a: 181). The regime change touted as the pre-cursor to bringing democracy to the region belies a recent history of propping up those regimes in Afghanistan and Iraq against U.S. enemies, particularly the Soviets and Iran respectively, without regard for the impact on the ethnic and sect-based conflict that characterised their domestic politics, but which now apparently concerns the U.S. so much.

Further, the method of regime change is particularly problematic. Thousands of Iraqi civilians and soldiers have been killed during U.S. occupation of the region, and consequent civil strife regularly takes further lives. Given that these deaths derive from an illegal war of aggression which is constantly justified by linkage to 9/11 where far fewer (mainly) Americans died, and the apparent disregard for those lives in the U.S. popular and political imagination, “For all those countries waiting to be ‘democratized’ by the United States, it sends a clear message that American lives are superior to all others” (Archibugi, 2004a: 183). Beyond the sheer number of lives lost, histories of military occupations show how their means – “Curfews, preventive detention, censorship, checkpoints, informers, interrogations, surprise ‘sweeps’ of local neighbourhoods, official identity documents limiting movement... The arbitrary exercise of power is the centrepiece of any occupation” (Swift, 2005: np) – seem distinctly at odds with the ends – freedom, rights, democracy – that they are purportedly aiming to achieve.

These problems are not unique to this particular occupation, and have also emerged in peacekeeping missions that have the legitimacy of being backed by international agreement. However the illegitimacy of the invasion is buttressed by the apparent lack of concern among the U.S. administration for actually existing Iraqi human rights.

Hyperviolent acts of aggression by individuals or groups of American soldiers leading to the robbery, rape, torture and murder of Iraqi civilians have, for some, led to punishment, but criticism from military or political officials in the U.S. has remained relatively subdued. Moreover the acts themselves are routinely dismissed as the product of individual pathologies, rather than being systemic. The distinction between acts of

violence sanctioned through the rules of war and illegal acts is only blurred by the types of treatment that have been sanctioned at Guantánamo and that, in some cases, have been carefully constructed as legal by the U.S. administration, as discussed in chapter 4. The now deposed Defense secretary, Donald Rumsfeld, rendered transparent the lack of concern over the legitimacy of the means of regime change, when he recognized that “eventually the Iraqis will get tired of dying” (Donald Rumsfeld, cited in Swift, 2005: np) so ending the need for U.S. occupation of the Middle East.

Beyond concerns over U.S. hegemony and the double standards for American and Iraqi lives of a ‘schizophrenic’ American democracy, one of the most problematic aspects of the occupation is the underlying supposition that U.S. actions are “geared towards benefiting those aggressed by bringing them freedom, prosperity, and democracy” (Archibugi, 2004a: 183). This legitimising discourse echoes the classical imperialist, orientalist occupations of previous global hegemonies, including, for example, the British occupation of South Asia, the political ramifications of which still wrack domestic and international politics for both the aggressor and its target. The consequences are manifest, not just in the control of civil society that has led to so many deaths and incursions into domestic freedoms, but also through the notion of ‘installing’ democracy in Iraq. Popular and academic criticisms abound concerning both the legitimacy and the feasibility of imposing democracy, rather than working to secure the conditions under which democracy might develop from within the *demos* (e.g. Enterline and Greig, 2005, 2007).

However, rather than simply being the clumsy deployment of an inherently undemocratic method for democratising the world, again the U.S. version of global interests appears at the base of procedural change. The U.S. sponsored constitution underpinned the free election of Ibrahim al-Jafaari as Iraqi prime minister, but the appearance of striving for democratic rule was short-lived as the U.S. administration engineered al-Jafaari's removal in 2006 and his replacement with Nuri Kamal al-Maliki. By the summer of 2007, the U.S. administration had become increasingly disenchanted with the failure of their puppet government in Iraq. Yet it remained unwilling to accept that its strategy of imposing Shiite-rule was an unlikely panacea for the region's ethnic and sectarian tensions, which are steeped in a long religious history but have become particularly heightened through a century of British colonial rule and its aftershock, and redoubled through subsequent U.S. sponsorship of Saddam Hussein's Sunni sympathising, elite Ba'athists. Therefore, given that the strategy of efficient regime change to a government sympathetic to U.S. interests has been neither democratic nor particularly effective, significant questions remain over the feasibility of cosmopolitan democracy emerging from a global system managed by a hegemonic nation-state. However, it is not only the contours of that particular, fractious debate that reflect what it means to have the U.S. as the arbiter of what constitutes democracy. Iraq and Afghanistan are far from isolated examples. The U.S. understanding of democracy is further reflected in its unquestionable role in Palestine. By withdrawing aid and supporting Israeli-imposed sanctions, a resource scarcity that exacerbated existing but tentatively dormant fissures led to descent into a civil war that in turn and, with some success, inevitably threatened to oust the

democratically elected Hamas government that the U.S. quarantines as a terrorist organization.

So far this chapter has considered how U.S. hegemony resists the formation of a cosmopolitan global order. However, an additional tactic emerges where the U.S. production of global space fails, and its interests are not served in the resulting global institutions, organizations and agreements, whereby the U.S. abandons the global order with varying effect. In a well-recognised example, the environmental restrictions afforded in the Kyoto Accords, to which the U.S. remains a non-signatory, are widely accepted beyond U.S. boundaries as being a crucial measure in the global effort toward global environmental protection. However the U.S. response to environmental protection takes the form of modified market forces, with industry protected from absorbing the full cost of environmental externalities buttressed by proposals to establish a domestic bartering system for emissions rights.

The case of the International Criminal Court (ICC) is perhaps most instructive of the capacity for manipulating the global order, given the ability of the U.S. leadership to minimize their own risk emanating from global militarist incursions, while imposing the full measure of international law on others. The U.S. derailment of international agreement is manifest in sustained opposition and targeted attempts to undermine the International Criminal Court (ICC), while simultaneously supporting certain international prosecutions, for example the International Criminal Tribunal against Serbian war criminals (Wood, 2005). The ICC case shows the full power of the U.S. administration to

manipulate the global order in its interest. After all, “Wars of aggression – such as the invasion of states without UN authorization – are considered serious crimes and fall under the jurisdiction of the International Criminal Court. If Bush, Rumsfeld and General Franks did not hold American passports, they would have already been served by the same international warrant of arrest that was sent to Milosevic, Karadzic, and Mladic” (Archibugi, 2004a: 182).

The cosmopolitanist response

What is peculiar here, given the widespread recognition of the impact of U.S. hegemony on the potential for the exercise of cosmopolitan democracy, is the response from cosmopolitan theorists. Advocates of cosmopolitanism find the Westphalian system of sovereignty inadequate for resisting hegemonic sovereign states, arguing instead for a stronger form of cosmopolitanism established via the strengthening of international institutions. Certainly, in the Iraq case, the international order of sovereign states had neither the capacity to constrain the U.S. and its co-conspirator, the UK, in the war of aggression, nor a successful mechanism for preventing the Iraqi administration’s abuse of its own people (Archibugi, 2004b: 454-5). This debate appears to be at a logical impasse, given that hegemonic nation-states appear to be unresponsive to international agreements regardless of the strength of international institutions. However, the ability of hegemonic states to co-opt cosmopolitanism and orient it towards their own interests – as I have identified in this section as the production of global space by the U.S. – renders a significant risk in expecting cosmopolitan democracy to serve anything other than hegemonic interests. In fact, given the extent to which international organizations such as

the UN, IMF, the World Bank and NATO have precisely served the interests of dominant nation-states, particularly the U.S., strengthening the institutions of global governance arguably compounds existing inequalities (Gowan, 2003).

Arguably, then, the construction of U.S. interests not just as the same as global interests, but as inherently cosmopolitan in and of themselves, not only obscures the reality of U.S. activity, but also further brings into question the value of a cosmopolitanism that can be so readily co-opted. Butler (2002: 186), by contrast, insists “the United States needs to assume a different kind of responsibility for producing more egalitarian global conditions for equality, sovereignty, and the egalitarian distribution of resources”. Thus Butler evokes a role of global responsibility for the U.S., specifically *as* a sovereign nation-state with hegemonic power, rather than assume cosmopolitan democracy can keep in check the interests of individual, powerful states. While there is little evidence to suggest that Butler’s plea will be heeded, it refrains from offering the false hope that constitutes an insufficiently conceived cosmopolitanism.

Interestingly for the case against cosmopolitanism, those organizations and individuals that are currently causing the U.S. so much consternation are far from cosmopolitan in orientation. While the Iraqi leadership was relatively swiftly subjugated following the U.S. invasion, various factions of its populace have provided apparently far more resilient opposition (Krauthammer, 2004). As the CIA have recently acknowledged (National

Intelligence Council, 2004)⁴¹, to their consternation the U.S. occupation of Iraq and associated activity such as that witnessed at Abu Ghraib and Guantanamo seems only to have served to radicalise Muslims and incite new rounds of terrorist activity. This suggests that individuals and non-state terrorist organizations with parochial interests, rather than those advocating a cosmopolitan ethos, have become the most effective vectors of resistance to U.S. hegemony. The alternative modernity that constitutes Islam is premised on the local (T. Mitchell, 2002). This is not, then, simply a matter of radicalisation and terrorism, although certainly parochialism underpins those fundamentalist activities existing at the limits of Islam, but of a different logic from the cosmopolitan ethos that advocates claim emerge as globalization impacts Western liberal democracies.

Elsewhere during the summer of 2007, the Putin administration, long a concern with regard to the management of relations with former Soviet republics, began to exert its own interests in Europe and the global sphere, apparently surprising many who believed that the Cold War had put an end to political strength in that region. At the same time the Iranian administration failed to quietly acquiesce despite, or perhaps because of the threat of invasion. And the persistence of the uneasy alliance with Pakistan, so crucial to U.S. action in the Central Asian region, looked increasingly doubtful as U.S. strategic influence over Pakistan's domestic politics threatened to crumble. While the U.S. has been busy constructing its militarist agenda with a cosmopolitan façade to preserve

⁴¹ Even the CIA recognizes this: a recent report by their National Intelligence Council think tank warns that 'a successor generation' to al-Qaeda is being created in the cauldron of the Iraqi occupation (National Intelligence Council, 2004)

legitimacy and placate its 'Washington Consensus' allies, the true irritant might actually appear in the form of traditional, antagonistic international relations or alternative ideas about modernity that are less pliable than cosmopolitanism, and barely beholden to the democracy that the U.S. upholds, at least officially, as the principle of world organization.

Conclusions

The terrorist attacks of 9/11, that propagated a parochial, traditionalist, and explicitly fundamentalist form of Islam, may appear to represent the archetypal opposition to cosmopolitanism. However the state-centered, militarist, and incautious response from the U.S. is as much of an assault on the cosmopolitan ethos. As Calhoun (2002: 870) observes "What could have been an occasion for renewing the drive to establish an international criminal court and multilateral institutions needed for law enforcement quickly became an occasion for America to demonstrate its power and its allies to fall in line with the 'war on terrorism'". The contemporary condition of global relations, then, rains doubt on the possibility of cosmopolitan democracy and an associated cosmopolitan citizenship, and advocates of cosmopolitan democracy recognize as much (Archibugi: 2004b).

Regardless of political appeal, then, cosmopolitan democracy remains a normative project. However, despite the undeniable critiques of its internal structure (e.g. Baker, 2002; Armstrong, 2006) the emergence of transnational political identification in the form of global civil society is potentially a truly revolutionary political transformation

that should not be dismissed prematurely. The question remains how to draw impetus for a cosmopolitan citizenship from this political energy. It is important not to reduce citizenship to a 'rights only' condition because this is an inherently weak form as the critique of postnationalism has shown, and because it encourages a tendency to statism with insufficient attention to the changes and possibilities emergent under globalization. At the same time, strategic disidentification from state processes in favor of asserting political identities without boundaries, fails to attend to the persistence of the nation-state. As Pasha and Blaney (1998: 420) note, "a failure to attend to the mutually constitutive relationship of civil society, capitalism, and the liberal state will misguide our assessments of the emancipatory possibilities of associational life".

David Held's (1995: 233) version of this project, which arguably remains the most coherent construction of cosmopolitan democracy, posits multiple political memberships that certainly seem to reflect the intent of those organizing across traditional borders, and in global civil society, as well as the supranational structures that these groups and individuals appeal to. In this context, the realist dismissal of the cosmopolitan project as utopian obfuscation of state-centered, imperialist 'Westernization' in the guise of humanitarianism (e.g. Zolo, 1997, 1999, 2002) is too simplistic. Certainly the arguments herein support the contention of imperialist expansion over-riding cosmopolitanism, but even as the nation-state retains formal power, it is operating under new conditions, and in new contexts. Rather than surrendering to the apparent impasse between cosmopolitanists and realists, concerning the relative power of the global and the national, it seems

apposite to draw focus to the way in which these political scales are emerging, in concert, and with what effect.

Regardless of whether theorists are for or against the possibility of global citizenship, questions of scale are necessarily explicit to their arguments. However I suggest that all these theories retain an inadequate understanding of space, and the mechanisms of its production. Cosmopolitan democracy theories ask ‘what is the most appropriate scale for the organization of democracy’, as if the spatial constitution of democracy can be abstracted from the conditions that allow its production. Thus cosmopolitanists continue to wonder why the global scale has yet to yield cosmopolitan democracy, limiting their responses to explaining how certain interests choose not to conform. Without attention to how and why the global scale is specifically produced in certain ways, with certain intentions, the limitations of the political order will never be fully appreciated. Effectively, theorists invoke deterritorialized space, asserting that the cosmopolitan form can transcend borders. Spacelessness is not invoked here in the same guise as is deployed by utopian ‘end of geography/empire’ arguments. However without attending to the specific production of space, the theoretical effect of ideas surrounding deterritorialization imbues notions of cosmopolitan democracy. I argue instead that rather than a decline in national space, we have witnessed the reorganization of the role of the nation-state under globalization. Thus hegemonic states continue to manipulate social conditions through the production of space.

What is at stake here is the quality of citizenship itself. Germann Molz (2005) finds mobility and detachment in round-the-world travelers' tales as evidence of cosmopolitan citizenship, and suggests that these wanderers frame their activities in terms of civic responsibility in producing cultural understanding and tolerance in the face of difference. This libertarian version of cosmopolitan citizenship, accessible to the few, surrenders citizenship entirely to the market, securing elite privilege while detaching these 'citizens' from any notions of duties, community, or participation, and serving 'others' up for their consumption under a Westernized/izing gaze. While there is a valid argument that such elitism thoroughly undermines citizenship's universalizing motives, it is perhaps even more important to recognize the limits on the quality of this form of citizenship. While privileged detachment appears to bear no risk, all guarantees and securities of citizenship are abandoned. Thus, while the market provides the benefits duly associated with rights from the state, all protections associated with rights *against* the state are lost. Although those exercising this elite form of citizenship are unlikely to suffer the same consequences of state discipline experienced by the marginalized, acquiescing to the idea of this libertarian form as citizenship results in guaranteed rights against the state being withdrawn until they are secured elsewhere. Arguably, libertarian cosmopolitan citizenship is far from being citizenship at all, and is only valuable as an 'add-on' to the existing guarantees of the national form.

The value of cosmopolitan cultural citizenship suffers a similar fate, in terms of its limited value absent an ongoing, robust national citizenship. Theories in this vein suggest that cultural, behavioral factors have transformed the meanings of citizenship,

such that the citizenship-based quest for social justice needs to incorporate questions of recognition and cultural respect (e.g. Stevenson, 2003). This perspective, which follows Nancy Fraser's extension of Habermasian notions of discourse and communication in the public sphere to secure conditions of justice among communities of difference (Fraser 1997) effectively works to ensure full inclusion into the community that seeks citizenship (Pakulski, 1997). Insofar as this takes a cosmopolitan form, cultural recognition transcends differentiation according to those matters that traditionally ground systems of in/exclusion, including race, gender, and nationality (Stevenson, 2003). In this vein, there is considerable valuable debate on the extent to which these cultural forms transcend the national community and dominant national political culture and, more specifically, how imbuing education with cosmopolitanism can both empower those not recognized and encourage tolerance among dominant groups (Waldron, 1999; Fullinwider, 2001; Blasco and Krause Hansen, 2006). In rebuttal, Katharyne Mitchell (1993, 2003) has exposed how the ideas of tolerance and diversity that constituted the ideal of multiculturalism have, in fact, given way to the creation of the 'strategic cosmopolitan', primed to deploy diversity to ensure competitive advantage in the global marketplace, and only serving to entrench neoliberalism.

However, even beyond the question of the true motives behind official multicultural / cosmopolitan rhetoric, the insistence on cosmopolitanism's transgression of boundaries, including national borders, is limited to developing equal access to participate in civil society. While valuable in its quest for inclusion, cosmopolitan cultural citizenship is inherently as weak as the libertarian form without an associated formal relationship

between citizens and the state. Much of the work of cosmopolitan cultural citizenship, however, precisely focuses on questioning the nation-state, leaving open the matter of where this formal relationship might take place. Theories of cultural citizenship are far more useful than libertarianism in their conceptualization of civil society. However to recognize cultural citizenship *as* cosmopolitan citizenship misses the state's role in constructing citizenship. While a realist blanket reassertion of the nation-state does little to enhance understanding of the state under globalization, analyses of cosmopolitan citizenship that fail to incorporate the state necessarily ignore its crucial role in regulating social justice and socio-economic conditions in general (Young, 2000: 180-8), whether in favor of citizens or otherwise.

Cosmopolitan democracy, then, is the only 'strong' form of cosmopolitanism, with a built in understanding of the state available to underpin citizenship. However, this virtue also necessarily limits cosmopolitan democracy theory to normative claims, rather than empirical observation of actually existing citizenship. As discussed throughout this and the previous chapter, the ethos and the institutions of global responsibility and democracy have been thoroughly subverted by a hegemonic – American – system of international relations that follows the model of realist, state-centered competition. In relation to Held's vision of multi-scale cosmopolitanism, this self-interest based dominance has destabilized the notion of cosmopolitan democracy forming within global institutions and procedures and shaping international relations between states. In terms of asserting cosmopolitanism within states, there has been limited influence on the sovereignty of hegemonic states, with the unique exception of the European Union where limited

influence is exerted via mandated supranational governance. However the Iraq war, echoing other U.S.-led, post cold-war incursions, shows exactly how the idea of cosmopolitan rights in the form of humanitarianism have been deployed to facilitate imperialist expansion rather than the extension of democracy (Zolo, 2002). Further, considering this point in the context of postnational / international human rights discussed in chapter 4, globalization and global interdependence has resulted in states directly encountering, and exerting discipline on, subjects outside their formal political and territorial control. Thus systems of inequality traditionally operating within the national sphere have begun to be exerted by nation-states in the global arena.

Cosmopolitanists then face a classic ‘catch-22’ situation, whereby weak, non-binding governance fails to yield the envisioned global democratic order but, even if it were possible, formally shifting sovereignty to the global scale runs the risk of despotism and cultural homogenization. Moreover there is little reason to believe that global governance would have an inherent tendency to be more democratic than the nation-state (Pensky, 2001), as suggested by the ‘democratic deficit’ in the European Union test case. In the dispute between realists and cosmopolitan democracy theorists, debate tends to end, in impasse, at this point. Realists assert the continued political power of the nation state, while cosmopolitan theorists propose new ways that democracy might globalize, without suggesting any reason why nation-states would relinquish sovereignty to institutions of global governance, beyond the humanitarian / global ethos. However, understanding the limits of cosmopolitanism as simply a matter of sovereignty misses the reality of the nation-state’s condition in the global era. This chapter has shown that expansionist

international relations, rather than sovereignty *per se*, is the adversary of cosmopolitan democracy, and this has been engineered by a specific production of space. The U.S. state has both determined global interest after its own interests, and cast that determination as inherently cosmopolitan. Thus a global order is apparent, but the 'need' for cosmopolitan democracy to respond to arising global issues has been met, instead, with militarism disguised as a co-opted cosmopolitanism.

Although it remains implicit, cosmopolitan democracy theory rests on an assumption that an alleged decline of the nation-state and the associated reconfiguration of the spatial order necessarily contains the possibility of a shift toward global democracy. Both these assessments are debatable, given that the hegemonic state can be seen to be continuing as a powerful political agent that is shaping the global order. As with the historical production of national space, that secured the allegiance of a community of national citizens, global space has been produced with intent. However, the different conditions that comprise neoliberal capitalism, particularly characterized by the flexible mobility of capital, provide no impetus for producing a global democracy, or 'global citizens'. As such, the assumption that a cosmopolitan ethos will yield cosmopolitan citizenship flounders as actually existing U.S. imperialism replaces normative cosmopolitan democracy as the necessary vector.

The limited possibility for cosmopolitan democracy has clear consequences for concomitant possibilities for the formation of a valuable cosmopolitan citizenship. The coherence of national citizenship and the successful reproduction of national citizens

were underpinned by the political-economic logic of Fordism. The coherence was precisely defined by the national scale, with an alignment of formal membership, community of allegiance, accountable state, and political-economic logic. This coherence was not inherent to national citizenship, but precisely a result of its intended production. Cosmopolitan citizenship, theoretically organized at the global scale and, for some, against the state, loses this coherence. To suggest that the qualities of national citizenship, disaggregated under globalization, should be able to re-coalesce in a valuable form, de-historicizes the conditions of production of national citizenship *as* valuable.

Cosmopolitan citizenship adopts a fluid form that is celebrated as avoiding the exclusions of national citizenship, but necessarily loses the quality of national citizenship as it reforms. Without a political-economic logic that parallels nationalist Fordism, there is no reason for 'global citizens' to be produced, meaning that citizenship does not shift scale intact. The problem for cosmopolitanists is that they assume cosmopolitan democracy as the necessary vector for transforming the cosmopolitan ethos into citizenship. As I have shown throughout this chapter, the actually existing vector is, at best, a hegemonic form of cosmopolitanism, co-opted by an imperialist U.S. state. Without accountability to a global citizenry, or the binding authority of global institutions, the global political order operates in the interests of hegemonic states, rather than following the cosmopolitan ethos of commitment to global humanity. Under these conditions, the multi-level scale of citizenship, and the fluidity of global political identities is not matched with an equally valuable quality of global citizenship.

Global citizens have no state to hold accountable for the guarantee of rights and political participation, and are therefore reliant on persistent national citizenships to provide rights from the state. However, as will be discussed in the next chapter, under the political-economic logic of the contemporary form of global capitalism, domestic citizenship is waning and increasingly less likely to reproduce national citizens in traditional ways. Simultaneously, however, necessarily in-situ subjects are subject to the discipline of national states, although under global conditions this is increasingly less likely to be the state where formal membership is held. This is a consequence of both immigration and nation-states exceeding their territories. In both cases the direct engagement of nation-states with foreign subjects, rather than as members of other nation-states, leaves subjects disempowered. As such this engagement occurs with limited rights held against the state, as global institutions have proven unable to resist impositions.

Bowden (2003a) suggests that citizenship and cosmopolitanism are incommensurable, precisely because of the divergence between coherence and fluidity outlined here. Evidence for actually existing cosmopolitan citizenship is limited to the libertarian or cultural forms that are 'thin' versions of citizenship. Alternatively, strong versions, as espoused in cosmopolitan theories remain normative with little promise for manifesting in any substantive way. This outcome is far from accidental. The global scale is not some accidental form, waiting to be filled with a humanitarian agenda. Rather it has been produced, and is continually re-produced, with the precise intent of hegemonic agents operating under a global capitalist logic. This raises the question of why powerful, and sovereign, nation-states would allow a global order to emerge, unless it was in their

interests. The current hegemonic state – the U.S. – exerts its sovereignty for ends that are far from cosmopolitan in nature, and in so doing subverts the ideals of cosmopolitan citizenship. While U.S. hegemony will certainly diminish in time, there is little historical evidence to suggest that the ensuing political order will take the form of cosmopolitan democracy or that cosmopolitan citizenship will prevail.

CHAPTER 6
CLIENTALISTIC CITIZENSHIP AND THE SPATIAL PRODUCTION OF
DIFFERENCE IN NEOLIBERAL CITIES

The impact of globalization on citizenship exceeds the way in which an emergent global scale interacts with the established nation-state, and the sovereign system. The previous two chapters have shown how an assumption of the ascendancy of the global scale belies the way in which the incipient global form has materialized through the nation-state, with the consequent global order reflecting the interests of certain hegemonic states. As such, I have suggested that as yet, albeit for different reasons, neither postnational nor cosmopolitan citizenships are particularly useful descriptions of, or predictors for, actually existing citizenship conditions. However, the focus on the global scale that is the domain of postnationalists and cosmopolitanists is not an exclusive model for theorizing the intersection between globalization and citizenship. As the case of the Guantánamo prisoners shows, regardless of the scale of its logic, the last instance of the interaction between the subject and the state happens *in situ*, wherever the subject is sited. Distinctly different from Guantánamo, though, in the U.S. domestic context much of this interaction happens in cities. Theories of urban citizenship then consider the state-subject relation in the context of the city, but particularly in relation to how the operation of the global political economy has reordered elements of the relationship between nation-states and their cities.

Although the constitution and impact of globalization itself is highly contested (see Beck, 2000), generally recognized as the intensification of global processes, it has two main sets of impacts on urbanization that have ramifications for the organization of citizenship. First, the re-organization of the political economy into its current global form has altered the functions of some cities⁴², and disrupted the operation of the national urban hierarchy to the extent that increased inter-urban competition has led to the rise of a set of practices recognized to be ‘urban entrepreneurialism’ (Harvey, 1989a). Second, the intensification and increasing complexity of immigration under globalization (Castles and Miller, 2003) has particularly affected the urbanization process, as immigrants tend to migrate to major cities. Some theorists, most notably Saskia Sassen (1988, 1991, 1996a, 2000b, 2001, 2003b) assert that this concentration of immigrants in ‘global cities’ and their importance within the reordered urban economy, has issued in a new form of politics where ‘new claims’ to citizenship are being asserted in global cities.

Within similar parameters, certain theorists particularly suggest that transnational politics is emerging ‘from below’ (Guarnizo and Smith, 1998), challenging the understanding of subjects as passive recipients of formal political forces, and citizenship as simply a passive status conferred by the state. The argument recognizes citizenship also as a social practice conducted within civil society and therefore beyond the confines – both territorial and institutional – of the state (Benhabib, 1999; Isin, 2002; Ehrkamp and

⁴² Given that globalization permeates the entire urbanization process rather than simply creating ‘global cities’ (Taylor *et al*, 2007) the logic of the global political economy has altered the functions of cities in the second, third, fourth etc. ‘tiers’ also (for example, see Markusen *et al*, 1999; Brenner and Keil, 2006). This recognition is crucial for realizing how the imperative of the global political economy influences the globalization/urbanization nexus, and by extension the condition of urban citizenship, beyond global cities. However the discussion in this chapter remains limited to the specifics of urban citizenship in global cities.

Leitner, 2003). This notion has particularly been developed in concert with ideas about transnational identities and citizenship claims made without the normalized formal political membership (for a specifically geographical take within this rapidly expanding literature see, for example, the special issues of *Environment and Planning A*, 2006 and *GeoJournal*, 2007). Here, then, the distinction discussed in chapter 4, between postnational and transnational citizenship, becomes obvious. While postnationalists envisage universal personhood operating beyond the increasingly irrelevant nation-state, the most useful transnational theories adopt an alternative view of the state where they recognize “the complex articulations of state and civil society in the construction of citizenship, and the intricate local, national and transnational interconnections shaping contemporary state conceptions and social practices of citizenship” (Ehrkamp and Leitner, 2003: 127).

Although not reducible to each other, theories of transnational and urban citizenship have broad intersection because as the locus of transnational practices cities tend to be produced through transnationalism. As much as transnational social practices shape subject identities, they also shape the multiple urban worlds that these subjects encounter (MP Smith, 2001). Immigrants are not the only ‘different’ bodies in cities though, as the city tends to be a space where a multitude of identities mingle. Cities, literally, are places of diversity (e.g. King, 1990). Recognizing that the form of the urban milieu exceeds a struggle between transnational immigrants and hegemonic interests, however, a somewhat distinct strain of urban citizenship theory draws from the Lefebvrian notion of the ‘right to the city’. This argument is similar to the idea of transnational citizenship in

global cities in terms of revising the political construction of the global city, but the protagonists are ‘citadins’ – city dwellers – and the specific aim is “to develop new notions of citizenship that expand the decision-making control of citizens” (Purcell, 2003: 564) to reclaim the city for its denizens.

The reality of the contemporary city perhaps belies these distinct but generally optimistic theoretical inflections, although the line is thin between failing to recognize the political activity of the marginalized, and paying inadequate attention to the power of the state in establishing the conditions for both formal and informal citizenship. From the outset though, it is important to recognize how the two phenomena – the re-organization of the logic and structure of the global political economy and the tumult of urban society – are intertwined. Isin’s (2002: 283) assertion that “The city is not a container where differences encounter each other; the city generates differences and assembles identities. The city is a difference machine” is a particularly apt point of departure for a discussion of urban citizenship, because it points to the ways in which subjects are actively produced through the organization and the operation of the city, and vice versa. In this context, some consider the urban scale to be emerging as the most appropriate site for the institutional organization of democratic citizenship (Isin, 2000a; Brodie, 2000; Beauregard and Bounds, 2000).

As the global political economy unfolds, cities are the crucial places where the contemporary neoliberal project is organized, articulated and contested; however cities have also been the spaces where the ‘roll-back’ of neoliberal policy has been most keenly

felt (K. Mitchell, 2004). As such there appears to be a theoretical disconnect between suggestions that the city might be the most appropriate site for citizenship, the assertion of non-traditional urban political identities, and actually existing conditions in cities. This disconnect reverberates around how urban citizenship theory might negotiate the Diallo case and broader structural conditions of police brutality outlined in earlier chapters, but the struggle over access to citizenship and its very quality are now perhaps even more pressing than ever:

After decades of expansion, civil liberties are under threat; the USA Patriot Act, the zoning of protest, quality of life initiatives that govern how people – and which people – can congregate in public space, and the move away from policies intended to redress historical exclusions are only some of the indicators frequently cited as evidence

Staeheli, 2005: 198

While debate proceeds over how far contemporary ‘post-9/11’ cities reflect an illiberal state (for an academic version of this popular political dispute, see Waddington, 2005 and the rebuttal by Haubrich, 2006), in this chapter I consider the ‘pre-9/11’ form of the city. Although the activities of the U.S. in the ‘war on terror’ have exposed the limits of postnational rights and the cosmopolitan ethos, the ‘new measures for new times’ rhetoric only serves to obscure the condition of the pre-existing urban form. Soon after 9/11, Vice President Dick Cheney warned us that measures which the government had been ‘forced’ to undertake “will become permanent in American life... perhaps for decades to come... the new normalcy” (Cheney, 2001). However, examining the contours of urban citizenship prior to 9/11 exposes how trends towards the ‘new normalcy’ were already well underway, and the rights of citizenship had already been subject to transformation.

In this context, the argument I develop through the rest of this chapter suggests that as much as the new order reflects a punctuating moment, marking a significant downswing in civil liberties, the precedent for this deflation of citizenship is long-established. Thus the mechanisms at the state's disposal may have changed, and the expansion of strategies to previously accepted – even relatively privileged – groups is also new, but the institution of citizenship has been under attack since long before 9/11. Arguably, citizenship has never embodied the universalism that underpins its assumed institutional significance, rendering it an unsurprisingly weak vehicle for conveying any response to the state's post 9/11 strategies. As such, I suggest that the recent decline in civil rights and citizenship is as much a matter of continuity as it is about a clearly demarcated moment of change.

Similar to the arguments already made concerning the global scale, here I suggest that the nation-state plays a key role in the organization of 'urban citizenship'. To make this argument, I start by considering the different sets of theories that assert urban citizenship either as in existence or as a feasible, desirable option. I then proceed by considering in detail the empirical and theoretical internal limits of the 'global cities' argument, with particular reference to New York City. The following section considers how the accompanying *political* character – of neoliberal urban governance – determines the quality of actually existing rights in the city, and in practice offsets the gains asserted in global cities theory. The penultimate section considers how this form, that I refer to as 'clientalistic citizenship' is organized spatially, both through the immediate spatiality of citizenship but also through the broader rescaling process that characterizes the national

organization of urbanism in the context of the global political economy. Finally, I conclude that optimistic assertions of ‘urban citizenship’ fail to pay adequate attention to the institutional transformation of citizenship, which effectively abandons subjects to the discipline of the market.

Principles of urban citizenship

It is now commonplace to understand the contemporary city as one of a number of social spaces that crystallizes out of the interactions of global processes or, in Castells’ (2000) language, as a ‘space of flows’. Thus global and urban processes are recognized as being thoroughly interimbricated or, as Short and Kim (1998: 39) succinctly state, “globalization takes place in cities and cities embody and reflect globalization”. The recent explosion of interest in urban citizenship, which derives more or less from interest in the political-economic and socio-cultural processes produced by the globalization/urbanism nexus, has spawned a number of frameworks for examining the condition of citizenship in cities. Here, after considering historical precedent, I briefly discuss each in turn, suggesting some of their limitations, but particularly recognizing the tendency to abandon the form of citizenship in the quest for theoretical coherence. While useful within their partiality, then, these theories remain limited in their capacity for explaining actually existing conditions of the institution of citizenship, as it is enacted in cities.

Historical precedent

Since the advent of modernity, and arguably since the emergence of nation-states in the 16th century, membership in society has been defined in terms of the connection between citizenship and the territorial nation-state with citizenship status superseding all other political identities, at least for all those who were deemed eligible (Painter and Philo, 1995; Holston and Appadurai, 1999). However, long before the emergence of nation-states, citizenship emerged as membership in the Athenian *polis* or Roman *res publica*. This membership was primarily institutional rather than territorial (Ford, 2001: 210) although, at least originally, membership was defined in terms of participation in the city's self governing assemblies, and therefore effectively denoted membership in the city. Eventually, the legalistic (rather than expressly political) definition of Roman citizenship and the expansion of the Roman empire meant that many who came under the jurisdiction of Rome were physically distant from the city, but even here the status still derived from membership in the city (Pocock, 1998).

Later, mediæval citizenship was again specifically tied to cities, with increasing access to citizenship falling into line with the emergence of democracy but, in Europe at least, that local autonomy was eroded with the emergence of the modern nation-state from the 16th century onward (Weber, 1998). Through the 20th century the territorial political-economic activity of cities was superseded via the consolidation of nation-states (Tilly and Blockmans, 1994). However, it is well accepted that the allegiance necessary to establish a national citizenship was cultivated in cities, which acted as the 'breeding grounds' for developing the attributes of civic-virtue and democracy (Holston and

Appadurai, 1999). The historical linkage between the city and citizenship is frequently asserted as the basis for the continued significance of the urban scale for contemporary citizenship (for example, Holston and Appadurai, 1999; Ford, 2001). More specifically, some have argued that the practicing of citizenship in the relatively coherent community of the city historically abetted the inculcation of civic-virtue, and therefore might serve as a better model for contemporary citizenship (see Dagger, 2000; Ford, 2001).

However simple appeals to the virtue and cohesive community of ancient models of urban citizenship ignore the fact that the celebrated communal spirit of inclusion and participation was premised on the simultaneous principle of exclusion, and an axiomatic denial of citizenship for women, children, slaves, and those without property. Isin (2002) has provided a genealogical account of citizenship that exposes exactly how the omissions and exclusions of 'universal citizenship' have been glossed over in our invented historical images of citizenship. Moreover, beyond concerns about the internal sociology of the city, contemporary cities are embedded in hierarchical models of government and contemporary forms of governance that simply did not exist prior to the emergence of nation-states. In other words, the relationship between societal, institutional and governmental scales is period-specific, with distinct consequences for political identities, as well as for sovereignty and the capacities of city governments (Isin, 2000a).

Globalization and global cities

The way in which theories concerning citizenship in cities particularly extend beyond postnationalist theories is that they emphasize how the power of the nation-state is being

usurped by accession to power at sub-national scales. From this perspective, this simultaneous undermining of the nation from above and below sets the stage for a citizenship that can no longer prevail at the weakened national scale, to re-territorialize in the city. The increasing political-economic importance of processes operating at supra- and sub-national scales, and the emergence of multiple non-national, localized identities are, in combination, the fundamental logic behind the rise of contemporary 'urban citizenship'. Given the changes wrought by the twin processes of globalization and fragmentation (Isin, 2000a; Ford, 2001), the once stable national urban hierarchy, with its relatively fixed form and set of functions, has been undermined somewhat. For some theorists, then, although the nation-state legally remains the primary site of citizenship, global processes have changed the meaning and quality of national citizenship to the extent that the formal status of 'national citizen' has been thoroughly undermined (Holston, 2001).

Even during the thoroughly nationalist project of modernity, cities retained a crucial role in the network of government, serving as the operational base for the organization of democracy and efficiency. While the twin impacts of globalization and post-modern fragmentation on the urban sphere have threatened the 'rationalities' that established this modern coherence, it has also opened up the city as a new space of politics for the assertion of often previously disenfranchised political identities (Isin, 2000a). As such, the civic-virtue necessary to inculcate the loyalty and sacrifice that underpin citizenship

may not reside easily in the conceptual and territorial expanses of the nation-state. The city, with its small and more circumscribed public life and a set of experiences and concerns common to all, may be the most nourishing environment for civic virtue and meaningful political participation. If so, the reemergence of the global

city as a meaningful territorial and economic location may have potentially salutary consequences for citizenship.

Ford, 2001: 224-5

One of the dominant sets of theoretical debates for understanding these transformations in the role of supra-national processes and the relationship between national and sub-national scales is 'global cities' theory. Although the idea of 'world cities' was first used to explain contemporary geographies by Hall (1966) and extended by Friedmann and Wolff (1982) and Friedmann (1986)⁴³, current debates originate particularly from Sassen's work on 'global cities' as the crucial places, or 'nodes', in the global economy, where 'the work of globalization gets done' (Sassen, 1996b, see also Holston and Appadurai, 1999: 3). The debates have been further extended via an intersection with Castells' (2000) conception of the 'network of flows', where "flows of capital, flows of information, flows of technology, flows of organizational interaction, flows of images, sounds and symbols" (Castells 2000: 418) determine the condition of the network that connects the nodes.

In synopsis of the global cities model, Sassen (1991, 1994, 1998) argues that contemporary global capital flows have led to an economy characterized by dispersed production sites and global cities engaged in the management of these sites. As a result of the trend toward the internationalization of production, and the concomitant demand for centralized management and specialist, internationalized services, global cities have

⁴³ Ron Johnston attributes the coinage of the term to Patrick Geddes in 1915 (Johnston, 1994), while Sassen (2001) claims Goethe used it first. Either way, Peter Hall's work shows considerable prescience, as he relaunched the term on the cusp of the contemporary era, since when it has proven to be a highly influential concept within urban geography, and for the examination of globalization.

emerged as nodes in the network of global flows that constitute the global economy. Thus the global economy has altered global cities in a number of ways. First, a networked structure, with global cities as the ‘strategic sites’ in the international economy, has replaced hierarchical arrangements. Second, as global cities have shifted functions to operating as centers of internationalized management, their occupational structures have also shifted, leading to socio-economic polarization of the labor force. Third, cities have been reconstructed as agents in the organization of globalization with influence far beyond their territory.

Subsequently, greater attention has been paid to the detailed complexity of the international labor markets emerging in global cities, and the consequent ramifications for labor and immigration. This line of inquiry had led to some degree of intersection between literatures examining global cities and global citizenships. Sassen (1996a) asserts that, despite the new global economic trend to polarize the workforce, “the city has indeed emerged as a site for new claims: by global capital which uses the city as an ‘organizational commodity’, but also by disadvantaged sectors of the urban population, which in large cities are frequently as internationalized a presence as capital” (Sassen, 1996a: 208). Sassen (1996a) argues that the ‘new geography of centrality and marginality’ that repositions global cities as absolute centers of power within global networks of capital, also establishes strategic sites for oppositional politics. Given their preponderance of immigration via the transnationalization of the labor force, global cities have become centers for the formation of transnational identities, leading to both transnational claims, and transnational claimants. For Sassen (1996a: 206) “[t]he

denationalizing of urban space and the formation of new claims centered in transnational actors and involving contestation, raise the question -- whose city is it?" Sassen's work has been a catalyst for understanding urban citizenship with respect to both the form of the city, and the identities that converge there.

Urban citizenship

The fragmentation that characterizes the emergence of global cities or global city-regions and the attenuation of the nation is more than a product of economic phenomena, however. The coherent national identity that serves as the premise of modern citizenship has been disrupted by the postmodernization of political and cultural identities. The "process of fragmentation through which various group identities have been formed, and discourses through which 'difference' has become a dominant strategy" (Isin, 2000a: 1) have, in combination, encouraged disenfranchised individuals and groups to assert citizenship rights. This move toward greater inclusion has necessarily threatened the rhetoric of the cherished, universal national identity that under-pinned modern citizenship. Thus the effects of political-economic transformation are exacerbated by the assertion of more localized, fragmented political identities, as replacement for a cohesive national identity.

Diversity concentrates in cities (King, 1990). Even though the order of cities is dominated by the logic of global capitalism, 'other' identities are omnipresent, especially given that cities become the primary site for the formation of political identities that are linked directly into global politics rather than the national system (Holston and

Appadurai, 1999:3). Moreover, immigrants congregate in a small number of major cities (Frey, 1996), and although these cities are not necessarily all 'global', global cities tend toward high levels of immigration. In fact, rather than emerge in spite of the global economy, the increasing immigrant presence in cities is a direct response to its operation (Sassen, 1988). When assimilationist integration strategies failed, the official projection of pluralist multiculturalism designed to deal with the apparent partiality of immigrant membership did little to benefit immigrants. However, optimistic visions identify urban citizenship as a way of establishing newly inclusive and democratic forms that might resist the inherent exclusions in multicultural policies and the static understanding of ethnic identities in national multiculturalist discourse (K. Mitchell, 2003; Uitermark *et al*, 2005).

Within this context, there are a variety of reasons why cities have become a focus of attention in discussions of citizenship. Some discussions emphasize the concentration of problems, in the form of unrecognized citizenship claims, in cities, as the basis for emerging citizenship and the progressive logic for encouraging it. Others emphasize the possibility of cities in terms of the ways in which fragmented political identities can be served in the diverse urban milieu. In general, however, this choice is a matter of emphasis, rather than a bifurcated approach to urban citizenship, and theorists tend to meld the problems engendered by the externalities of globalization with the possibility of the concentration of plural and multiple identities in cities. In sum, globalization, in whatever guise, and the emergence and endorsement of assertions of difference have, for urban citizenship theorists, reinvented cities, and global cities especially, as crucial sites

of citizenship. They are “the concrete sites in which to investigate the complex relays of post-modernization and globalization that engender spaces for new identities and projects which modernization either contained or prohibited, and generate new citizenship rights and obligations” (Isin, 2000a: 3).

For urban citizenship theorists, consequences of the urbanization of citizenship emerge in terms of both its institutional form and who can access it, although these two aspects manifest simultaneously. Some use the universal-rights discourse of postnational citizenship as the basis for contrasting urban citizenship with the homogenizing tactics of nation-building and citizenship as a set of obligations to and rights from the state.

The overarching contention of urban citizenship theory echoes the assertion of postnational theory, namely that “formal membership in the nation-state is increasingly neither a necessary nor a sufficient condition for substantive citizenship... legally resident noncitizens often possess virtually identical socioeconomic and civil rights as citizens” (Holston and Appadurai, 1999:4). Urban citizenship theories extend this claim beyond postnational theory by asserting that membership consequently re-territorializes at the city scale, rather than remaining a property of the individual. From this point of departure, theorists then attempt to uncover the new notions of membership and community that are generated by this urbanization of citizenship.

In recent democracies, assertions of the urban arena as a scale for claiming rights emerges in the context of new access to formal political rights, emerging alongside either the collapse of social rights particularly in Central and Eastern Europe (Garcia, 1996), or

the uneven distribution of civil rights in Latin American countries (Yashar, 2005; Roniger, 2006). In established democracies, however, claims to urban citizenship are largely theorized in relation to immigrant claims to rights. While a new image of the ‘citizen’ is constructed here in complement with the new scale of citizenship, the activity of citizenship is also redefined. Some theorists of urban citizenship specifically focus on the ways in which ‘new claims’ involve constructing an active challenge to the state, rather than simply passively accepting the rights and duties conferred by the state via formal membership (Benhabib, 1999; Magnusson, 2000). For instance, Ehrkamp and Leitner (2003) have shown how Turkish immigrants in Germany encounter the state at multiple scales, from the neighborhood to the supra-national, in their attempts to contest their political exclusion and demand the rights to cultural practice. Similar stories have been told from Los Angeles (Pincetl, 1994; Rocco, 1999) to Istanbul (Secor, 2004).

Even while engaging with the state, these actions are specifically produced in civil structures – the institutions and actions that construct communities via the ‘horizontal bonds’ of citizenship (Staeheli, 2005), thus refocusing the organization of urban politics. Whatever the specificity, the general emphasis here is on citizenship as *practice*, rather than a more static understanding of citizenship as a status, as defined in T.H. Marshall’s (1950) seminal work. This particularly active interpretation of citizenship follows Isin’s (2002) assertion that the act of ‘being political’ escapes definitions of formal politics. Rather, he understands ‘becoming political’ as “those moments... when strangers and outsiders question the justice adjoined on them by appropriating or overturning those same strategies and technologies of citizenship” (Isin, 2002: x).

For some, empirical evidence of actually existing rights assertions gives way to normative claims based on some understanding of the city as the most appropriate scale for the exercise of citizenship now that the compendium of sovereignty, democracy, accountability and citizenship has been ‘cast adrift’ from the nation-state (Brodie, 2000; Ford, 2001). Exaltation of urban citizenship is, however, rarely accompanied by an understanding of how such a phenomenon might emerge in current conditions, although Beauregard and Bounds (2000) hypothesize the rights and responsibilities necessary to facilitate the performance of daily life and debate as the center of a citizenship of the public realm (as opposed to the state). In an attempt to shift debate beyond the limits of liberal conceptualizations of rights *in* the city, arguments grounded in the Lefebvrian concept of the ‘rights *to* the city’ attempt to overcome the problem of idealistic assertion of the possibility of urban citizenship. For example, Purcell (2003) adapts Lefebvre’s concept of the urban dweller (*le citadin*) to contrast ‘citadinship’, or membership in the city, with national citizenship. Citadinship depends on the Lefebvrian conception of the ‘right to the city’, which establishes the ‘full and complete usage’ of urban space -- comprising the rights of political membership and participation, and the necessary conditions to generate equal access to these rights -- as a right deriving from urban inhabitation.

Institutions/rights/identities in state/space

The approaches to urban citizenship reviewed here raise a number of matters that serve as the theoretical basis for the remainder of this chapter. The earliest work on citizenship in

global cities started as an interesting off-shoot from analysis of the global political economy, rather than from an interest in urban citizenship *per se*. Although the global cities/urban citizenship nexus has subsequently been far more fully developed, theories in this genre tend to retain a unidirectional economism that pays inadequate attention to the complexities of how citizenship rights emerge. As such, questions concerning how the city might serve as a space for constructions of new political identities, in turn generating ‘new claims’ with tangible results of ‘actually existing’ citizenship, and what this means for the condition of citizenship remain undertheorized. This problem, which is reflected in other sub-debates concerning urban citizenship, turns on the theoretical desegregation of elements of citizenship that traditionally are understood in concert. Particularly emphasizing political identities, for example, fails to attend to the quality of citizenship that emerges, or the institutions that might provide that citizenship; similarly, assertions of ‘rights’ without connection to broader political identities projects a very particular interpretation of citizenship rights.

This is not to suggest that empirical identifications of new types of urban politics are necessarily erroneous, rather that the accompanying theoretical disconnections have led to overly simplistic identifications of ‘citizenship’. Effectively, conclusions on access to citizenship are pre-figured, as little attention is paid to the actual contours of the condition of citizenship. As such there is a potential danger for theories of urban citizenship to stretch both the significance and the substantive condition of citizenship to the point that it is relatively meaningless. My argument turns on the question of what constitutes ‘rights’, and whether ‘rights’, rather than ‘privileges’, are required for the

enjoyment of citizenship. Without foreclosing on initiatives that speak to new social and spatial arrangements, it is important to foreground here the *quality* of ‘citizenship’ deriving from such struggles. The possibility that we might need to redefine what we mean by ‘citizenship’ in order to find some value in everyday negotiations of the city for disenfranchised groups seems to both the political and the scientific value of current work.

Beyond the political questions reacting to a seemingly casual abandonment of the quality of citizenship, is a more specifically geographical concern related to the understanding of global processes. In this context, the analytical absence of the state – frequently justified on the grounds that informal political activity is being conducted beyond the state – threatens to gloss over the extent to which the state’s role in creating the subject, the condition of the subject, and the frame within which subjectification can be contested is still fully pervasive (Rocco, 2000). Geographers, in particular, have argued that globalization involves a spatialized process of state-based rescaling, involving a rearrangement of mutually constitutive social and spatial practices. As with the global citizenship theories, much of the urban citizenship work appears to adopt very superficial understanding of these processes. For example, Varsanyi (2006) uses spatial language to categorize ‘rescaling approaches’ to urban citizenship, in which she groups together an odd assortment of denizenship and ‘rights to the city’ arguments, while excluding work on global cities, postnationalism, cosmopolitanism, and identity construction, which she classifies in separate categories of urban citizenship. As such, I suggest that the tendency

to devalorize the importance of spatial rearrangements under globalization limits the understanding of the spatiality of citizenship.

Finally, in the context of both the theoretical disconnect and the inadequate attention to the spatiality of citizenship, urban citizenship theories tend to operate with an unproblematized conceptualization of the city, unmoored from the nation-state. As such, the variety of structuring processes involved in producing both the city, and urban subjects are under-estimated. This appears most acutely in relation to the question of formal citizenship status. This is, in fact, a crucial distinction, because the claim to membership in, and rights of, the global city establishes a version of citizenship that is thoroughly different from the modernist version that defines obligations to, and rights from, the sovereign nation-state. However, most theories of urban citizenship fail to make the distinction between making citizenship claims *in* the city (and thus deriving from other scales) and rights *to* the city (where citizenship comes from inhabiting the city itself). Moreover, the way in which the nation-state continues to structure urban conditions, and thus the urban experience for subjects regardless of their formal status, is largely abandoned in urban theories. Arguably then, empirical and normative work on urban citizenship expounds a utopian vision, with limited potential for determining the mechanisms that might advance the city beyond its contemporary form. As Don Mitchell (2005: 86) notes, much of this body of work “is not yet well grounded in the actual legal and social exigencies of city life, operating too often on the normative, idealist plain”. The remainder of this dissertation aims to attend to some of these lacunae.

The condition of urban citizenship in a global city

While global citizenship theory considers various aspects of the politicization of the global city, in terms of the formation of new political identities and concomitant new claims, some are more concerned with the capacities of city governments to respond. Devolution of responsibility has not been accompanied by devolution of power, which has only been further curtailed by the pluralization and dispersion of authority emerging in new systems of governance (O'Loughlin and Friedrichs, 1996; Ruppert, 2000). The question of both vertical and horizontal influence on local autonomy is certainly pertinent to the production of formal citizenship. For example, individual obligations concerning taxation, local state commitments to federal legislation, and quasi-privatized service provision may limit the capacity of the local state to determine the condition of citizenship in the city. However, portraying local governments as pawns of the global economy and/or the nation-state denies the ways in which the contours of local conditions – including the substantive quality of urban citizenship – are, in part, locally determined. Therefore a more useful approach for understanding the extent of local government control over local conditions recognizes that as urban entrepreneurial strategies have supplanted the broad scope of welfare provision in the logic of local government (Harvey, 1989a), the substantive condition of citizenship is increasingly bound up in the local response to global political economic structures. The question for discussion here, then, is what do the processes identified in global cities theory – of cities competing in a transnational urban hierarchy and the concomitant informalization of labor – actually do to the condition of urban citizenship?

Urban entrepreneurialism or corporate welfare?

In the spirit of traditional ‘urban entrepreneurialism’, but in the context of the networked capital flows and new functions established in relation to the global political economy, local government strategies for economic development since the mid-1990s have focused on “linking localities to global webs and investing in human capital” (Clarke and Gaile, 1998: 181). Clarke and Gaile (1998: 185) identify a number of urban policy strategies that, with respect to linking cities into global networks, are exclusive to the current era, including attracting international direct investment, developing international tourism, and establishing world trade centers. Given that New York has always served global functions and operated as a center of world trade, it is perhaps difficult to distinguish between its status as a ‘world city’, with a long history of international influence, and its shift to being a ‘global city’, with the distinction being premised on whether the city has the attributes that specifically pertain to the operation of the current form of the global political economy (Sassen, 2001: 79). However, although New York has always been a center of world trade, evidence of the decreasing orientation to the national economy (Markusen and Gwiasda, 1993) alongside globalization’s cementing of New York as the ‘capital of capitalism’ (Abu-Lughod, 1999:320) suggests that the city is being actively reproduced as a global city.

With respect to developing international tourism, the Disneyfication of Times Square in the late 1990s, turned it from the center of sleaze in Midtown into a sanitized virtual theme park for tourists as well as a prime location for foreign investment in real estate. This purpose-built gentrification was orchestrated through the local BID with significant

public funding serving to pump-prime private investment, and with further involvement from the city in the form of new zoning laws to displace existing enterprises that did not blend well with the new image being created. Just next to the Brooklyn Bridge, South Street Seaport has witnessed a similar transformation. (Boyer, 1992; Zukin, 1992, 1995; N. Smith, 2002b). The displacement of everyday New Yorkers is globalized in terms of the international tourist clientele, but also in terms of the attraction of foreign capital investment. For instance, One Times Square, the advertising structure that dominates Times Square, was purchased in 1997 by the Jamestown Group, a German investment company, for \$110 million, or a 400% increase over the price paid for it 2 years earlier (Bagli, 1997). As an urban entrepreneurial strategy, a policy change from the city's administration turned Times Square toward the global economy for both its consumers and its producers.

Much has already been written on what constitutes a global city, and a considerable amount of this analysis, when it extends beyond the abstract to the empirical, has been concerned with how far New York conforms to these criteria (see Sassen, 1991, 1994, 1998; Friedman, 1995; Knox and Taylor, 1995; Cox, 1997; Crahan and Vourvoulias-Bush, 1997; Abu-Lughod, 1999). Global cities theory contends that the logic of accumulation in the transnational economy is distinct from earlier models in that rather than operating as the home of transnational banks and corporations, global cities are centers of agglomeration of a vast array of small financial and producer services institutions. Thus FIRE (Finance, Insurance and Real Estate) industries are of increasing importance in nodal cities, because financial services especially are crucial for the

operation of global cities as centers of management for dispersed international production systems. As such, growth in FIRE industries is frequently taken as a measure of the extent to which a city is 'global'. As a caveat, Sassen (1991) recognizes that other major, but 'non-global', cities are also experiencing growth in producer and financial services, but she accounts for this by suggesting that similar growth results from incorporation in two distinct economic complexes. Thus, global cities are incorporated into a transnational network oriented toward international investment and service provision, whereas other major 'non-global' cities have specialized producer service provision as a legacy of previous demands and nationally oriented trade and investment.

Following these criteria, Sassen (2001) identifies New York, London, and Tokyo as distinctly 'global' cities. This classification has been endorsed, at least in part, by urban theorists including Friedman (1995) and Knox (1995, 1996). However critiques surrounding the identification of New York, Tokyo, and London as global cities derive from the assertions that they are dissimilar and therefore Sassen's classificatory system does not apply (Markusen and Gwiasda, 1993), and that other cities are equally 'global' (see Abu-Lughod 1995, 1999, on Chicago and L.A. for example). Moreover, Abu-Lughod's (1999: 2) contention that FIRE industries were expanding in New York in the 19th century suggests that the exact contours of the global economy might require some disentangling from the city's legacy. Regardless, it remains apparent that those cities that dominate the global political economy have a set of attributes that, under specific circumstances, local governments can work to encourage within their cities in order to elevate their position in the global networks by, for instance, encouraging financial

institutions, producer service firms, and corporate headquarters to locate in their city.

This is exactly what was happening in New York City during the 1990s.

In the period between 1988 and 2000, New York City gave out over \$2 billion in incentives, mainly to companies in the financial services, banking, insurance, and media industries (Bowles, 2001a). The largest of these enticement packages was the \$600 million given to the NYSE in 2000, with proposed incentives topping \$1 billion in city and state funds by 2001 (Bowles, 2001b). Nasdaq/Amex and Chase Manhattan received over \$200 million; NY Mercantile Exchange benefited by more than \$180 million; and approximately 80 more companies received in excess of \$½ million in commercial retention deals (Bowles, 2001a). Many of these 80 deals offered little in the way of job retention, and frequently there was also little or no job growth. Moreover, half of the 80 companies either sustained direct job losses, or were involved in mergers and acquisitions, often immediately after incentives were awarded (Bowles, 2001a). Perhaps the most notorious case was when CS First Boston laid off 900 workers in 1995, less than three weeks after receiving a tax abatement incentive of more than \$50 million (Bowles, Kleiman, and Thrush, 1999). According to a report from the Center for an Urban Future:

during the Giuliani Administration, this practice has escalated to the point where any large company that even flirts with an out-of-state suitor can expect to benefit from the city's hair trigger tax abatement program. Many firms... received lucrative abatement deals from the city even though they never threatened to relocate.

Bowles, Kleiman, and Thrush, 1999: 1

Giuliani's strategy of bank-rolling large corporations perhaps precipitated the tumultuous economic expansion that incentive packages allegedly engender. However, although

'trickle down' is notoriously difficult to measure, the 1990s largesse in corporate welfare was not accompanied by similar expansion in prosperity for the city's general population. According to a report issued by the Fiscal Policy Institute, the average New Yorker's median wage fell during the 1990s, even as they worked harder and for longer hours (Fiscal Policy Institute, 2002), while 1 in 4 New Yorkers were living below the poverty line in 1999 (Wallace, 2002). Moreover, economic growth stayed on Wall Street. In general the outer boroughs benefited little from Giuliani's strategy as income polarization characterized the 1990s and, most significantly of all, people of color disproportionately absorbed the disbenefits. Even before the 2001 recession and the terrorist attacks of September 2001 shook the city's economy, those hovering around the bottom of the socio-economic order had not recovered their wage levels of the late 1980s (Fiscal Policy Institute, 2002: 1).

Studies such as Sassen's (1991, 2001) or Abu-Lughod's (1995, 1999) have detailed the specific economic conditions that have emerged in New York as a global city. While these studies explicate the conditions of, and for, the financial and service industries, and how these conditions have drawn capital into New York City, there has been less attention to disaggregating the impacts of these changes. Thus New York City may be successful in terms of FIRE industries, attracting transnational capital, or some other marker that identifies global cities, but different impacts are experienced outside elite industries. While the Giuliani and Pataki administrations take credit for an 'economic boom', which they attribute in large part to their tax cuts and other business-friendly policies, dependencies on these sorts of firms, and the business services firms whose

fortunes are tied to them, can lead to significant hikes in unemployment as shifts in the stock market, acquisitions and mergers, or simply the vagaries of commercial banking, lead to vast lay-offs (Eaton, 2001). Moreover, the financial pay-offs of attracting these firms – the direct and indirect taxation, and consumer spending – are similarly dependent on global economic factors beyond the city's control. While socio-economic impact within the global city can be recognized as a consequence of the organization of the global political economy, the specificities of orienting the city toward that logic, with its associated unevenly distributed benefits, risks, and penalties is engineered by the local-state.

Cities undertake investment in human capital in order to generate local advantage in the global economy, attract foreign investment, and stave off a legitimization crisis (Clarke and Gaile, 1998: 184). However, assuming redistribution is of at least some interest, the logic of attracting growth industries is dependent on the assumption that increased investment in the city yields both employment and income to fund social programs through the trickle-down effect. However the lack of jobs deriving from corporate retention deals and the simultaneous wholesale retrenchment of social citizenship programs contradict that logic, at least in practice in New York City. This raises the question of how driving down the cost of labor in the face of increasing global competition fits into the city's interests in attracting major growth industries and strengthening its position as a dominant, global city. For Sassen (1994, 1998), accepted understandings of how inequality and poverty derive from underemployment take on a new dimension within the global city, as "major changes in the organization of economic activity over the last fifteen years have also

emerged as a source of general economic insecurity and, particularly, of new forms of employment-centered poverty” (Sassen, 1998: 137).

Sassen (1991) argues that the occupational structure of global cities, that derive from its new focus on FIRE and producer services industries, generates a polarized income structure of elite and downgraded labor. Although the global city emerges as the center of a new economic geography, the global economy also engenders growing inequality of profits between different economic sectors, economic polarization within service industries, casualization of employment, and the growth of an informal economy (Sassen, 1998: 137, 153) which are all compatible with downward pressure on wages. As such, the contemporary global economy’s wealth creation is both selective and accompanied by the exacerbation of poverty in some sections of the population, with the particular characteristic being the expansion of urban marginality *within* growth sectors, as well as according to the traditional mechanisms of the exacerbation of poverty via the demise of industries and the abandonment of the associated workforce.

Theorists have contested the explanatory capacity of the broad global cities thesis, questioning the empirical evidence and claims of causal mechanisms behind labor migration, informalization of employment, and the growth of sweatshops (see, for example, Samers, 2002), with a general contention that the impetus behind economic activity in any global city cannot be reduced solely to the impact of a unidirectional ‘globalization’ (Abu-Lughod, 1999; Fainstein, 2001; Samers, 2002). Further, questions remain regarding how well global cities theories explain the specifics of income

polarization, leading to the suggestion that the global cities literature is overly simplistic in its analysis of class and the insistence on the dualistic model of class conflict (Isin, 1999a). For example, Fainstein (2001: 283) asserts “that global city-regions in wealthy countries do display high levels of income inequality (although not necessarily of class polarization) but that the explanation given by global-city theorists in terms of earnings is not wholly satisfactory”. Identification of social polarization is complicated by questions concerning how to measure income distribution, as well as how to define the region under examination given the relatively recent suburbanization of wealth. Fainstein’s (2001) comparison of five global city-regions establishes that polarization increased in the 1980s and 1990s, albeit to varying extent in different places. However, the explanations offered for this phenomenon by global cities theory are partially rebutted by evidence suggesting improving conditions for much of the middle income group, with labor force exclusion as the primary reason for poverty rather than increasing participation in downgraded, very low-paid service industries.

Hamnett (1994, 1996) criticizes the specifics of Sassen’s argument regarding both the nature of polarization in global cities, and its causes. He suggests that the polarization of occupational and income structures that Sassen identifies in global cities, where absolute growth in both elite and downgraded labor is accompanied by a declining ‘middle’, may be evident in Los Angeles and New York, but can not be extrapolated to all global cities. Using evidence from Randstaad, in the Netherlands, Hamnett suggests that instead of polarization, ‘professionalization’ is dominant in some cities. In other words, in some cities a ‘new middle class’ is emerging alongside the deproletarianization that derives

from a shrinking unskilled labor force, rather than the labor force being redistributed bimodally by global forces. Following criticism for inattention to the matter of unemployment, which indicates that polarization and professionalization can co-exist (Burgers, 1995), Hamnett (1996) refines his analysis to incorporate the unemployment question and suggests that, in Europe at least, individuals are insulated by the welfare state.

Given the imperative toward corporate welfare identified in the production of New York as a global city, this reliance on a benevolent state is a risky strategy. I return in the next section to the question of how far a model of the state acting in its traditional role as buffer against the excesses of capital reflects contemporary conditions. Suffice here to recognize, first, that the state is capable of generating, rather than redressing, inequality (Wacquant, 1999). However it is equally important to recognize that if the distinction between the U.S. and Europe is simply a matter of the welfare state stepping in to deflect the tendency to polarization, then the economic processes that Sassen identifies are, in fact, apparent, even if local outcomes differ. Thus if the pressures toward social polarization are present in the logic of global capitalism, any lack of polarization as the dominant social condition is fully dependent on a benevolent, or compromised, state, and such insulation is thus fully vulnerable to repeal if the quality of citizenship wanes.

The global cities thesis considers how the social polarization that derives from the operation of the global economy has significant consequences for socio-economic conditions within the urban labor force. However, perhaps seeming counterintuitive,

Sassen's understanding for how this political economic organization impacts urban citizenship takes the form of asserting that those marginalized through this process of polarization are able to make 'new claims' to urban citizenship, by virtue of the significant role played by marginalized labor in the production of the global city and the power of their mobility. The creation of these 'emergent subjects' relies on the 'strategic' role of the global city as a node in the global political economy, rendering it as a new 'space for politics' (Sassen, 1996a, 2000b, 2003b). Moreover, while cities are where the political-economic work of globalization gets done, a complementary understanding interprets the global city as also being the crucial site of postmodernization, as relatively disenfranchised groups congregate and "draw upon the city and use it as an organizing principle" (Isin, 2000a: 6). As such, "cities remain the strategic arena for the development of citizenship. They are not the only arena. And not all cities are strategic. But with their concentrations of the nonlocal, the strange, the mixed, and the public, cities engage most palpably the tumult of citizenship" (Holston and Appadurai, 1999: 2).

This portrayal of the city as a place of new types of struggle for rights, or 'new claims' from new types of citizen-subjects, has inspired a newly burgeoning literature concerning 'citizenship in cities', or 'urban citizenship'. The overarching premise here is "that the transnational flow of ideas, goods, images and persons... tends to drive a deeper wedge between national space and its urban centers" (Holston and Appadurai, 1999: 3).

According to theories of urban citizenship, therefore, global processes have increasingly established cities, rather than nation-states, as the logical arenas, and the most salient sites of contemporary citizenship (Holston and Appadurai, 1999: 3). In other words, the appeal

is not to the city as an inherently democratic site. Rather, the argument is more functional. The impact of global and subnational processes and postmodernization of identity on citizenship are reflected in

how cities make manifest these national and transnational realignments, how cities inscribe the consequences of these changes in the spaces and relations of daily urban life, how cities generate new possibilities for democracy that transform people as citizens, and how cities are both a strategic arena for the reformulations of citizenship and a stage on which these processes find expression in collective violence.

Holston, 1999a: preface

However the form of this urban citizenship appears to be conceptually slippery. For example, Sassen (2003b: 62) understands it as ‘presence’: “a distinction between powerlessness and the condition of being an actor, even though lacking power”. In a similar vein, Holston (2001: 340) defines urban citizenship as having “no formal standing in the sense that it is not recognized in the constitution along with national and state memberships. Rather, it is a de facto regime of new rights and identities. Having no formal status per se, urban citizenship is all substance and symbol”.

From this vantage point, substantive rights apparently emerge despite a lack of formal citizenship, as the marginalized assert their membership in the city, premised on the centering of their active political identity at the urban scale. However, as much as the definition of urban citizenship is somewhat slippery, its benefits are even more elusive.

Some understand the type of community and communication inspired in the city as directly facilitating the exercise of citizenship in terms of ‘insurgence’ and/or violence from groups forming across the political spectrum (Holston, 1999b; Wieviorka, 1999).

Elsewhere a loosely defined set of socio-economic privileges, or even simply the rights to

exist and compete for resources in a downgraded, or even illegal, labor market frequently stand in for 'citizenship rights' in discussions of urban citizenship. For example, the state's acquiescence to illegal land claims in Sao Paulo largely as a result of bureaucratic failure, and provision of the basic services and infrastructure that allows a thoroughly segregated, impoverished labor force access to the city and low-wage work in Sao Paulo's increasingly tertiary economy are interpreted as the rights of urban citizenship (Holston, 2001; Caldeira, 1996).

These alleged 'rights' bear little correlation to the state guaranteed economic and social security that T.H. Marshall (1950) determined to be the pinnacle of citizenship, and which, he argued, would realize the full participation of the individual citizen in the community. The understanding of 'rights' that exercises only minimal claims on the state to act in the individual's or group's interests, fails to even approach a demand for basic welfare. However, the insubstantial quality of the alleged rights in the Sao Paulo example is more problematic than might first appear. First, having instituted policies that made renting accommodation near their city jobs virtually impossible for the city's poor, the city administration's provision of basic infrastructure merely makes it possible for peripheralized labor to get back to the city to participate in the downgraded workforce, and yet is classified as the gain of urban citizenship. Second, the local state effectively granted squatters rights in the face of multiple legal and illegal claims to the same plot of land, after its bureaucratic mechanisms failed. It seems far more plausible that the explanation for both these sets of 'rights' lies in their ability to produce a relatively

acquiescent workforce, that could participate in Sao Paulo's increasing drive to global city status, at minimal cost to the state.

As another example, this problem of over-estimating citizenship is also evident in Holston's (2001) contention that urban rights are being asserted in Oceanside, California's consideration of a culturally specific food market in a poor, Latino neighborhood of legal and illegal immigrants. Arguably, the city's attention to the problem of a lack of stores to serve the neighborhood's Latino residents reflects the localized recognition of cultural rights for non-nationals, or the 'special rights' of Young's (1989) 'differentiated citizenship', although the community had already entered into illegal self-provision through in-home and mobile vending, that the city elected to close down. The assertion of 'cultural rights' did not, therefore, reformulate the operation of citizenship in the neighborhood; rather the disenfranchised immigrant labor force was given sufficient benefits to enable its own reproduction, but in a manner controlled by the city. From these examples, the contention that global democracy has fostered the conversion of "resident nonnationals into urban citizens who exercise a substantive democratic membership in the city" (Holston, 2001: 345) is overly optimistic. Although deploying different versions of agency, I suggest that both the notion of political expression through urban violence, and the enactment of social reproduction through self provisioning, understood as examples of urban citizenship, thoroughly limits subjects to the occupation of interstitial space (Massey, 2005).

In the context of more formal citizenship, T.H. Marshall (1973: 84) recognizes that it is “reasonable to expect that the impact of citizenship on social class should take the form of a conflict between opposing principles”, given that the emergence of modern citizenship coincided with the advent of capitalism (at least in his empirical case study in England). While capitalism asserts class inequality, citizenship, in theory, strives to equalize. For Marshall, this anomaly could be accounted for, historically, in terms of citizenship replacing feudal class inequality with the new sets of inequalities required to sustain capitalism, such that the institution of a specific set of rights was “necessary to the maintenance of that particular form of inequality” (Marshall, 1973: 87). Thus the rights that were afforded to overcome feudal class relations merely served to institutionalize new inequalities. Rather than the global expansion of democracy reorienting the organization of rights at the city scale as Holston (2001) suggests, the self-serving nature of the rights granting tradition is echoed in modern Sao Paulo, where contemporary capitalism’s requirements for an acquiescent, removed, and barely reproduced workforce, have led to the limited affording of certain privileges. The difference remains, however, in the extent to which the state is prepared to guarantee these moments of social reproduction as citizenship rights.

Under certain epistemological assumptions, employment and social conditions may operate as a partial indicator of citizenship rights, but these sets of conditions are not analogous. The main critique of letting socio-economic conditions stand in for citizenship rights, is that the social *privileges* accrued do not amount to the *rights* of social citizenship. The failure to institutionalize social benefits means that no precedent is set

requiring the state to guarantee them as rights, and subsequent claims require new rounds of social struggle. As such, the willingness from some theorists to recognize the acquisition of certain social gains as rights, and therefore as a form of citizenship, is a risky strategy that effectively acquiesces to, and even sanctions, the state's withdrawal from obligations that were won through drawn-out, painstaking political processes throughout the 20th century. Social rights, above all others, are somewhat flexibly defined, even arbitrary, given that they are intended to guarantee a right to the preponderant standard of living. However the weak claims involved in existing empirical evidence seem to suggest that urban citizenship is currently more evident in theory than in practice, with a few fragile examples being stretched to account for some fairly substantial claims concerning the shifting of citizenship to the urban scale. While these examples offer useful insight into contemporary relations between the state and the denizen-subject, to argue their value *qua* citizenship rests on undermining our very understanding of citizenship.

Neoliberal urbanism and the formation of clientalistic citizenship

Neoliberal rescaling

The contemporary political economy appears as the formation of a transnational urban hierarchy, centered on the structural competitiveness of what Scott *et al* (2001) have determined to be 'global city-regions' and the network of linkages that stretch between them, supposedly with little regard for the pre-existing national urban hierarchy (Sassen, 2002b). The economism that characterizes global cities theory pays scant attention to the influence of the state's political organization. However, tensions arising from the alleged

failure of the national-scale Fordist-Keynesian model for managing this shift to a global economic structure have led to a reorganization of the state in terms of the rise in importance of supranational and local government; the shift from government to the increased significance of private and non-governmental interests via governance at all scales; and the re-orientation of policy towards competitiveness within the international order (Jessop, 1999). In other words, the response to economic transformation has been played out in the broadly defined political sphere. However, under global political-economic pressure, an emergent neoliberal state reflects not only a transformation from the functions of the modern, liberal nation-state, but also the displacement of previously national state activity to new scales (Jessop, 1999), establishing new state spaces.

Discourses of global capitalism project a flattened world, undisturbed by irritations of borders, spaces, and distance – of geography (Friedman, 2005; Ohmae, 1990), but neoliberalism is a thoroughly geographical project. Neoliberal logic filters a combination of institutional transformation and rhetorical justification through a spatialized frame, establishing new functions for scales within the global political-economic order.

I argued in the previous chapter that rather than witnessing the deterritorialization of space, we have seen the construction of a spatial ambiguity that involves a specific reterritorialization of space, where discourses of ‘national’ and ‘global’ get selectively invoked in order to determine the implementation of material processes, policies and conditions. This process of reterritorialization involves the strategically selective expansion and retraction of certain functions within those scales, rather than the rise or demise of any particular scale, and the mechanisms of the nation-state are a key operative

in this flexible reorganization of state scale. In other words, the set of processes that we understand as global neoliberalization have instigated a multi-scalar reorganization of previously national systems of state regulatory arrangements that are specifically strategic (Jessop, 1990; Brenner, 2003). It is worth recalling here, that the spatial rearrangement of broad societal conditions is a longstanding practice. The language of scale ordering, multi-scalar relations, and so forth are relatively new analytical concepts, at least in terms of their present deployment. However, the modern construction of a national polity, economy, and populace, and its more recent transformation under global political-economic forces are but the most recent concrete examples of the strategic manipulation of spatial scale to fit conditions reflecting a historical moment and particular state spaces.

In context of the interwoven scalar reorganizations of economy and polity, it is useful to think about scales having both *function* within the global capitalist economy, and concomitant *form* in terms of institutions, social infrastructure, and so forth. To avoid accusations of a purely functional reductionism, it is worth clarifying that this relationship is neither theoretically unidirectional, nor uncontested or free from failure in practice, and therefore cannot be represented as following an established linear trajectory. In fact, the tendency for neoliberalism to mutate in response to its inherent crises is well established, even in its short history (Brenner, 2002; Brenner *et al*, 2005). However the emergent global political economy has provided the impetus for new function/forms for both a nation-state that is no longer involved in securing conditions for mass production, consumption and redistribution as discussed above, and the urban scale.

Scale ordering is inherently relativized, such that in a multiscale neoliberal framework no single scale can be interpreted as necessarily privileged, from the principle that none can be viewed in isolation (Low, 2004). Nevertheless, in the same way that economic global cities theories interpret the city as a crucial site in the global economy, the more expansive understanding of a neoliberal political economy considered here also identifies the importance of cities. Under neoliberalism's enforcement of market rule, the function of cities, for the global political economic order is increasingly seen to be one of production and elite consumption serving aggressive local entrepreneurialism rather than the collective consumption that underpinned the Fordist-Keynesian order (Clarke and Gaile, 1998; Brenner and Theodore, 2002b). The discipline of the market founds the prevailing logic of neoliberalism, having shaped economic, political, organizational and ideological characteristics since the 1980s (Brenner and Theodore, 2005). Although neoliberalism has been popularly projected as the 'rolling back' of the state, in keeping with standard 'free market' rhetoric, it is more accurately portrayed as the simultaneous 'rolling back' and 'rolling out' of the state (Peck and Tickell, 2002). Effectively, while some state functions are 'rolled back' to mimic wholesale deregulation, neoliberalism in practice (or what Brenner and Theodore, 2002a term "actually existing neoliberalism") turns on the very specific imposition – the 'rolling out' – of certain market-based practices and policies.

In effect, transformations in the economy and the polity have fostered the emergence of new social realities that combine in the erosion of economic, political and ideological functions of the Keynesian welfare state, and the emergence of a 'Schumpeterian

workfare regime'. With the impetus of entrepreneurial capitalism as the guiding logic, international competitiveness, social policy oriented towards enhancing production, and the support for private interests, have replaced previous priorities of full employment and redistribution as the underpinning of a strongly supported national labor force (Jessop, 1999). More specifically, neoliberal principles have been

deployed to justify, among other projects, the deregulation of state control over major industries, assaults on organized labor, the reduction of corporate taxes, the downsizing and/or privatization of public services and assets, the dismantling of welfare programs, the enhancement of international capital mobility, the intensification of interlocality competition and the criminalization of the urban poor

Brenner, *et al* 2005:1

For Wacquant (2001: 81) this neoliberal order can be characterized as the “erasing of the economic state, dismantling of the social state, and strengthening of the penal state”. The concomitant form of the city is what becomes an issue for questions of local citizenship. In the analytical ground between questions of state intervention in constructing these neoliberal landscapes and assertions of the viability of resistance via ‘new claims’, lie the rationale behind, and the practical creation of, new forms of injustice, exclusion, and disenfranchisement that exactly undermine citizenship, in both its formal and substantive senses.

Rescaling citizenship

Urban entrepreneurialism has been criticized for its lack of concern with social welfare as the increasing inter-urban competition that it inspires (Short and Kim, 1999) leads attention instead to the “naked requirements of capital accumulation” (Harvey, 1989b: 367) by cutting local state ties to Keynesianism. Exactly these consequences have

emerged from New York City's entrepreneurial model (Mollenkopf and Castells, 1992; Fainstein, 1994) as witnessed by the depth of income inequality in the city (Fainstein, 2001). Moreover, as corporate interests become institutionalized via the organization of growth coalitions and general governance strategies, welfare goals are subordinated to local growth aims, and the quality of citizenship necessarily wanes. As globalization of systems of production undermine capital's commitment to, and investment in, a particular place, not only are production and reproduction increasingly de-linked, but the state's incentive to maintain social reproduction is also weakened.

In this context, Brenner *et al* (2005) define neoliberal urbanism in the form of moments of 'destruction' – of the nation-state's systemic, bureaucratic, and financial support for the local state and its modes of social reproduction; of public services, housing, infrastructure, education and public space; and of nationally sponsored systems of protection and redistribution – and the simultaneous 'creation' – of devolved opportunities, responsibilities and risks in the face of globalized investment; of privatized governance, services, and consumption; and of the creation of spaces and structures for opportunities concerning investment and labor markets that unevenly mete out their benefits and disbenefits. Examining these conditions for signs of citizenship, it becomes clear that neoliberalism in the city undermines social and civil conditions, taking the form of wage suppression and the decimation of public spending, hypersurveillance, and the erosion of rights, freedoms, and the democratic process (Sandercock, 2005).

Sassen specifically understands new claims in terms of the capacity to operate within a globalized labor force, but more generally the argument for citizenship in global cities works on the premise that access to global institutional forms, whether democracy, individualistic human rights, or the global labor force, facilitates individuals' capacity to socially reproduce themselves. As these theories abandon the need for the state's buffering, or mediating, role, individuals are left in a direct relationship with capital. Rather than citizens, buffered by the state, subjects become clients, abandoned to the market. Moreover, given the argument that an individual's position in the global labor force enables them to assert citizenship claims, this direct relationship with capital is where labor purportedly is able to derive citizenship. However, in modern citizenship, social rights comprise the state intervention required to facilitate individual consumption and social reproduction. For individuals to consume as citizens, rather than as clients, the state intervenes, in the form of economic goods and services, to prevent the market value of labor from determining real income (Marshall, 1950). Without that level of state intervention individuals are simply clients, with unequal capacity to compete in the private market for the services necessary for social reproduction.

While the inequalities preserved in modern citizenship never realized the removal of social inequality, nor destroyed the class system or other mechanisms and structures of discrimination, social citizenship effectively reduced the inequalities associated with the operation of the market (Marshall, 1950). To accept the alternative, 'clientalistic' form of citizenship leaves individuals without protection, and vulnerable to their labor market position for their access to reproduction. Beyond the immediate problem of how those

without access to the labor market can self-reproduce, the acceptance of the clientalistic form of citizenship sanctions state withdrawal from all forms of social reproduction. This legitimation has broader consequences than those concerning the possibility for non-nationals to secure the rights of social reproduction. The state's general retrenchment and privatization of social service provision has had a profound effect on the citizenry of modern capitalist societies and their capacities for social reproduction.

However, rather than taking the form of a simply defined social polarization, as outlined in global cities theories, a wider system of rights denials is in operation. The consequent privatization of public goods, services and spaces leads to the management of the retreat from social reproduction through the literal displacement of 'social problems' from city streets (Katz, 2001). As Don Mitchell (2001) notes in his discussion of the 'post justice' city, the end of social programs designed to achieve minimum standards of housing, education, and employment has entailed more than simple inculcation of systems of neglect. The contemporary response to homelessness takes the form of criminalization of the homeless, attacking the victims of the problem rather than finding solutions for the problem itself via provision of social housing. This particular example of criminalization has been facilitated by the broader set of practices, tagged 'zero tolerance' policing, that targets various fractions of the population for disenfranchising procedures. These practices of zero tolerance policing are indicative of the shift to social management by discipline, rather than by welfare (Wacquant, 2001: 81).

Rather than simply abandon social reproduction, then, the local state is actively involved in the production by discipline of citizen-subjects (D. Mitchell, 2001). Wacquant describes the ordering and operation of this process of disenfranchisement as the “‘government’ of social insecurity” (2001: 81). In social theoretical debate, New York City perhaps has been the exemplar – for Wacquant (2001) it is the ‘showcase’ – of the state’s vigorous assault on a swath of groups, as identified in Neil Smith’s (1996, 1998, 2001) critique of Giuliani’s ‘revanchist’ regime. The retreat to the market following fiscal crises during the 1970s, exacerbated by the failure of liberalism in the city, led to a series of social problems that provoked the hypervigilant, and ultimately hyperviolent response of the NYPD’s tyrannical “social cleansing strategy” justified by an anti-crime discourse (Smith, 2001: 69). Thus the particular conditions of civil rights abuses delineated in the empirical evidence of police brutality and repressive behaviors (chapters 2 and 3) can be established in the context of the broader political economic structures that define the global city. Whereas in global cities theory, the bifurcated conditions of existence for labor are simply a function of demands from the new political economic order, here the state is recognized as being specifically implicated in the reproduction of the polarized labor force. This reproduction has a two-dimensional effect: it criminalizes the excess labor force while simultaneously pandering to elite interests. Effectively, global cities theory tells only half the story, as having recognized the demand for a polarized labor force, no theoretical attention is paid to how this polarization is then managed. Clearly, then, this leaves theoretically weak any claims made in global cities theory concerning transformations in citizenship.

Some theorists recognize the direct connection between the conditions for labor, the state's disciplinary practices, and changing demands for labor as establishing police brutality as part of a broader punitive system. Wacquant (2001) identifies zero tolerance policing as indicative of a shift from the welfare state to a 'penal state', which disciplines those members of the working class who have lost their traditional employment, and warehouses surplus labor through imprisonment. As well as underwriting the operation of the labor market by warehousing the poor, mass incarceration also facilitates direct economic exploitation of prison labor while simultaneously facilitating the redistribution of capital via federal government's sustenance of the prison-industrial complex (Herivel and Wright, 2003). Beyond immediate concerns of unequal treatment in relation to confinement, the consequences of imprisonment for individuals are increasing problems re-entering the labor force and a concomitant propensity to recidivism. These problems largely derive from stigmatization and social expectation for recidivism (Peck and Theodore, 2006). Moreover, imprisonment and the associated desocialization⁴⁴ of labor (Wacquant, 2001) work in concert to comprise a systemic material reality and discursive certainty that pre-emptively render labors structurally non-threatening to the interests of capital and the state. Through imprisonment, the practices that lead up to it, and the associated undermining of subsequent life chances, the penal state disciplines by undermining disruptive elements of the labor force, while simultaneously asserting its own authority (Wacquant, 2001).

⁴⁴ Wacquant's understanding of desocialized labor is literally that portion of labor subjected to the opposite of social reproduction, whereby social stability among the low and un-skilled labor force is undermined by removing socio-economic rights and leaving them to the vagaries of market forces. This understanding dovetails with what I will refer to in the next section as clientalistic citizenship, where citizen-subjects are rendered clients by virtue of the absence of the state buffer, and the logic of the market determines the manner of social reproduction.

The central question here, however, is as much to do with processes of differentiation as it is to do with disenfranchisement. As Wacquant notes, the emergence of

the paternalist penal state, it must be stressed, does not target all Americans. It is trained primarily on the destitute, the disreputable and the dangerous, and all those who chafe, in the lower regions of social space, at the new economic and ethnoracial order being built over the rubble of the defunct Fordist-Keynesian compact and the dislocated black ghetto: namely, the colored subproletariat of the big cities, the unskilled and precarious fractions of the working class, and those who reject the 'slave jobs' and poverty wages of the deregulated service economy and turn instead to the informal commerce of the city streets and its leading sector, the drug trade.

Wacquant, 2002b: 382

While not exclusively the provenance of African Americans, the history of labor disenfranchisement has been tightly intertwined with processes of racialization. Despite morphing into different forms as it follows the history of the economy and of social struggle, the racialization of labor in North America has always concerned the extraction of labor and the process of social ostracization, and has always centered on African Americans (Wacquant, 2002a: 44). Imprisonment then serves as the apex of the attendant criminalization of Black and Latino youth, which itself reflects the propensity of politicians, state officials, and broader social discourse to deal with social problems through "ill-conceived public policy and policing practices.... as a substitute for policies that promote social economic, and racial justice for people of color" (Daniels, 2000: 250).

In the contemporary city, we find that racially selective incidences of police brutality and broader invasive procedures (such as those in New York City outlined in chapters 2 and 3) are part of a racialised penal system that particularly targets African Americans.

Attending to imprisonment, which obviously serves as the apex of the penal state's

battery, the ethnic composition of the prison population is predominantly black; incarceration rates are disproportionately high for blacks even though the arrest rates have remained stable, and the cumulative lifetime probability of imprisonment is stunningly high for the black population (Wacquant, 2002a: 43). Imprisonment establishes a cyclical, structural system of disadvantage as those with criminal records experience vastly diminished expectations for re-entry (or entry) into the workforce. Adding persistent segregation into the dynamic, the consequence of large-scale racialised incarceration is a range of vastly deleterious social and economic effects in specific neighborhoods and parts of the city, as ex-convicts return to their home communities (Peck and Theodore, forthcoming).

Civil and political citizenship are fundamental in the modern version of the capital-state-labor relationship. Failure to attend to broader issues of citizenship is, then, a crucial flaw in an attempt to understand urban citizenship. The state's withdrawal from its role in citizenship is often couched in terms of a lack of social provision that I conceptually extend to clientalistic citizenship. Here, however, we see that the state has not just retreated to clientalism, but has entirely redefined its relationship with labor, centering it around discipline and control instead of social reproduction. The unequal distribution of illegitimate state intervention is manifest in the incidence of police brutality, violence and hypersurveillance in New York City, as discussed in chapters 2 and 3. Drawing on Macpherson's (1985) understanding of civil rights as rights held against the state, this type of invasiveness comprises the denial of civil rights. Urban citizenship theory suggests rights can be drawn from the city, but fails to attend to the ways in which the

localized denial of civil rights thoroughly undermines this assertion, and effectively sanctions the state's withdrawal from citizenship with respect to civil rights as well as social rights. This evidence suggests that the entire relationship between labor and the state, and therefore citizenship, is being transformed. Carelessly sanctioning this transformation effectively dismisses both the social and institutional history of the struggle for citizenship rights.

Clientalistic citizenship

The social rights championed in global citizenship theory do not encompass political or civil rights. Moreover, social and economic rights are, logically, most easily granted, but are inherently the set of rights most open to revocation owing to their statutory nature (S. Smith, 1989). Paradoxically, they are often the rights championed and appealed for, as they can provide instant relief from the most immediate ramifications of unequal socio-economic conditions. However, fundamental change, rather than superficial mediation of ills, derives from engendering equal membership in civil society and equal access to the political means to alter social conditions. Beyond the obvious problem of surrendering the ability to make claims against the state, the dilemma here is that the ability to engage in self-reproduction and associated claims are thoroughly enmeshed in the intersected social, political, and civil rights. Social privileges, or even social rights, are not just insufficient in isolation, they bear little meaning outside simultaneous civil and political rights. In this context, Hamnett's (1996) reaction to the global cities theory – that social polarization is not experienced outside the U.S. – misses the broader *societal* polarization

reflected, for example, in the racism and anti-immigrant mentality that is currently sweeping Europe, and that speaks to questions of civil, rather than social, rights.

The fundamental premise behind the celebration of urban citizenship follows the argument from postnational citizenship, that political membership is changing to the extent that certain rights can be achieved without access to the whole set of rights comprising full citizenship. In other words, the linear model of civil, political and social citizenship is no longer relevant, or necessary, given the prevalence of individuals living and claiming rights outside the nation-state where they formally hold membership.

However, as T.H. Marshall (1950) notes, although civil, political, and social rights derive from different institutional bases, and therefore civil rights do not guarantee other rights, they do sustain the acquisition of other rights. Marshall departs from standard liberalism's argument that all citizenship rights derive from civil rights, especially property rights, claiming instead that different sets of rights attach independently to citizenship status, arguably, then, ceding to the postnational thesis. However, the achievement of civil rights is crucial because of the way they sponsor access to further rights. The ability to exercise political power, which in turn facilitates the demand for social rights, depends on recognition of individuals as free and independent agents (Marshall, 1950). Without this sequence, access to political and social rights is inherently fragile, prone to being eliminated, and capable only of generating the weakened form of citizenship.

If citizenship is interpreted in terms of a compendium of distinct sets of rights, it is easy to see how gains in social benefits can easily be offset by processes of retrenchment organized around larger, or merely alternative, events (for example, see Herod and Aguiar, 2006). Thus, rather than simply failing to support the assumption of social and political rights, the denial of civil rights actively undermines access to broader systems of rights. Thus, beyond questions of the state's increasing absence from social reproduction practices, and the processes that unequally structure citizen-subject's abilities to reproduce themselves, the broader problem here is that without coherent and consistent civil rights, individuals are not protected against incursions from the state.

While the current retrenchment of social citizenship implies the absence of the state, it is only absent with respect to its functions in engineering social reproduction and buffering labor from the effects of the market. However, as detailed above, the state is ever-present in terms of the discipline and control of labor. In terms of understanding how this relates to civil rights, and citizenship rights more broadly, it is useful to distinguish between the rights that guarantee the provision of benefits *by* the state (social rights), and rights that provide freedoms that the state cannot invade, or rights *against* the state (civil rights) (Macpherson, 1985). The state holds the power of discipline in terms of equal access to discipline and punishment by the legal and judicial systems. However, civil rights against the state theoretically provide the right not to be criminalized or subjected to illegal and unfair treatment with respect to the operation of discipline, control, and invasion of private space, including the body. Thus the material consequences of neoliberal urbanism take the form of the retraction of rights received both *from* and *against* the state. In the

words of theories of the neoliberal state, then, while certain functions of the state that relate to citizenship are very much “rolled back”, others are aggressively “rolled out”, and this manifests through a rescaling that transforms state functions as they move between scales.

Previously documented incidences of police brutality and aggressive tactics on the streets of New York City reflect a form of discipline and control by the state that thoroughly undermines the freedom required to exercise any social rights achieved. Thus, while social privileges might make existence somewhat easier, the constant presence of a hyperviolent police force leaves the new ‘citizens’ no closer to any form of security. In New York City, any advantages gained by immigrant labor’s ability to operate as part of an informal, downgraded, and illegal labor force are consistently undermined by the constant threat of police brutality, aggression and hypersurveillance. Ultimately, the absence of the state in social reproduction systems can be navigated, even if such a retreat is experienced thoroughly unequally. However, recognizing that certain citizen-subjects cannot resist an active state presence – in the form of incursion – is an entirely different matter from the abandonment of social reproduction.

Practicing differentiated urban citizenship

Arguably, globalization has issued in a new *de facto* logic for the practice of urban citizenship. While the evidence presented here suggests that the optimistic theories presented might belie the reality of the contemporary urban condition, globalization has still transformed the condition of actually existing citizenship in cities. However, rather

than new subjects asserting citizenship rights in the city, the clientalistic form of citizenship – where social reproduction is replaced with management by discipline, or *antisocial* reproduction – is the new institutional form of the relationship between capital, the state, and labor. In other words, the problem of clientalistic citizenship is experienced not only by non-nationals, but also by formal citizens, as the quality of citizenship as an institutional form declines. As such, while theorists laud apparent new levels of access to the rights of citizenship, the quality of those rights is in such decline that any access achieved has limited value.

The key to understanding universally clientalistic citizenship, however, is the way in which clientalism itself is disproportionately experienced. The retrenchment of state sponsored social reproduction in the city is not problematic for those who can afford the practices of private consumption. Similarly, the imposition of state discipline is not equally felt, as brutality and the wider practices of state discipline are socially and spatially differentiated. Effectively then, the changing role of the state, from buffer against capital to facilitator of capital has an unequal impact. Urban citizenship theories tend towards the abstract citizen-subject, by using an overly homogeneous understanding of ‘labor’ in an attempt to erase the binary interpretation of the citizen with full rights versus the non-citizen with no rights. Given that these differences have not been overwritten, in practice, the key question in relation to ideas about urban citizenship becomes how those structuring processes work. In this context, existing ideas on difference among citizens, established in the ‘pre-global’ context, is useful for examining

the formation of categories of citizens and the different access to power resources held by these categories.

The role of the nation-state

Individual subject positions are established both directly through the machinations of the transnational economy, and indirectly through the impact that economic transformations have on the city they inhabit. The transnational economy operates in multiple ways to position subjects hierarchically – by underpinning a direct process of privatized dis/enfranchisement; by undermining the logic behind national citizenship; by determining the capacities of local states to respond to the needs of their inhabitants, and then by abandoning the disenfranchised to systems of discipline established by the local state to manage the local labor market. In other words, as social reproduction is denied, the demand for the anti-social reproduction of labor discipline expands. However, the nation-state is crucial, in terms of its role in maintaining the social cohesion that simultaneously legitimizes the relative disenfranchisement of sections of the population, and the demise of citizenship as an institution.

For some, the process of ‘glocalization’ (Swyngedouw, 1997) that characterizes the global political economy appears to signify the decreased significance of the nation-state. However, despite the contradictions that emerge from globalization and regionalization exerting pressure on the nation-state, the emergence of the transnational urban hierarchy is, in many ways, sponsored by the nation-state. Thus neoliberal rescaling can better be understood as a national project that reconfigures the organization of scales within the

global political economy. Even while the project of neoliberal urbanism entails devolution, the nation-state has maintained many functions, particularly related to sovereignty, political organization, and securing social cohesion, and has rearticulated itself in the capacity of mediator for the multi-scale organization of internationalized production systems (Jessop, 1999).

Certainly both the nation-state and central government work to secure their own legitimacy, in part by maintaining the meaning of national identity and citizenship. However the role of the nation-state here is particularly relevant in terms of facilitating the process of local differentiation. This has happened in part through the institution of devolved neoliberalism as a new system of governance, but also through the retrenchment of the welfare state system in 1996, and particularly via an ambiguous immigration policy that renders flexible immigrant subjectivities. The relationship between the U.S. and Mexican labor perhaps best typifies this flexible arrangement that serves U.S. labor demands. Historically, Mexican labor has been imported through the braceros program, deported through “Operation Wetback”, or usurped through the Maquiladora program, according to fluctuating demands in U.S. labor requirements (Carrasco, 1997). Katharyne Mitchell (1995) and Aihwa Ong (1996) have complicated the idea of the automatic disenfranchisement of immigrants. Mitchell (1995) shows how wealthy immigrants, particularly from Hong Kong, entering Canada through the Business Migrants Program have thoroughly redefined citizenship and local political and social structures in Vancouver. Ong (1996) discusses the ways in which subjects are produced through their own actions and those of the state, as they are subjected to an ‘ideological

blackening or whitening' that shapes their respective experiences of immigration. As such, it makes no sense to understand immigration outside the context of race (Liu, 2000).

Although this flexibility effaces the legal/illegal distinction that dominates hegemonic discourse on immigration, by the mid-1990s the distinction of formal status had been strengthened, and there had been a simultaneous push toward distinguishing between the rights of legal aliens and citizens (Aleinikoff, 1997). Through the 1990s national legislation has moved towards eliminating social welfare for legal aliens – “a dramatic shift in national policy” (Aleinikoff, 1997: 327) – at an estimated saving of over \$20 bn a year, despite the fact that permanent residents fulfill the same duties in terms of taxation and military service obligations that full citizens hold, and that constitutional law disallows such discrimination. Thus, even if formal status does not maintain the in/exclusion that underpins traditional citizenship theory (if not practice), the nation-state retains a strong role in securing the differentiation of immigrant labor.

While a homogenous 'immigrant' does not exist, and status based on class and education, for example, may be able to insulate labor from the more extreme impact of the racializing moment (Portes, 1981; Portes and Rumbaut, 1996), systems of socio-economic organization still cluster immigrants into niches (Waldinger, 2001); much of the immigrant population – and all of the illegal immigrant population – is distinctly structurally disadvantaged, often precisely in the instant of crossing the border and being subjected to delegitimizing state structures; and furthermore, the racialization of even

wealthy immigrants persistently shapes their socio-cultural experience (Mitchell, 1995; Ong, 1996). Assertions of identity-based citizenship claims must, then, recognize that the possibility of ‘new claims’ is thoroughly dependent on the state’s formulation of the alien-subject.

This process of differentiation is played out in the urban environment, making the city a different place for different people. Urban citizenship theories tend to underemphasize the distinctions between differently positioned subjects, either through an assumption of the nation-state as irrelevant, or by inadequate attention to formal status as the marker of accession to rights. For example Ehrkamp and Leitner (2003: 128) contend that it is “misleading to reduce citizenship to nationality and naturalization conferred by the state”, but the political activity they identify among Turkish immigrants in Germany precisely depends on their formal, legal status as guestworkers. Meanwhile there is no attempt to distinguish between the ‘urban citizenship’ of guestworkers, and of that asserted by the ‘illegal urban poor’ (Holston, 1999b); ‘informal downgraded labor’ (Sassen, 1991, 1996); or ‘housewives’ (Sassen, 2003b). As much as this suggests inadequate attention to the differentiation of subjects, it also points to a problematic oversimplification of the city as political space. Rather than rehearse questions of how different subjects might be able to deploy different uses of the city as political space, the somewhat distinct notion of the right *to* the city is a useful contrast, in that it shows exactly how different the city would need to be for ‘urban citizenship’ to be effectively invoked.

With respect to those theories that deploy the Lefebvrian argument of rights *to* the city, new combinations of scale form-functions are perhaps even more problematic as the premise of rights accessed through national membership and formal citizenship are abandoned entirely. If the city is intended as the formal limit of citizenship, with respect to both identity and scale, the function of the city in capitalism and its concomitant social form contain the full extent of citizenship activity, with even greater impact than the current limits on the quality of national citizenship. Theoretically, however, work that takes Lefebvre as the point of departure specifically intends a normative revamping of citizenship, as part of a larger reorganization of broad social structures. Thus rather than make the claim that contemporary conditions yield rights for immigrants, the argument starts from the assumption that city inhabitants *should* be afforded the benefits of citizenship given their investment in and attachment to the city. In this vein, Purcell (2003: 564) argues that “in order to resist the growing control of capital over the global political economy, one important project is to develop new notions of citizenship that expand the decision-making control of citizens”. The form/function of scales argument is instructive here, not as critique but as recognition of how the city scale would need to be re-orientated, contra current global political economic logic, in order to operationalize currently utopian normative ideas of the city as an inherently democratic site, and of urban citizenship. Staeheli (2005) suggests that the capacity of cities to provide citizenship might be *shrinking*. This chapter has argued that conditions are as much a question of interest, and therefore of power relations, as of capacity. As such, I suggest that interrogating the form/function of the urban scale in the global order is crucial if we are to attend to questions of whether the city can and will offer citizenship rights.

Conclusions

Either implicitly or explicitly, theorists of urban citizenship work from the premise that citizenship is not limited to the formal status conferred by the state. Certainly under evolving global conditions, political identities, social conditions and state formations are undergoing transformations, and these changes should not be dismissed lightly. However, citizenship has never been a static formation, and simply because contextual changes are emerging, there is no reason to believe that evolution of citizenship will work inherently in the interest of subjects. As Marston and Mitchell note:

the state's relationship to citizenship is always shifting, sometimes contradictory and inevitably interrelated with the form and logic of capitalist development... The state's position in relation to capital is absolutely crucial in understanding how and why citizenship comes to be defined or redefined in the manner it does. This goes for both the local state, urban development and the practices of citizenship at the neighborhood or city scale... as well as to global capital, and the practices of national citizenship.

Marston and Mitchell, 2004: 95, 101

While the problem of 'status' is recognizable, reducing citizenship to a process necessarily loses the certainty of status as the basis of claims, and presents unprotected labor in a fundamentally unequal interaction with a capital-state alliance that is unlikely to achieve sustainable and consistent advantage. There is a significant difference here between accepting that citizenship status no longer offers the same benefits and protection as when single membership in a sovereign nation-state was a rational (if not particularly egalitarian) way of organizing societies, and rejecting out of hand the value of citizenship status, even as an ideal.

The contemporary system of social reproduction – and the concomitant order of subjectification and repression – is a significant measure of the way neoliberal urban governance localizes the global political economy (Katz, 2001). Thus, while it is important to recognize that the policies and practices invoked in neoliberal urban governance have not been imposed uncontested, and that in no way have the state or civil society remained static through changing political-economic realities, I suggest that it is important to uncover state practices not as an inherent or determining limit to subjectivity and citizenship, but as a crucial component in the conditions that produce the subject. Considerable amounts of ethnographic data have been amassed on more or less successful localized political struggles involved with asserting citizenship rights. The question remains, however, what does it mean for our understanding of citizenship, if *rights* are accepted as determined in particular struggles against the state over individualized, substantive matters, or even against capital, rather than in generalized, formal institutional structures?

In reaction to the contention that formal citizenship is not necessary for substantive citizenship rights, Garcia (1996: 8) wonders “whether these social rights can be considered rights of citizenship”. This argument turns on the question of what constitutes ‘rights’ and whether ‘rights’, rather than ‘privileges’, are required for the enjoyment of citizenship. Without foreclosing on initiatives that speak to new social and spatial arrangements, it is important to foreground here the *quality* of ‘citizenship’ deriving from such struggles. Extending Garcia’s concerns, I suggest that there is a potential danger for

theories of urban citizenship to stretch both the meaning and the substantive condition of citizenship to the point that it is relatively meaningless.

Primarily, then, rather than asserting that identifications of urban citizenship are wrong, what I am attempting to problematize is the way in which transformations to the institution, and thus the quality, of citizenship are accepted, even trivialized. Claims for local manifestations of cultural citizenship and self reproduction are limited indicators of citizenship, because they fail to assert social citizenship claims against the state, but more importantly because they offer no protection from an incursive state that denies civil citizenship. Simultaneously, exalting urban violence and 'insurgent citizenship' (Holston, 1999b) risks restricting oppositional practice to interstitial space (Massey, 2005), when structures of citizenship as writ large by alliances of capital and the state occupy center stage. Certainly assertions of new political identities and the exertion of active citizenship through oppositional form both occupy and create spaces of political engagement that warrant investigation and recognition. However to validate these activities *qua* citizenship, fails to recognize the spatial reorganization of the context and the production of contemporary citizenship.

There is more at work here, however, than national scale promotion of systems that underpin the emergence of a neoliberal transnational urban hierarchy. While networked global cities might dominate a political-economic order that operates according to a new, global imperative, the neoliberal logic necessarily detours into path-dependent outcomes as it butts against existing, locally specific Fordist-Keynesian regulatory legacies

organized around nation-state based scale hierarchies (Brenner, 2002; Brenner and Theodore, 2005; Brenner et al 2005). With the advent of globalization, the emergence of a network of global cities that comprises the transnational urban hierarchy necessarily complicates existing tensions between national and local scales, as cities are simultaneously connected into, or excluded from, distinct national and transnational urban hierarchies with competing logics and objectives.

The simultaneity of distinct national and transnational urban hierarchies has consequences for the fortunes of both cities and citizens. The demise of Fordist-Keynesian systems of mass production and consumption has been unevenly experienced, as certain cities have felt the full weight of deindustrialization, while others have flourished as global cities in comparison. Still other cities – e.g. Boston, and San Francisco (Sassen, 2001) – have been able to reinvent themselves, without emerging as particularly ‘global’ cities or orienting toward the transnational economy, emphasizing the importance of the continuation of the national political economy, even if in transmuted form. The operation of the global economy inspires competition, place marketing, and reorganization of the regulatory process (Leitner and Sheppard, 1998) that both establishes a hierarchy of cities governed by their capacities to respond, and reorganizes the social-institutional form of all cities. Thus the relative fortunes of cities affects both their capacity to provide citizenship, and the opportunities available for their inhabitants.

In one sense, then, the rescaling processes that comprise the neoliberal form of relations between capital, the state, and labor have spatialized citizenship, by reorganizing the logic of empowerment, and associated operation across and in space, for each of its interested parties (capital, state, labor). Thus the spatial dialectic of the global political economy, and the scalar framework through which it is constituted, shape the institutions and the place specific conditions that inform our understandings of contemporary citizenship. However beyond neoliberal scaling in the broad, contextual sense, the production of citizenship itself is being re-scaled as much as the material re-organization of any other socio-spatial arrangement subsumed within the global political economy. This is not to suggest that the formal status of citizenship has moved away from the national scale, rather that the institutionalized form of citizenship, as much as its constituent elements of capital, the state, and labor, has been radically altered by the broader rescaling of the political economy.

Forms of citizenship reflect the historical moment of their construction, as negotiated through relations between capital, state and labor. As modern citizenship built around the national economy gives way to a 'more global' form, urban citizenship theorists are effectively sanctioning a disaggregated, clientalistic citizenship as the inevitable manifestation of capital, state, and labor negotiation under the global political economy. The clientalistic form deploys the logic of the market to differentiate by labor value, and weakens accessible citizenship by disaggregating the compendium of its elements. With the shift in organization of the capital-state-labor relation from the national to the local scale, the quality of citizenship fails to re-emerge at the urban scale intact, and the

compendium of constituent elements do not re-coalesce as social rights underpinned by civil and political rights.

My aim in this chapter has been to expound the actually existing conditions of contemporary citizenship, and explain what I have described as a clientalistic form, through a spatialized lens. A lacuna exists in narratives of urban citizenship deriving from what I suggest is a relatively unsophisticated spatial argument about the fundamentally spatial phenomenon of rescaling citizenship. The basis of my critique of these urban theories, is that citizenship does not shift scale intact, precisely because the form and function of processes operating at distinct scales have changed. While the spatiality of social life is axiomatic in the social theoretical realm that urban citizenship theories contribute to, I suggest that the full implications of this mutual spatial-social constitution have remained under-examined in both the context that defines the logic of citizenship, and the more particular disaggregated organization of its institutional form. There is no doubt that scale changes are implicit in assertions of the global city or assertions of new political identities. However, the extent to which 'citizenship' has been structurally transformed through the process of its scale-shifting, with inherited consequences for its quality and the concomitant treatment of subjects, arguably remains obfuscated unless theories of spatial scale are made explicit in understandings of citizenship.

According to Marshall (1950) the transformation of citizenship rights serves to underpin the shift to new stages of political-economic organization. Thus the withdrawal from citizenship is directly related to the interests of the state. Although Marshall's claims

remain relevant in terms of the processes described, identifying the interests of the state in the context of the shift to a new political economic form – contemporary globalization with its global-local connections – means that the interests of the local state are as pertinent as those of the nation-state. Regardless of whether Sassen's contention that the global city requires a polarized labor force is accepted or not, global cities attract significant amounts of low-grade labor, both immigrant and citizen. The empirical evidence from New York City shows that rather than attempting to socially reproduce that downgraded labor force in order to secure their acquiescence, the local state maintains a system of discipline through violence, control, and fear. Understanding this relationship through the lens of citizenship allows us to recognize the quality of the relationship between labor and the state as more than a coincidental consequence of the requirements of a global city. Both social and civil citizenship are actively denied to illegal and low-grade labor, the unemployed, and the homeless.

It is too simple, however, to understand this organization of citizenship conditions as a direct and unmediated reflection of the city's interests and capacities. Both are contextualized in an explicit set of relations that emerge between the global, national, local, and body scales under contemporary globalization, and that exhibit a specific politicized geography. Understanding this geography can retain the theoretical insights that global cities theory offers to a conceptualization of urban citizenship, without accepting some of the more naïve interpretations of the state's role in social organization. A specifically geographical understanding of the contemporary organization of labor challenges the suggestion of equal access to globalization implicit in the global cities

argument that because “the international market... has its own rules and networks that contradict national boundaries, both rich and poor immigrants also successfully evade state control to a significant degree” (Holston and Appadurai, 1999: 13).

CONCLUSIONS

Three thematic strands are drawn through these concluding remarks. They concern 1) the transformation of the empirical condition of contemporary citizenship, or the state-subject relationship, as it appears in various types of places; 2) the reorganization of theoretical frameworks that can be used to theorize that contemporary form; and 3) the deployment of these somewhat abstracted theoretical tools to help conceptualize the struggle between hegemonic futures and alternative oppositional possibilities of citizenship under global conditions, without retreating to what I have argued here are the overly-optimistic interpretations that tend to dominate the current literature on citizenship. I examine each of these strands here although they cannot be held distinct, even for analytical purposes, as empirics, theory and politics slip and fold into each other. I start by rehearsing in broad terms the critiques to be leveled at existing theories within the globalization/citizenship debate, before proceeding to draw out an alternative understanding of the role of the state in forming citizenship conditions under globalization. I then make explicit the need for a rather more complex understanding of the spatiality of citizenship that is offered in contemporary versions of globalized citizenship theory, before using that frame to conceptualize how we might think about possible alternative futures for subjects, citizenship and the spaces of globalization.

The transformation of citizenship and the globalization/citizenship debate

The broad empirical conclusion to be drawn regarding the condition of citizenship extends beyond the suggestion that contemporary citizenship has been subject to a

‘deflation’ (Brysk and Shafir, 2004). Rather I suggest we are witnessing the end of citizenship, at least in its modern, cherished, and relatively valuable form. In the domestic arena this assertion can be evaluated, in part, in relation to the supposed quality of formal, national citizenship. Particularly through welfare reform in the 1990s, the social rights of citizenship that theoretically guarantee a minimum standard of living have been erased and replaced with privatized provision – either through the market or self provision and the logic of ‘volunteerism’. Rather than the state guaranteed universal standard overcoming inequality, the increasing retreat to the market in the realm of social reproduction compounds that inequality. Formal political rights remain and necessarily act in a legitimating capacity, although selective disenfranchisement engineered through an array of measures from rescinding voting rights of criminals, through gerrymandering, to reported dubious election day practices, questions the universality of formal political citizenship. Moreover, as formal politics provides progressively fewer options informal political activity is increasingly important. However, as radical critics have long recognized, equal access to political participation is thoroughly structured and often precluded by the unequal implementation of social and civil rights. In other words, subjects are not equally present in civil society, and by extension are not equally positioned to exert political rights or press for their extension.

Within contemporary citizenship, however, the matter of civil rights is fundamental. In T.H. Marshall’s (1950) original synthesis, civil rights were conceptualized as underpinning all other rights, and citizenship itself. Although providing more than limits on state incursions, the quality of contemporary civil rights has been considered in this

dissertation as it relates to the various state activities that go to producing the subject through direct interaction, by structuring the subject's immediate conditions, or by shaping overarching principles of membership and rights that contextualize citizenship as a relationship between the subject and a state. As detailed here, the state has retreated from civil rights across these varying levels of abstraction, and this has become the pivotal element in the explanation of the transformation of contemporary citizenship, as well as being the component that coincides domestic and international experience of the nation-state as the form of this relationship has been exported beyond U.S. territory.

With respect to the urban, domestic experience of actually existing citizenship, it has not been the intention of this dissertation to quantify civil rights abuses to the extent that the contemporary city can be established as comparatively worse than other times and places. In fact, there is continuity of method between contemporary police brutality and associated systems of state discipline, and the sadism of the antebellum South and its perpetuation through lynching after the formal end of chattel slavery that were virtually inseparable from the violence of formal policing (Kelley, 2000). The significance, then, of contemporary denials of civil rights lie in both the state's capacity to perpetuate these tools of discipline through the developing history of the socio-political order, and the way in which the resultant process of differentiation has served distinct purposes in different political-economic contexts. These are the broad matters that need to be addressed to explain the actually existing conditions of contemporary citizenship.

That state sanctioned or orchestrated violence persists is perhaps unremarkable. However, even before we look to matters of the broader significance of aggressive policing and the implementation of the ‘penal state’ for the organization of citizenship under global conditions, its persistence as a method of differentiated disciplining points to a prior problem regarding the introduction of globalization into the citizenship debates. As discussed in chapter 1 systematic differentiation, including the inequality riven into the actions of a repressive state, was a dominant focus of the ‘pre-global’ radical pluralist agenda, leading to an analysis of how the *de facto* form of citizenship failed to meet its universalist claims. Thus the theoretical contribution from cultural pluralists asserts that what I have categorized as the *activity* of citizenship – it’s actually existing quality as well as normative interpretations of what it might become – can only be comprehended adequately when intersected with the *identity* of citizenship – the cultural assumptions about the subject that underpin access to the practice of full citizenship.

At least implicitly, these analyses assume the nation-state to be the scale of citizenship, even where the questions of inequality and difference are shaped around the impact of immigration on the contours of multicultural citizenship. However by theorizing new forms of access to citizenship through the lens of ‘denationalized citizenship’ (Bosniak, 2001), more recent debates concerning globalization/citizenship have, equally implicitly, considered how citizenship is shaped in the intersection between identity and *scale*. However while focusing on the political transformations that have enabled immigrants to access citizenship outside their member states, attention has been drawn away from the activity-identity intersection that dominated theory in its ‘pre-global’ moment. Put

simply, while the most recent theoretical contributions claim that citizenship is opening up and expanding as it is being accessed by immigrants without formal attachment to the state, attention to the quality of what exactly is being accessed has fallen away. In this context, and given the arguments I have made throughout this dissertation regarding the changing quality of citizenship, what is being championed under the broad rubric of ‘globalized citizenship’ is no more than the right to compete for social reproduction within the clientalistic frame, while being subjected to the attack on civil rights characterized by the ‘penal state’.

Effectively, a common assumption is made throughout the various strands of the globalization/citizenship debate that as the *scale* of the organization of citizenship shifts, allowing the *identity* of citizenship to shift from national membership to the global or the urban scale depending on the perspective advanced, the *activity* of citizenship remains constant. A broader empirically-based critique of this assumption proceeds below, concerning the actual conditions under globalization at global and urban scales, with citizenship viewed through the lens of its mutually constitutive *activity-identity-scale* dimensions, or what I refer to as *citizenship-as-spatiality*. First, though, I want to establish the theoretical basis of this critique by drawing from ‘pre-global’ radical theory identification of the identity-based stratification of access to national citizenship. Following this argument, it becomes apparent that unless the quality of the conditions being accessed is foregrounded the version of citizenship that is implicitly assumed is an ideal typical model that belies actually existing conditions.

Certain caveats need to be applied to qualify my contentions. First, as postnational, transnational, and global cities theories elucidate conditions experienced by immigrants, they do not blindly imply that those without member status are accessing a full and valuable version of citizenship. Moreover, the ways in which immigrant political activity transcends national borders and makes active claims rather than passively accepting the formal non-member status assigned by the nation-state, are empirically valid recognitions. Second, some versions of immigrant transnational political activity have been truly transformative of local conditions. For example, Katharyne Mitchell's (1995, 2004) discussion of the activity of business migrants from Hong Kong in Vancouver, BC elucidates exactly how certain immigrants have been able to contest and rework local conditions to their advantage. However even as these elite migrants have been able to engineer their conditions and have vast impact on the local built environment and socio-cultural conditions, I argue that the version of citizenship being accessed still follows the 'clientalistic' form. Business migrants literally buy their status through massive financial investments, and transform the city through ventures in commercial and private real estate. In other words it is precisely the removal of citizenship to the market that has allowed privileged migrants to overcome traditional barriers to citizenship.

Given that most immigrants are not part of an elite category, however, the dominance of the market-based, clientalistic model does not bring the same advantages to all immigrants. While it may be valid to recognize political activity as transnational, postnational, or urbanized, it is not equally valid to claim transnational, postnational, and urban *citizenships*. In effect, the bending of the meaning of citizenship to fit it to the post-

modernization of its identity–scale nexus identified in immigrant political activity, renders invalid assertions of citizenship in its modern, valuable form. As argued in each of the chapters on postnational, cosmopolitan, and urban citizenships, one component of citizenship cannot be shifted while the remainder of the relationship between the subject and the state remains intact. While empirical observations within the globalization/citizenship debate are not asserting full access to rights and membership, the promise of citizenship is held as a tangible goal that is being worked towards. Deployment of the term ‘citizenship’ carries the discursive weight of the value of being a citizen; the term is used precisely because of the benefits it implies.

This promise of citizenship is misleading for reasons related to both the condition of citizenship and the logic of immigrant access to the state. Even if it is accepted that immigrants have managed to access some form of citizenship, it is unclear how much value can be placed on that access given the quality of conditions documented throughout this dissertation. I take up below the matter of explaining the quality of citizenship in the context of the global political economy, but my critique here extends beyond the matter of the quality of citizenship as activity in any straightforward sense, and particularly concerns the way it has been theorized in the globalization/citizenship debate. Lauding new forms of political activity as specifically gaining access to citizenship effectively sanctions the state’s retreat to the clientalistic form, and abandons the hard won rights of citizenship that were the result of long and difficult political struggles spanning the 19th and 20th centuries in particular. In addition, accepting this new relationship between subjects and the state *as* citizenship potentially limits the contours of oppositional

struggles, which might be more productive if they were oriented exactly towards demands centered around reasserting those hard won, now apparently abandoned, rights.

My final critique of the way in which the globalization/citizenship debate has understood citizenship is perhaps the most significant, and leads into the larger matter of explaining the quality of citizenship in relation to the global political economy. I suggest that it is precisely the demise of the current quality of citizenship as activity that has facilitated the weakening of the distinction between citizens and non-citizens without significant impact on the state⁴⁵. In other words, the identified trend of non-citizen subjects accessing citizenship draws stronger critique than I have already asserted here regarding the weak quality of citizenship. Rather the two are thoroughly intertwined. That is not to suggest a direct, causal, and necessary relationship between the demise of citizenship, and the apparently expanding political activity of non-citizens. However the history of immigration to the U.S. has been dominated by a functionalist approach to labor market requirements, manifesting as a series of measures, including selective exclusions, guestworker programs and porous borders ensuring flows of illegal immigration, that maintain a labor supply that is eligible for making few demands on the state (Carrasco, 1997).

⁴⁵ This is not to suggest that the immigration question has been unproblematic for the state, especially in recent years. However the popular disquiet is largely based on xenophobic concerns for the preservation of social and cultural hegemony and, in recent years, misplaced perceptions about the intersection of racialized immigrants and terrorism. Although not divorced from the question of citizenship, especially as it pertains to national identity and cohesion, regardless of popular projections to the contrary these concerns have little to do with subjects demanding rights from, and asserting rights against the state.

The existence of immigrant political activity is insufficient to overthrow existing practices of the management of the labor market. While such transformation is feasible its likelihood needs to be examined in the context of the entire capital-state-labor relation, rather than asserted through weak evidence of citizenship claims by immigrants. That is precisely what I aim to do in the next section. However, regardless of the question of causality, given that global processes are the root cause of both the expansion of immigration and the basis of global citizenship claims (for example via cosmopolitanism, international human rights, and global cities) and the capitalist rescaling that has fostered neoliberal urbanism and the demise of actually existing citizenship conditions, it seems likely that the two will remain linked unless there is change to the overarching political economic imperatives of globalization.

In formal institutional or actually existing conditions, citizenship has always taken a shifting form (Marston and Mitchell, 2004). Undoubtedly, as the question of global governance impacts upon contemporary political arrangements, appeals for preserving an unchanged modern form of citizenship are largely infeasible (Tambini, 2001). In addition, as Bosniak (2006) has shown, the inability of 'pre-global' theory to contend with globalization has manifested in uncritical assumptions of the border, which were then complicit in the construction of the border itself, along with the accompanying phenomena of alienage and exclusion. In other words, the critical potential of radical 'pre-global' theory needs updating to be relevant in the contemporary order. However, thus far attempts within the globalization/citizenship debate have been lacking, and I suggest the lacuna is a spatial one – first in terms of the spatiality of citizenship itself as

discussed above, but also with regard to the spatialized logic of the broader political economy that contextualizes the capital-state-labor relation. It is this broader global political economic logic that I turn to next.

Globalization and the role of the state in contemporary citizenship

Although the globalization/citizenship debate has largely focused on immigrant access to citizenship or the supranational institutions that might provide that citizenship, one somewhat lesser explored theme has been the feasibility of an explicitly urban citizenship. The two main thematic foci of the debate involve understanding the city as a site for exercising new forms of political agency and focusing on the changing form of the city itself under globalization. However discrete theoretical approaches blend these foci differently, if at all, rendering the catch-all term ‘citizenship in cities’ somewhat problematic. In transnational theories, cities are largely understood as sites for exercising political agency. Alternatively global cities theory gives more attention to the way political agency is grounded in the restructuring of the city under globalization, but this work tends to an economism that inevitably limits explanation of the full transformation of the city. Meanwhile, even as ‘urban citizenship’ theories draw clearer attention to the form of the city itself, normative ideas concerning the feasibility of urban citizenship remain distinct from ‘rights to the city’ arguments where the focus explicitly concerns how the city might be organized differently by intervening in the operation of the global political economy.

It is this attention to the relationship between the form of the city and its function within the global political economy that I want to foreground in my conclusions concerning the changes to the form of actually existing citizenship, initially in the domestic context.

While perhaps inevitable, the tendency to focus on immigrants draws attention only to part of the transformation of citizenship. My discussion in chapter 6 of the metric of urban citizenship particularly aimed to consider the institutional quality of citizenship, which manifests as the minimum guaranteed standard for *all* subjects, even if there are different experiences of the quality of actually existing citizenship. Here I aim to draw out the way that the global political economic imperative is expressed through the state's actions of disciplining and differentiation, and what that means for understanding citizenship. Essentially, the argument expounded in chapter 6 is that the shift to market-based social reproduction has established a 'clientalistic' form of citizenship that is, by its nature, an uneven distribution of resources. This uneven impact on labor is managed through a range of disciplinary tactics selectively exercised by the state against certain populations. Thus the logic behind the contemporary, neoliberal organization of social and civil rights is comparatively distinct from the Fordist-Keynesian model of reproducing national citizens. However, what I have highlighted as the apogee of this new condition for citizenship – police brutality – has a long history. Here, then, I want to briefly consider the function of state violence under neoliberalism and how we might better interpolate that understanding into theories of citizenship.

Historically, inequality was a formal, legal element of the construction of citizenship, given that its status was only available to free, white men. Although this built-in

inequality manifested very differently for white women and slaves, for example, the socio-political history of the 20th century has been one of various social movements aimed at changing consequent formal and informal conditions. The expansion of citizenship in terms of extending political and social rights has paralleled this extension towards universality, but expanding available rights and extending the population who can access those rights are not comparable. It is an axiom of radical versions of U.S. citizenship history that with the 20th century expansion of citizenship, denials of civil rights served as markers of exclusion from full citizenship. Although these denials were no longer part of the legal construction of citizenship, its *de facto* formulation worked through various differentiation processes, including state discipline. In part, then, these parochial sets of exclusions acted as a marker against which full citizenship could be affirmed. Under neoliberalism, the processes established historically as external markers have been brought *inside* the citizenship formulation. Thus the new role for the state of managing the absence of social reproduction through discipline is integral to the current form of citizenship, rather than an external marker against which citizenship is established.

While the expansion of modern citizenship was thoroughly attached to the Fordist-Keynesian demand for a national labor force, the state's response to the current global political economic imperative has entailed a system of neoliberal rescaling with consequent change in the form and the function of cities. The current form of citizenship, with the differentiation process brought inside its institutional form, serves to resolve the inconsistency between a discourse of expanding citizenship, and the labor market

demands of the global political economy, as detailed in the discussion of the global cities debate. While there is a fundamental disjuncture between the experience of police brutality and broader practices of state disciplining in contemporary cities, and the compendium of the civil rights movement, the formal rhetoric of rights, the discourse of expanding citizenship, and now, the notion of new possibilities emerging through globalized citizenship, I suggest that the formation of this disjuncture needs to be understood as the resolution of a broader schism between the notion of expanding rights and citizenship and the labor requirements of the global political economy. Viewed through this lens, the transformation of citizenship can be understood as an almost inevitable conclusion, but only when following the assumption that cities should promote capital interests over those of their inhabitants.

Bringing civil rights denials inside citizenship may appear to manifest simply as a downswing in the limits on the state's incursions. However, by making this possibility an integral part of citizenship, the absence of a universal guarantee for citizenship extends the threat to all subjects, rather than just the marginalized. Certainly marginalized populations are most likely to feel the effects of this transformation and the relatively privileged are unlikely to experience similar forms of state discipline. However the absence of a guarantee for civil rights makes them contingent and thus dramatically weakens the institutional form of citizenship. I have argued that the logic underpinning the retreat of civil rights pre-dated the 'war on terror', and that the stage was already set for a broad repeal of rights. However the impact of removing the guarantee of civil rights has been made transparent by the post 9/11 'new normalcy', as a range of state practices

such as illegal wiretapping and limiting dissent by restricting political protest, combined with more formal measures including the passing of the Patriot Act allowing broad new powers of intrusive surveillance, detention, and prosecution, facilitate and legitimate the denial of civil rights.

While post 9/11 domestic conditions reflect the continuity of the neoliberal form of citizenship, they also mark a moment of reversal since when the retreat from civil rights is conducted openly. As such, state practices in relation to citizenship have moved through a cycle from the pre-civil rights era, through the extension and expansion to full citizenship where civil rights denials served as the contrast to citizenship, to the neoliberal era where a clampdown on civil rights became an element within citizenship, through to the post 9/11 era of the open retreat from rights. Dealing with the matter of post 9/11 civil rights has not been an objective of this dissertation, and although I have introduced that topic as an area for examination under the spatialized model developed here, I have done so particularly to serve as an indication of how conditions might develop if a robust civil rights tradition is not preserved. It is worth noting that the aberrant moment in this 'cycle' of citizenship may be the stage of full citizenship. That is not to suggest that the repeal of citizenship cannot be productively challenged, but perhaps it offers a more realistic understanding of contemporary citizenship than that imagined by an ever expanding trajectory.

The conclusions thus far have concentrated on the domestic condition of citizenship, however the discussion of postnational citizenship indicates how the reformulation of the

relationship between the state and subject has been exported beyond U.S. territory. In some respects the questions raised by the assertion of postnational citizenship are entirely different from urban citizenship. The main difference between sub- and supra-national citizenship is that with urban citizenship the impact of globalization redefines an existing domestic relationship between the state and its subjects (whether citizens or not), whereas postnational citizenship posits a new relationship organized beyond the nation-state but obliging the state to respond and to engage with new subjects. For many this appears as a threat to sovereignty, but the evidence given in chapter 4 from Guantánamo Bay and beyond shows that the nation-state is thoroughly capable of producing space to limit the condition of postnational citizenship. The idea of postnational citizenship is qualitatively different from urban citizenship because the global scale serves as the basis for claims against the nation-state. It is precisely that scale difference that postnational theorists invoke as leverage but which, in practice, the nation-state organizes to undermine assertions of rights.

In this sense the processes involved in the nation-state's formulation of its relationship with postnational subjects very much echo those found in urban citizenship, even if the state/subject relation takes a different form. In the context of urban citizenship I argued that social rights from the state, regardless of their degree of robustness, can be – and are – undermined by an absence of rights against the state. In the postnational arena that same phenomenon appears, but this time it is stretched across the scale framework. In the Guantánamo Bay case, the rights of the deterritorialized subject that come from the international order, already comparatively weaker than citizenship rights, are thoroughly

undermined by limitations on rights against the nation-state. That strategy has worked to the extent that the U.S. state continues to deny rights to the Guantánamo prisoners based on a series of arguments claiming that the prisoners are beyond U.S. jurisdiction, and also beyond the jurisdiction of their home state or Cuba. Moreover, having been forced to recognize the illegality of establishing prisoners as ‘non-persons’ thus denying their rights under the Geneva Conventions, the nation-state actively denied its international obligations by enacting legislation that over-wrote any such obligation. Again, similar to the effect on urban citizenship of the simultaneous absence and presence of the state, the U.S. state secured its formal absence by asserting Cuba’s “ultimate sovereignty” at Guantánamo, while clearly remaining present to determine the conditions for prisoners. The state’s production of space in the Guantánamo prisoners case also extends to reassertions of sovereignty, both by redefining the nation-state as a legal body, and by maintaining a hierarchy of sovereignty to remove the influence of other states.

The fact that the ‘deterritorialized’ identities at Guantánamo are unable to escape the state again echoes problems in transnational and urban citizenship theories. The ‘reterritorialization’ of Guantánamo prisoners is distinct from the imposition of state discipline and the ‘penal state’ in the domestic context, because they are underpinned by different logics. However a consistent assertion across these theories of citizenship, which claims that the nation-state is waning thus allowing new scales of citizenship to spring up, belies the evidence of the nation-state’s continued significance in constructing and managing these various ‘new spaces’ of citizenship. This points to another similarity between postnational and urban citizenship, with regard to the way in which new

assertions of citizenship are made based on the identity–scale nexus. The assertion of new identities by immigrant subjects in cities, lauded in transnational and global cities theories, fails to secure anything more than social privileges which are easily offset by the denial of civil rights. Here a similar process operates at the global scale as the presence of international human rights, which are theoretically utilized by those detached from formal membership, has been shown to be thoroughly circumnavigable. As such, the intersection of activity-identity-scale for describing the quality of contemporary citizenship is as relevant in the postnational arena as it is to urban citizenship.

Finally, the state's response to the global political economy has been shown to be the logic behind the transformation of domestic citizenship. Inevitably the dimensions and the logic are different at the global scale. First, the possibility of global citizenship is being forged anew, rather than etched onto an existing form as in the domestic case. Second, the struggle over the existing form of domestic citizenship is not paralleled in the global case because the relationship between subjects and the state does not revolve around securing the state's legitimacy and its reproduction of national subjects. As concluded in chapter 5 there is no larger political economic reason nor institutional apparatus for the production of global citizens. The operation of cosmopolitan citizenship is, then, left to scales of state that *do* have the institutional apparatus to provide citizenship. However as the discussion of the Iraq war shows the global order is dominated by the nexus of U.S. geopolitical and geoeconomic interests, and the dominant version of cosmopolitanism is produced in U.S. interests. Therefore there is little logic underpinning global or cosmopolitan citizenship, apart from normative assertions that the

global scale is the best context for securing democracy. With respect to the quality of citizenship, the treatment of the Iraqi people and polity, and the prisoners at Guantánamo Bay, stands testimony to the political frailty of the global democratic ethos and global citizenship. Judith Butler (2002, 2004) contends that the detention and mistreatment of prisoners at Guantánamo may be for intelligence gathering, to provide ‘tangible’ legitimization for the ‘war on terror’, to serve as revenge, or may simply reflect accidental fallout from U.S. militarism in Iraq and Afghanistan. Regardless of the logic of these detentions, a global cosmopolitan ethos provides little advantage in the face of nation-state power.

Contesting spatialities of future citizenships

I have argued throughout this dissertation and here in these concluding remarks that citizenship is spatialized both in respect to its internal structure, and in terms of the political economic contexts in which it is embedded. This is as true for the standard form of national citizenship as it is for the versions of ‘citizenship’ that are emerging under globalization. The arguments I have made here concerning the continued significance of the nation-state in reproducing spatial formations that limit urban or global forms of citizenship, are not intended to refute the existence of incipient political practices. Rather I have aimed to show how these spaces are defined and produced in ways that distort the meaning of the social and political relations that proceed there. Whether it be questions of emergent neoliberal urban governance in New York City; redefining the legal body of the nation to limit rights of Guantánamo prisoners; or constructing a global cosmopolitan ethos that supports U.S. geoeconomic interests, the U.S. state is clearly not experiencing

diminished sovereignty in the ways suggested by theories of citizenship under globalization.

I contend that the production of space is key to state strategy, and yet state spatial practices are largely overlooked in contemporary citizenship theory. Geographers, in particular, have attempted to insert a spatial dimension into this relatively new arena of inquiry leading to considerable attention to the ‘new spaces of citizenship’ (e.g. Painter and Philo, 1995; Desforges *et al*, 2005; Kurtz and Hankins, 2005; Ehrkamp and Leitner, 2006). Certainly a range of useful work has been generated reflecting how assertions of political identities have changed under global conditions. However, among all the optimistic assertions of new modes of citizenship, there has been little cross-pollination with theoretical insights concerning the impact that globalization has had on these ‘new spaces’ themselves. Thus what tends to get ignored in these theorizations is the way that governments operating at the new scales of citizenship often have neither the interests nor the capacities to produce ‘citizenship’ in response to subjects’ demands. The consequence has been that ‘citizenship’ is constantly redefined in progressively weaker forms.

Although the legacy of national citizenship barely warrants unqualified celebration, its demise is detrimental to the reproduction of subjects in egalitarian ways. Undoubtedly new logics of inclusion need to be worked towards for the sake of enfranchising the increasing numbers of people who exist outside the territory where they hold formal political membership. However simply identifying new forms of engagement between subjects and the state, or even direct relations between subjects and capital, is insufficient basis for suggesting that new *citizenships* are emerging.

Following these contentions, and in light of the fairly damning evidence regarding the quality of citizenship, it is perhaps useful to reflect briefly on potential ways in which the transformation of citizenship might be resisted. Although I have suggested that claims to ‘transnational citizenship’ usually rely on a relatively weak condition of citizenship, there is still considerable merit in transnational political activity. Michael Peter Smith (2001) refers to Kadiadou Diallo – the mother of NYPD victim, Amadou – as the ‘archetypal transnational subject’, because of the anti-brutality political campaigning she was able to conduct after the acquittal of the police officers who killed her son. Certainly a Guinean woman (albeit relatively privileged) holding discursive authority in questions of domestic politics fails to fit standard ideas of the intersection between race, class and power relations in the U.S.. However, for all the discursive legitimacy and power, there is more evidence toward revived protest than there is toward substantive change in the matter of police brutality and racial profiling in U.S. cities. In fact, the post 9/11 profiling, surveillance and detention of individuals from Arab and Muslim states, as well as continued accounts of police shootings among a broad spectrum of aggressive policing measures, suggest that these tactics are expanding rather than waning in response to protest.

While transnationalism may be a feasible tool for altering political discourse, given my argument here concerning the nation-state as the ongoing locus of power in constructions of citizenship, it is reasonable to assume that the nation-state could also be the most effective scale to demand change. As Lake (2002) notes, the nation-state has the capacity

to reorient processes towards, rather than away from social justice. With regard to citizenship perhaps more than any other relation, the elements of what would comprise an enfranchising relationship are already laid down in historical social formations. It is the retreat from these conditions that poses as much of a problem in contemporary society as much as the experiences of those who are formally ineligible for citizenship.

Discursively, reasserting the parameters of citizenship would expose the inconsistencies inherent in the dissonance between formal citizenship and actually existing conditions, and ambiguities in the state's organization of citizenship. Materially, change will come from reconsidering the way in which the global political economy is brought to bear on domestic arrangements. The inevitability of globalization centers on the connectedness and communication of globalism, not the perpetuation of unfettered global capitalism that comprises globalization. While I stated at the beginning of these conclusions that we have witnessed the end of citizenship in its modern, valuable form, demanding that the state responds to labor rather than capital interests could serve as the basis of a revived citizenship.

At some point differences that permeate writings on the current condition of citizenship surely reduce to dissimilarity on what constitutes the actual form of citizenship. In other words, the points of contention in contemporary citizenship debates are less about conflicting empirical observation and more reflective of divergence in what these conditions mean, and in particular what they indicate about the institution of citizenship.

This feature of current debate retains both similarities with, and marked divergence from, the debates that dominated the literature in the 1980s and 1990s. Then, parallel argument over normative visions of citizenship was in part contained by the common assumption of the national border, the national state, and the national citizen. Now, as forces of globalization apparently have unleashed the identity and scale components of citizenship, the very methods of negotiating the activity of citizenship have escaped the formal state-subject relation, and seem as open as the activity of citizenship itself. Interpreting this opening up of new political ground as offering fertile possibilities for revisioning citizenship is not without merit. However this opportunism carries the concomitant risk of sanctioning the retreat from the hard-won rights that characterized formal citizenship in post-war liberal democratic states, and abandoning citizenship to the clientalistic form based on the market rather than the universal guarantee afforded by the state.

The differences in ideas about citizenship under global conditions turn on the deployment of divergent understandings of globalization itself. The dominant theme of this dissertation has been that abstracting citizenship from broader materialities deploys a selective understanding of globalization that belies its actually existing form and the consequent shaping of citizenship. Here, theoretical divergence gets read back into the viability of political alternatives, as different ideas about *what* constitutes globalization directs how the question of *who* constitutes globalization (and *in whose interests* it is constituted) get read into theories of the contemporary form of citizenship. The tendency towards the simple elision of the nation-state in postnational, cosmopolitan, and urban citizenship theories allows assertions of new political identities exerted in new spaces of

citizenship but, as I have argued here, ignores the centrality of the state in the mutual constitution of those new identities in and through new spaces. Simply, the right to be, in space, is insufficient benefit for globalization to be lauded as the base of new political opportunity. On the domestic stage, neoliberal rescaling has altered the forms and functions of scales with considerable consequences for citizenship, but this has been engineered by the nation-state rather than been virtually imposed by globalization as some suggest. Furthermore the expansion of global processes such as increased flows of labor immigration and capital investment, and the ascendancy of the global scale as an institutional-organizational arena in which the U.S. is a dominant force, has only served to expand U.S. hegemony and extend its versions of state/subject relations to other states.

Fittingly, the insights of T.H. Marshall (1950) shape the final and overarching thought of this thesis: the differentiating forces of capitalism and the equalizing imperatives of citizenship are logically consistent only up to the point where citizenship reproduces the subjects necessary for the dominant political economic order. Under Fordist-Keynesianism, citizenship entailed social reproduction and the expansion of rights for a national citizenry, engaged in the production and consumption that sustained national capitals. The different demands of the post-Fordist regime provided a new imperative for the state-subject relationship. Those theorists arguing for an understanding of citizenship as an active condition, rather than simply a passive acceptance of status conferred by the state, tend to pay inadequate attention to the consequences of this different imperative. Given that citizenship has never been a static condition, but also that crisis-ridden capitalism is inherently riven with the fissures from needing to constantly uproot its fixed

structures, the political order is far from being immune to contestation. In this conclusion I have attempted tentative indications of how such struggle might emerge effectively, but these suggestions concerning oppositional struggles are all oriented towards the ongoing power of the nation-state. However far systems of global and urban governance have changed the contours of the political order, the nation-state remains a key player in these rescaling processes, and the conditioning vector of contemporary citizenship.

APPENDIX

THE 10-POINT PLAN ON MISCONDUCT AND BRUTALITY⁴⁶

“Following are the proposals issued yesterday by a broad coalition of political leaders and community organizers in response to the shooting of Amadou Diallo:

1. Mayor Giuliani must immediately implement the recommendations of the Mollen Commission, especially the call to establish an independent investigative body with full subpoena power that has jurisdiction over police corruption and brutality in New York City. Twice, the City Council has passed legislation creating a body to monitor corruption, but the Mayor has done everything in his power to block its implementation – first by veto and then, when the Council overrode his veto, by tying the matter up in court. The Mayor must also implement the recommendations (from both the majority and dissenting reports) of his *own* Task Force, that he appointed in 1997 in the wake of the shocking Abner Louima incident.
2. The Civilian Complaint Review Board must be immediately reconstituted, strengthened and fully funded so that it can effectively investigate civilian complaints of police misconduct.
3. The State Legislature must pass legislation creating a permanent special prosecutor for police brutality and corruption in New York. In conjunction with this, the State Attorney General must create a special unit on police misconduct and should issue an annual report documenting instances of misconduct throughout the state.

⁴⁶ Issued March 27, 1999; reprinted in the *New York Times*, 4/28/99, p46

4. The Police Department must develop a comprehensive training program, developed in consultation with outside experts, to school its officers in racial and cultural sensitivity and must also implement a rigorous process of in-depth psychological screening of its recruits and officers
5. The New York Police Department should reflect the makeup of the citizen population it serves – N.Y.C. police officers should live in New York City. The State Legislature must immediately pass a law mandating residency for city officers.
6. The Police Commissioner must also take specific and immediate steps to recruit more minorities and women to serve as police officers and develop a plan to increase promotion opportunities for women and minority officers.
7. The salary and benefits for police officers must be improved. Law enforcement officers are entrusted with an extraordinary responsibility and they should be compensated accordingly.
8. The Police Department's "48-hour" rule, which delays the ability of N.Y.P.D. investigators to question police officers charged with violations of N.Y.P.D. rules and regulations, must be eliminated.
9. The weapons, ammunition and tactics used by the department must be assessed and periodically reviewed, not only to measure effectiveness, but to protect the safety of innocent New Yorkers. The use of hollow point bullets should be discontinued immediately.
10. Congress must call on the Justice Department to honor its commitment to monitor and issue annual reports documenting instances of police misconduct throughout the

country. This promise was made in the wake of the Rodney King incident and has yet to be acted upon.”

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