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In Brief:

Linda Bosniak’s *The Citizen and the Alien*

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Linda Bosniak’s *The Citizen and the Alien* provides few answers, but it does elucidate a useful framework to approach the chimera of citizenship. How are we to understand who is a citizen and an alien and how are we to weigh the pertinent policy questions for the country and its people? Bosniak posits that much of the difficulty in dealing with the issues surrounding citizenship stems from a lack of clarity over the term. She begins by asking three cornerstone questions in the context of citizenship: what, where, and whom?

Bosniak first categorizes citizenship into four types: status, rights, social, and identity. The first type, status, refers to legal classification; citizenship is equated with formal legal status.\(^1\) The second type is the early Roman concept of citizenship as the enjoyment of rights and privileges; one is a citizen if he or she enjoys the rights of one.\(^2\) Social citizenship is the Athenian idea of collective self governance—of “ruling and being ruled”—citizens are those that engage politically.\(^3\) Finally, citizenship is also a form of identity and social membership; an example would be a citizen of the world or “a good citizen of Springfield.”\(^4\)

According to Bosniak, citizenship is either transnational—due to the emergence of transnational corporations and issues such as global warming or infectious diseases that are not confined to a single nation’s borders\(^5\)—or a bounded national citizenship.\(^6\) Bosniak focuses on the latter and finds that it is the most applicable to contemporary issues of citizenship and immigration.

Next, Bosniak proposes three ideas to explain who is a citizen: universal, bounded, and alien citizens. The first idea describes citizenship as aspirationally universal—that everyone within the jurisdiction of that

\(^2\) Id.
\(^3\) Id.
\(^4\) Id. at 20.
\(^5\) Id. at 25-28.
\(^6\) Id.
government should be and will eventually be eligible for citizenship.\(^7\)
While many espouse this as how the United States operates, Bosniak quickly notes that the inclusion of groups such as women and racial minorities occurred begrudgingly rather than as a product of a natural evolution. The second idea is that citizenship is defined as much by the "nots" as by the "haves;" the line between citizen and non-citizen is clearly bounded and distinct.\(^8\) An example of bounded citizenship is the proposed legislation to annul jus soli for those whose parents were not present legally. The last idea is the one that Bosniak finds the most interesting, and on which a large part of this review will focus: the alien citizen—an individual who is denied formal citizenship status but who maintains other facets of citizenship such as having the same rights, political engagement, and identity of a citizen.\(^9\)

Bosniak considers the meaning of citizenship through the lens of alien citizens because of what it reveals about citizenship’s inclusionary and exclusionary aspects. For those within the citizenship community and enjoying universal citizenship, Bosniak writes that citizenship is a concept open to all members supporting equality and empowerment. But for those outside the citizenship community and living in the unprivileged side of bounded citizenship, citizenship is a tool with which to draw lines and legally perpetuate inequality. She challenges that the two sides are not as distinct as historical scholarship would have us believe; Bosniak often uses the phrase "hard outside, soft inside" not to refer to an egg, but to the dichotomy upon which scholars have traditionally adhered to discuss immigration and citizenship.

"Hard on the outside, soft on the inside" describes a Rawlsian system of citizenship espousing strict border and immigration controls while adopting social liberties compatible with a democratic legal system for the nation’s interior.\(^10\) Bosniak notes that Rawls mistakenly assumes that borders are impermeable, so Rawls’ concept of citizenship glosses over the issue of undocumented immigrants. Bosniak frames the question this way: Do the immigration powers and the Rawlsian “hard” extend to the interior for alien citizens, or should they be protected by the “soft” values of liberal democracies, such as equality and due process?

The answer, at least historically, has been varied. The book details the slow progression of limited substantive due process for certain alien citizens within the interior, but also highlights recent state legislation that seeks to restrict access to government programs for undocumented aliens. The closest normative answer that Bosniak proffers is through the work of

\(^7\) Id. at 29-30.
\(^8\) Id. at 31.
\(^9\) Id. at 34-35.
Michael Walzer. Often cited as the ideological support for the “hard” approach, Walzer argues that all immigration decisions are political and necessary to the identity of a nation group—that group value and identity is a way of life (e.g. culture) and that there exists a right and duty to preserve it. However, Bosniak’s approach to alien citizens hinges upon a little-noted corollary of Walzer’s where he claims that a nation has a duty and right to protect its borders, but that once people enter a country, they must be on the track to citizenship otherwise they will be subject to tyranny and abuse.

Walzer’s theory is based upon historical and theoretical observations. Ancient Athens forbid metic laborers and their progeny from becoming citizens, thus creating a population of permanent noncitizens. This led to an unacceptable caste system and abuse by citizen tyrants. Walzer further argues for a soft interior by defining his concept of “justice” in terms of spheres of power. While accepting that individuals will naturally monopolize certain goods, he feels that dominance in one sphere of power—such as politics, money, or beauty—should not lead to “unjust conversion” in another. Thus, when dominance in political power translates into power in the sphere of beauty, that is unjust and allows for tyranny. The negative also applies: a lack of power in one sphere should not impact the value of other spheres. In applying this theory to immigration, Walzer finds that allowing the strict, and oftentimes harsh, exclusionary immigration laws to extend into the interior would be unjust because it would cause someone who lacks power in the sphere of status citizenship to be further disadvantaged in other spheres of power.

Some factors complicating the “hard outside, soft inside” image is that many who are in that “soft inside” still have connections to the “hard outside.” For example, many noncitizens participate in ways associated with citizenship of a community without possessing the formal status of “citizen.” Conversely, some who possess formal citizenship status—but who are not marginalized as “second-class citizens” and have no barriers to participation—do not participate in their community. This reminds us that people can participate in their communities without wearing a formal badge of “citizen.”

But is this concept new? For some, acquiring citizenship status is more of a formality to prevent deportation, and it does not significantly preclude us from being active members in our communities by working or volunteering in them. This would be especially true for the many of us with intimate ties to immigrants who understand that it is entirely possible to live full lives as Americans without being a formally sanctioned “citizen.”

12. Id. at 62.
13. Id. at 54-55.
Of course, some argue that there is no full participation in American society without voting, but that assertion has its fair share of contenders. And as Bosniak herself mentions, some local elections do not require proof of citizenship in order to vote.

Bosniak urges constitutional and immigration law scholars, political theorists, sociologists and others to think beyond their disciplines because she considers their scholarship to be confined to either thinking of citizenship within its community—the "soft inside"—or from the exclusionary—or "hard outside"—perspective. Her book seems, then, targeted at scholars; it advocates a multi-faceted approach when considering citizenship and immigration. But that does not make it irrelevant to the general public. Because immigration issues are rampant in the media, many people could access Bosniak's language and gain additional insight around the debate.

Bosniak also balances various approaches to citizenship. One such difficulty is the future and uncertain possibility that citizenship be again rooted in the 14th Amendment. Supreme Court precedent all but limited the privileges and immunities of citizens to the rights already guaranteed by the Constitution in the Slaughter-House Cases. However, if those decisions were to be overturned and citizenship became rooted in the 14th Amendment rather than the Due Process Clause, the implications for economic, social and political equality could potentially be tremendous. Yet, the cost may only apply to aliens, who are not included in the "citizens of the United States" language of the 14th Amendment. Bosniak predicts that this conundrum can be addressed in two ways. First, the existing due process protection still applies to aliens, and second, the rights of citizens describe merely the rights and not the recipients.  

Bosniak also devotes an entire chapter to women from other countries who work on the domestic front and what it means for these women to acquire "citizenship" as scholars currently conceive of it. It is at the end of this chapter that Bosniak proposes eliminating the term "citizenship" altogether because it is so muddled, and replacing it with a direct discussion of what we mean—state membership or equality and democracy.

Another possible evolution of citizenship rights includes recognizing the labor of women in childbearing. While noting that many feminist theorists have argued for compensation for child rearing, female domestic work has traditionally been slowly addressed in the market through growth in the service industry. Bosniak notes that many of these workers are those without status and as a result it is the upper class women who are gaining rights citizenship through the exploitation of those who do not have status.

citizenship. 15

Bosniak’s book, for all its strengths, can deter readers because its discussion is abstract and may be difficult to approach without the proper legal background. Even then, it lacks grounding at times. For example, she provides very little testimony to the lives of actual alien citizens. Without knowing their trials, readers view the citizenship problem from a top-down approach. Including historical impact and testimony regarding the effects of Chinese exclusion, Alien Land Laws, or facially neutral but functionally discriminatory laws would have provided important insight into policy considerations.

Additionally, the picture of citizenship would be aided by analyzing the “why” of citizenship. Aside from the claim of tyranny, what other effects would there be if we did not provide a path to citizenship? What are the benefits and possible conditions that would strengthen the nation and what would be deleterious effects if we failed to recognize alien citizens? Bosniak’s The Citizen and the Alien may not provide these answers, but by raising those questions it tasks its readers to think more deeply about immigration issues. The egg of immigration is cracking and every one of us must take responsibility for what hatches.

15. Id. at 104-12.