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Immigration and Citizenship

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Immigration concerns the movement of people across national borders; *citizenship* concerns who legally belongs to a state. People legally assimilate through citizenship, which excludes and includes. Citizenship is distinct from being a *subject* of a monarchy in that it implies participating in government. The ideal type of citizenship has been that it is “egalitarian, sacred, national, democratic, unique and socially consequential” (Brubaker 1997: 132). States typically receive people who settle as asylum seekers or refugees, family members of those already settled, labor migrants, or retirees with sufficient resources.

The legal regulation of people movement and national membership leads to disputes, and courts, administrative tribunals, and case level officials work out much of the politics of inclusion and exclusion. The places those disputes are addressed include both local and transnational arenas. The number of officials in charge of enforcing borders has expanded as state officials enlist nonstate actors to exclude or enforce. Enforcement officials include reluctant or uninterested employers, airlines, and vindictive neighbors as well as police, immigration officers, and schools. Transnational agreements provide guidance and establish structures but do not articulate clearly enforceable rules. In the twenty-first century, these issues are at the top of political agendas in many Western countries. While the focus of discussion in recent years has been on control and exclusion in Western postindustrial states, in earlier decades this was not the case, or at least not for all potential immigrants.

Citizenship Based on Birth or Residence

States have historically organized citizenship through blood and soil, *jus sanguinis* (law of blood) or *jus soli* (law of soil or place). Germany, for instance, was a paradigmatically blood-based country for citizenship. France and the United States, alternatively, have seemed more republican, offering citizenship first to all who are born in the territory and second to most who would naturalize. A measure of how open a state is would be the accessibility of naturalization. These two paradigmatic frameworks blur in practice. For example, Germany no longer bases citizenship only on ethnicity, and the United States until 1952 excluded Asians from citizenship on the belief that they were intrinsically not

suitable for it. Responsibilities and rights of citizenship have not been available to all who are formally members of society.

The classical idea of citizenship is under question as citizenship has become less sacred, nonexclusive, and postnational. First, states marked “sacredness” by military service; feminist scholars have questioned whether that means women simply could not be citizens. Not all countries require military service; what, then, would mark citizenship as sacred? The inequality in rights by race and gender has also raised problems with how [p. 728 ↓] realities fall short of the ideal. Next, with mass migration, many families live transnationally, whether through travel or extended family in multiple countries. Finally, citizenship rights have become tied to universal human rights frameworks rather than membership in a national state. Perhaps paradoxically, legal citizenship facilitates transnationality because it more readily allows family ties across borders through making international travel legal and relatively easy.

Immigration and Deportation Law

Immigration law has made nations. Whom states have chosen to exclude has often demonstrated who they think can culturally belong. For many years, Australia and Canada had “white” policies. The United States first excluded the Chinese from immigration in 1882, and later extended this exclusion to other Asians, making them ineligible for citizenship. From the 1920s until 1965, the United States excluded people in a way that favored those from northern Europe and Canada.

In Europe, migration once was from a country's former colonies or under a formal guest-worker program such as that in Germany. Britain had free movement immediately after World War II for all from its Commonwealth. As people who left certain developing countries immigrated to Western states, those recipient countries debated what it meant to maintain a nation and to include multiple cultures. Australia, for example, has recently tied itself more closely to Asia, caused by a demand for labor not met by migration from Europe, in addition to the movement of refugees.

Credible immigration regulation requires the harsh threat of deportation. Otherwise, once people are in the country to which they wish to migrate, they too easily become

established residents. The ability to settle legally would depend wholly on one's ability to get to the intended country and to stay there, hardly a criterion that we usually see as either rational or ethically justifiable. Yet, deportation is visible and harsh; it sometimes allows the removal of people who have otherwise lived by implicit social contract rules, such as by working. The marginal status of immigrants has allowed countries to limit the remedies available for deportation, whether in the United States through limits on habeas corpus procedures or in Europe through coordination of exclusion. Deportation separates families and sometimes brings on violent enforcement.

The implicit social contract idea in Western countries currently debating immigration includes working and participating in community life. It can be hard to respect a law that only occasionally and rather unpredictably recognizes those matters. Legal rules draw lines. That means officials treat some people as legal, although they might not attend to their children or work hard at their job, simply because they followed a set of procedures to enter a country or were ahead of a numerical cutoff. Officials treat other people as illegal because they did not follow those procedures or fell out of compliance based on time limits even though they have indeed worked, sent their children to school, and been kind to their neighbors.

A Rational Citizenship Scheme

If the law does not respect the work that immigrants do, immigrants and their advocates may find that they have little reason to respect the law. The ordinary moral sense that one ought to be able to earn legal status as a citizen usually finds itself into statutory frameworks. People sometimes have gained legal status when states grant amnesties or when states provide for discretionary suspensions of deportation. Discretion and an amnesty's cutoff date add a layer of arbitrariness from the point of view of those regulated. Suspensions of deportation and amnesties provide the leeway in a system of rules that remains uneven. Discretion alongside legal rules makes unworkable programs at least some-what manageable. When one reasons from the point of view of legal subjects, however, it is the law that often looks dysfunctional.

Refugees and Asylum Seekers

Some of those who migrate legally or illegally are fleeing persecution in their home state. Since 1951, the United Nations High Commissioner for Refugees (UNHCR) has identified a refugee as someone who has a well-founded fear of persecution based on race, national origin, religion, or membership in a specific [p. 729 ↓] political or social group. Nation-states interpret who is a refugee, and states make various choices concerning how to interpret these terms. Advocates for refugees and asylum seekers argue that the conditions under which people must flee their home countries for fear of persecution far exceed what the UNHCR recognizes. Diplomats designed the UNHCR for the problems resulting from World War II, not for the civil wars and massive displacement of peoples that have occurred over the past thirty years. Because the agent persecuting must be a state, for example, the Convention would not seem to recognize those fleeing civil wars.

Immigration, perhaps more than other policy issues, is one that many policy makers would like to address outside the glare of public debate or sometimes via individual cases that make the spotlight so that unprincipled but pragmatically satisfying results are possible. This policy domain, then, might be particularly amenable to litigation case by case before judges and less visible administrative officials. They would occasionally suspend deportation in a sympathetic case or grant refugee status. This provides exclusion with something that looks like mercy, but with the arbitrariness that mercy might imply.

Legal Regulation, Families, and Transnationality

Immigration law partly operates through family law. Under ordinary statutory interpretation, officials determine what a real marriage, entitling a spouse to entry, is or who is a real child of a legal immigrant. Supranational rights also shape interpretation of the family. The Council of Europe's European Convention on Human Rights (1950)

includes a right to family life, which people threatened with deportation have used to litigate their departure, arguing that a state's decision would deprive them of their family.

Since immigration law has allowed one to bring in a wife but not a friend, a daughter but not a friend's child, decision makers in immigration law must make relationships appear fixed. Practices that might in other circumstances have been fluid or part of an informal structure of caretaking—watching a neighbor's child, cohabiting and raising children together—must be comprehensible within legal categories. One is or is not married, is or is not a parent; such a simple categorization requires a formal system of marriage and birth registration. In poorer countries, the lack of a formal system of birth registration makes documentation only irregularly connected to citizenship status.

Because people might treat legal rules as instructions on how to make decisions, legal regulations partly produce families across national boundaries. If having a child together will persuade officials that a marriage is genuine so that a spouse can enter, new spouses will produce children. Children document the genuineness of a marriage in some countries, leading to the quick birth of a child in a marriage involving immigration.

Legal rules and officials also erase relations. In recognizing for citizenship those who were born in a country and those who have legal status, but not those who are undocumented, state practices yield persons who are not relatives for the purpose of the law. In the early twentieth century, determining who had a kin relationship plagued the immigration officials responsible for regulating the immigration of the Chinese into the United States, where papers documenting whether one was a U.S.-born child of an immigrant were often sold.

The regulation of families with members in two or more countries has included presumptions that concern gender. In the early twentieth century, for instance, U.S. officials were more likely to believe that wives and daughters of Chinese immigrants were genuine relatives than men who claimed to be sons of those legally settled, and so the officials questioned the women less aggressively than they did the men. In Britain, until the European Court of Human Rights declared Britain's policy to be against its terms in 1985, the government would allow men to bring in wives with little evidentiary requirement but not provide the same privilege to women.

Children also provide the grounds for regulating families and migration, not only through marriage, asylum seeking, and deportation, but also through intercountry adoption. Intercountry adoption may involve global regulation of family relationships. About thirty thousand children move annually from sending countries to receiving countries, and states have signed the Hague Convention on Intercountry Adoption (1993) [p. 730 ↓] to regulate this movement. Until the mid-twentieth century, adoption usually did not mean a change in nationality, although adoption across national boundaries typically cuts ties between a child and the birth family. Regulation of intercountry adoption has shadowed and intersected with immigration policy, domestic race relations policies, and domestic adoption policy.

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See also

- [Adoption](#)
- [Asylum, Refugees, and Immigration](#)
- [Cultural Identities](#)
- [Discretion in Legal Decision Making](#)
- [Family Relationships, Sociology of](#)
- [Geography, Law and](#)
- [Human Rights, International](#)
- [Nation Building](#)
- [Race and Ethnicity](#)
- [Social Contract](#)

Further Readings

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