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“Membership without Citizenship: The Economic and Social Rights of Noncitizens

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Chapter 7

**MEMBERSHIP WITHOUT CITIZENSHIP:
THE ECONOMIC AND SOCIAL RIGHTS
OF NONCITIZENS**

William Rogers Brubaker

We live in a world of nation-states. Each one defines itself by claiming a certain fraction of the earth's surface and a certain fraction of the human population as its own. Usually, the territory and citizenry thus claimed are roughly congruent. This means that most citizens are residents, most residents citizens. If congruence were perfect, all citizens would be residents, all residents citizens. Perfect congruence is unrealized and unrealizable in the modern world. But approximate congruence remains an ideal.

Over the long run, in a democratic society, residence and citizenship should roughly coincide. This does not exclude movement across state borders. It is perfectly compatible with a high volume of interstate travel for short-term stints abroad. Nor does it exclude settlement in a foreign country—so long as this is followed (and legitimized) by naturalization. It does, however, exclude immigration without naturalization, immigration that issues in settlement but not in citizenship.¹ Yet just this state of affairs—settlement without citizenship—has become increasingly prevalent in Europe and North America in recent years.

Many postwar migrants, of course, have naturalized. Millions, however, have lived five, ten, even twenty or more years—sometimes their entire lives—as resident noncitizens. Some of these, to be sure, intend to naturalize, but many do not; and even those who do eventu-

ally naturalize will have spent long stretches of their lives as resident aliens.²

How significant is this long-term exclusion from citizenship? In the political sphere, it is decisive. This is not to say that noncitizens are politically mute or passive. Mark Miller's essay in this volume makes it clear that this is not the case. Nor is it to attribute miraculous virtues to universal suffrage. The possession of full political rights does not guarantee their effective exercise, particularly by groups poorly endowed with organizational and financial resources. It is simply to recall the obvious: the exclusion or self-exclusion of immigrants from formal citizenship leaves a significant fraction of the population, and a much higher fraction of the manual working class, without electoral voice; and the interests of disenfranchised groups do not count for much in the democratic political process.

But how much does citizenship matter outside the political sphere? In his essay on American citizenship in this volume, Peter Schuck finds few significant differences between citizens and permanent resident aliens. Does a similar pattern hold in other countries? Can one speak, with Schuck, of a general "devaluation of citizenship"? What does the possession or lack of citizenship mean in terms of the social and economic opportunities of today's immigrants? What economic and social rights are enjoyed by different categories of noncitizens? These are the questions that I address in this essay.

Clearly, citizenship status is not what matters most in the economic and social sphere. What really matters, as a determinant of the life chances of immigrants, is their position—all too often a weak one—in the labor market, the housing market, and the educational system. This position—which for certain groups and subgroups amounts to a general economic and social marginalization—is largely independent of formal citizenship status. It has long been clear from the experience of the United States, and it has more recently been confirmed in Britain, that the possession of full formal citizenship does not prevent the development of multiply disadvantaged ethnic minorities.

Even in this life-chances perspective, however, formal membership status is important, indeed increasingly important. The demand for entry into the more prosperous and peaceful territories of the earth is greater than ever before. This is the result of the simultaneous working of "push" and "pull" factors. The push—the incentive to leave—comes from the population pressures, limited economic opportunities, and political instability that are endemic in many third world countries. The pull—the attraction exercised by particular countries of

destination—comes from the eclipse of distance between the third world and the first through the mutually reinforcing links of transportation, communication, and migration.

Given this unprecedented demand for entry—a demand that, in all probability, will continue to increase—the right to enter, work, reside, and, above all, remain in a prosperous and peaceful country has a very high value indeed. Such rights can decisively shape individuals' life chances. Citizenship, of course, carries with it all these rights. But one does not need to be a citizen to enjoy them. For most purposes, the crucial status is residence, not citizenship: more particularly the status of "privileged," "established," or "permanent" resident, which confers an ordinarily nonrevocable right of residence as well as a wide range of civil and socioeconomic rights. In terms of life chances, the decisive gap is between privileged noncitizen residents and persons, inside or outside the territory, without long-term residence rights.

But this is to anticipate. And it is also too one-sided. Despite its diminishing significance, citizenship still confers certain significant privileges, even outside the political sphere. To delineate these, and to characterize the economic and social rights of noncitizens, is the task of this essay.

The labor market. On what terms—and under what conditions—are noncitizens allowed access to the labor market? Posing the question in this way is a reminder that there is, in principle, a basic difference between citizens and noncitizens. While citizens' access to the labor market is (in modern Western states) general and unconditional, noncitizens' access is always only partial and conditional. Careers are open to talents within, but not between nation-states. As a basic principle, freedom of occupation is a bounded freedom, applying within a particular region (the territory of a nation-state) and to a limited class of persons (the citizens of that state). This is nicely illustrated by a provision in the constitution of the Federal Republic of Germany: free choice of career and workplace is one of the "basic rights," but one expressly reserved to Germans (and thus distinguished from other basic rights that apply to all persons).

If free and unconditional access to the labor market is reserved for citizens, this is because every modern state—dependent for its legitimacy on the active or at least passive support of the citizenry as a whole—is committed to protecting its national labor market. No government—at least no government of a relatively prosperous country—can politically afford to maintain a completely open labor market. In today's small world, with its great and growing migratory pressures,

perfect openness would induce immigration on a vast scale, sufficient to force wages down or unemployment up or both. This is a political risk no state would consider running (quite apart from the other political risks a policy of open borders would entail).

But if none of our six countries would consider opening its labor market to all comers, it is equally true that none would consider closing it to all noncitizens. Perfect closure is as unrealistic as perfect openness. There are a number of reasons for this. In the first place, it would be contradictory to admit persons as immigrants or prospective settlers yet exclude them from the labor market. And each of our countries continues to admit such persons (in Europe chiefly through provisions for family reunion). Second, labor shortages in certain sectors of the economy—especially those characterized by some combination of low wages, intermittent or seasonal work, low prestige, unpleasant or dangerous working conditions—generate strong pressures from employers to admit noncitizen workers. Third, absolute closure is incompatible with the need of the international economy for a certain flow of specialized personnel between countries. Perfect closure, finally, is incompatible with the commitment to free labor mobility within the European Economic Community and the Nordic region.

Labor markets in each of the six countries, then, are partially open to noncitizens. But noncitizens are a varied lot, and the rules governing their access to the labor market reflect this variety. Every state defines different categories of noncitizens and regulates their access to the labor market accordingly. The categories are not precisely the same in each country, but they are sufficiently similar to permit the following general observations.

The most fundamental distinction is between immigrants and nonimmigrants. Although only the United States and Canada, among the countries considered in this volume, are classical countries of immigration, the European countries, too, acknowledge certain categories of noncitizens as immigrants, granting them an ordinarily non-revocable right of permanent residence. Thus the status of permanent resident alien in the United States and landed immigrant in Canada is roughly similar to that of persons with “indefinite leave to remain” in the United Kingdom, of persons with a “right to residence” (*Aufenthaltsberechtigung*) in the Federal Republic of Germany, of persons with the “Carte de Résident” in France, and of persons with a permanent residence permit in Sweden.

These recognized immigrants enjoy privileged access to the labor

market. They do not need special permission to work, and they can compete for jobs on terms of formal equality with citizens. (The one major exception to this equal treatment—the fact that some jobs, mainly in public service, are reserved for citizens—will be discussed below.) If they become unemployed, their right to remain in the country is not jeopardized. They qualify for unemployment benefits and most other social benefits on the same terms as citizens.

Provisions for freedom of movement within the European Economic Community and the Nordic region create, for France, Germany, Britain, and Sweden, a second category of noncitizens with privileged access to the labor market. Like immigrants, these persons too are excluded from certain public service employment. Otherwise, they enjoy access to the labor market on the same terms as citizens. EEC rules, for example, explicitly forbid member states from discriminating against workers or job seekers from other member states. These rules also specify that involuntary unemployment is not a ground for refusing to renew a residence permit.

In contrast to acknowledged immigrants and citizens of common market states, nonimmigrants who do not enjoy freedom of movement within the EEC or the Nordic region have at best a conditional and qualified access to the labor market. With insignificant exceptions, they need explicit permission to work. Typically, such permission is valid only for a limited time. It may be limited in other respects as well—to a particular region, industry, occupation, employer, or even to a particular job. And, of course, permission may be refused. Some categories of nonimmigrants—tourists in all countries, for instance, and candidates for political asylum in the Federal Republic of Germany—may be flatly barred from working. For others, the initial permission to work—or the renewal of this permission—may depend on the state of the labor market in a particular industry, occupation, or region. If a nonimmigrant worker loses his job, moreover, he may lose his right to remain in the territory.

This is not the place to examine in detail the various ways in which states regulate nonimmigrants’ access to the labor market. I want simply to emphasize that foreigners enjoy secure, continued access to the labor market, as well as a secure right of residence, only if they have the status of acknowledged immigrants (or common market citizens). Policies governing access to the labor market therefore have to be understood in conjunction with policies governing access to immigrant status.

Access to immigrant status. There are two ways of acquiring

immigrant status. The first is to obtain it abroad and enter the country as an immigrant. This has been characteristic of the United States and Canada, although some persons—chiefly those joining family members—now enter European countries with immigrant status. The second way is to enter the country as a nonimmigrant and later graduate to immigrant status. This has been characteristic of Europe, although many persons, unable to get immigrant visas, enter Canada and especially the United States as nonimmigrants in the hope of later acquiring immigrant status.

Among our six countries, access to immigrant status on the part of long-resident foreigners is most closely controlled in Germany. There, the *Aufenthaltsberechtigung* (literally, the right of residence) is granted on application after eight years' residence if the applicant demonstrates, among other things, that he has adequate living quarters for himself and his family, "sufficient" knowledge of German, and a "secure" economic existence. Only 22 percent of all adult Turks in the Federal Republic have an *Aufenthaltsberechtigung*. The figure is higher if one considers only adult Turks having lived 10 years or more in the Federal Republic—but even then it is only 29 percent.³

Outside of West Germany, the largest group of long-term residents without immigrant status in our six countries are the undocumented aliens in the United States. Under the legalization program enacted in 1986, it seems likely that well over one million persons who have been in the United States since 1982 will have their status legalized, in addition to a smaller number of agricultural workers with shorter periods of residence.⁴ Successful applicants are initially granted temporary resident status and authorization to work. After 18 months as a temporary resident, they will have a year in which to apply for permanent resident status. This will be granted if the applicant meets ordinary standards for admissibility as an immigrant and if, in addition, he demonstrates minimal knowledge of English and civics. The large majority should qualify for permanent resident status. The legalization program, however, excludes persons who entered the country after January 1, 1982 (except for certain categories of agricultural workers). Many of them are by now quite firmly established in the country; their social ties, formed through work and prolonged residence, make them members of society in Joseph Carens' sense. But their legal status will remain precarious.

In the other countries, long-term resident foreigners generally have immigrant status or common market status. This includes virtually all long-term residents in Canada and Sweden, and the large

majority in Britain and France. Among the European countries, access to immigrant status has long been quickest and easiest in Sweden, where permanent residence permits have been routinely issued after one year's residence. France recently liberalized its policy in this area. The *Carte de Résident*—valid for 10 years and renewable as a matter of right—is now accessible to foreigners after three years' residence. In Britain, persons subject to immigration control can be granted indefinite leave to remain after four years.

Since no European country has recruited foreign workers—except for seasonal workers—for 15 years now, the great majority of immigrants who have entered Europe during this time have been family members of earlier immigrants. (Refugees comprise the second largest group of recent immigrants.) All countries place certain restrictions on family immigration. In general, these have been tightened in recent years. (Restrictions are tightest in Britain and Germany). But those admitted are—except in Germany—admitted as immigrants when the person they are joining has immigrant status. This gives them immediate free access to the labor market. In Germany, however, spouses must wait four years after entry before they are eligible to work (or two years, if they wish to work in branches of the economy in which there is a shortage of labor). As in the case of Germany's five-year ban on work on the part of applicants for political asylum and their family members, this restriction is clearly intended to dissuade immigration.

Family immigration accounts for much of the immigration to the United States and Canada as well. In 1986, for example, relatives of citizens or permanent residents accounted for nearly 75 percent of all admissions to immigrant status in the United States, and family members accounted for roughly half of admissions to immigrant status in Canada in recent years.⁵ Unlike European countries, however, both Canada and the United States continue to admit in modest numbers some immigrants who are neither refugees nor relatives.

Immigrant or permanent resident status, it should be noted, does not confer an absolute right to remain in any country. There is no difference between countries of immigration and other countries in this respect. "Permanent" residents, unlike citizens, can be deported for various reasons. Nineteen distinct grounds for deportation, for instance, are itemized in the American Immigration and Naturalization Act. In practice, however, permanent residents are rarely deported or expelled from any of our six countries except as a result of infractions of narcotics laws or other convictions over a certain threshold of seriousness. It can be argued that deportation is often unwarranted

even in these cases, particularly when the deportee was born or raised in the host country and has no knowledge of his "home" country, perhaps not even speaking its language. Expulsion in such an instance as this, it might be argued, amounts simply to an unjustified attempt by the country of immigration to export the social problems associated with immigration. Recognizing this fact, some countries have moved recently to limit the possibility of expelling long-established foreigners. A French law of 1981, for example, prohibits the expulsion, except in cases of "absolute urgency," of foreigners under eighteen, foreigners having lived in France since the age of ten, foreigners having lived 15 or more years in France, and spouses and parents of French citizens.

Public sector employment. In general, acknowledged immigrants enjoy access to the labor market on the same terms as citizens. There is, however, one major exception. In every state, certain jobs are reserved for citizens.⁶ Most of these are jobs in (or closely connected with) public administration. The traditional justification for reserving such jobs for citizens is similar to the justification for limiting voting rights in national elections to citizens. In both cases, the idea is to "preserve the basic conception of a political community," as the U.S. Supreme Court has put it. Noncitizens, whatever their degree of economic and social integration, have not joined the political community. For this reason, it is argued, their ultimate loyalty to the state cannot be presumed, nor can they be presumed to have its interests at heart. They should therefore not be permitted to exercise public authority (as an agent of the state) or to help direct its exercise (as an elector). Although aliens enjoy broad social and economic rights, "the right to govern is reserved to citizens." And "governing," in the Supreme Court's interpretation, is not limited to voting and holding elective office; it involves all forms of participation in the "formulation, execution, or review of public policy." A broad interpretation of this language has led the Court to uphold state laws excluding aliens from the police force and even from positions as public school teachers.⁷

Similar arguments are invoked to justify the exclusion of aliens from public sector employment in other countries. The scope of exclusion, however, varies from country to country. This is not surprising: it is impossible to specify with any precision what jobs involve the exercise of public authority, so states have considerable leeway in determining their policies. Two approaches can be discerned among the countries considered here. Some states have defined a narrow range of positions to be reserved for citizens—positions clearly involv-

ing significant exercise of public authority, especially in matters bearing on the security of the state. This has been carried furthest in Sweden, but it has also been the approach in Britain and Canada. The other approach involves the blanket exclusion of noncitizens from a certain status, regardless of the authority actually exercised. Thus most federal civil servants in the United States, all *Beamte* ("officials") in the Federal Republic of Germany, and all *fonctionnaires* in France must be citizens. The second approach, needless to say, is much more restrictive than the first, and closes off substantial numbers of jobs to noncitizens. Many of these can scarcely be said to involve the exercise of public authority. This wholesale exclusion seems motivated less by the desire to preserve the basic conception of a political community than by the desire to monopolize access to certain attractive and secure jobs.

Self-employment and small business formation. Working for one's own account or opening a small business is a dream of many immigrants and a classic strategy of upward mobility. This has long been true in North America, and it is proving true in Europe as well, though to a greater extent in some countries than in others, with self-employment and small business formation among immigrants being more widespread in Britain and France than in Sweden and Germany. As in the United States, there are significant differences among immigrant groups within each country. Indians, for example, are much more likely to be self-employed or small employers than West Indians in Britain; while Algerians are much more likely to be small shopkeepers than other foreigners in France.⁸ In all countries, retail trade, restaurants, bars, cafés, and services catering to the immigrant community account for most immigrant self-employment and small businesses.

Acknowledged immigrants are legally permitted to be self-employed or to form their own businesses in each of our countries, as are citizens of common market states; others generally require special permission to do so. This requirement hinders immigrant self-employment especially in Germany, where so few foreigners are acknowledged immigrants. The residence permit of most foreign residents in Germany explicitly forbids self-employment, and federal administrative regulations specify that this can be altered only when there is an overriding economic interest in or a particular local need for the business the foreigner proposes to open. State-level regulations in most of the West German Länder, however, are somewhat more liberal, generally permitting self-employment after eight years' residence.⁹ And in fact the number of self-employed has more than doubled since

1973. Yet while foreigners accounted for 7.5 percent of all employees in 1984, they accounted for only 4 percent of the self-employed.¹⁰

The economic status of noncitizens. The fact that noncitizens who have been granted immigrant status are free to take any job they wish (outside of the public sphere) and to engage in self-employment does not, of course, guarantee their effective economic integration. In each of our six countries, noncitizens are overrepresented in jobs that are dirty, dangerous, exhausting, menial, unpleasant, strenuous, monotonous, insecure, badly paid, low-status, or low-skill. They have tended to take jobs that native workers have shunned. One-third of all foreign workers in France hold unskilled positions, for example, compared with only one-tenth of the French.¹¹ Moreover, noncitizens have been overrepresented among the unemployed, at least in Europe. The unemployment rate of foreigners was 5.2 percent in Sweden in 1985, nearly twice the overall Swedish unemployment rate of 2.8 percent; it was 15.1 percent in West Germany at the beginning of 1987, compared to an overall German rate of 9.6 percent; and it was 16.6 percent in France in 1984, compared with 9 percent for French citizens.¹² Foreigners have borne the brunt of the recessions of the 1970s and 1980s. This is most dramatically illustrated by the German experience between 1974 and 1976, when the total number of jobs declined by 955,000, while the number of jobs held by foreigners declined by 512,000. Foreigners, in other words, accounted for over half of the decline in employment, although they held only 11 percent of the jobs in 1974.¹³

Why are noncitizens overrepresented in the less desirable jobs and on the unemployment rolls? Not because of their citizenship status. It is important to stress this point, for even if all long-term foreign residents were naturalized overnight, their real economic position would not change dramatically. The only significant change—for persons who already had immigrant status—would be the lifting of restrictions on public sector employment. The low economic status of noncitizens results not from their lack of citizenship but from such factors as their geographic concentration in declining industrial areas, their relatively low educational attainment, their relative lack of the skills that are highly rewarded by the job market, their lack of seniority (which makes them vulnerable to dismissal in an economic downturn), their difficulties with the native language, and ethnic or racial discrimination on the part of employers in firing, promotion, and hiring decisions.¹⁴

Statistics bearing on the economic status of the foreign population as a whole, of course, conceal substantial variation among nationality

groups. In France, for example, at the time of the 1982 census, Algerians' 22 percent unemployment rate was three times the Portuguese rate of 7.5 percent.¹⁵ British unemployment statistics are not broken down by citizenship status, but a major survey in 1982 revealed that the unemployment rate of Asian men was 50 percent above the rate of white men, while the unemployment rate of West Indian men was twice that of white men.¹⁶ Variations in the economic experiences of immigrants are nowhere more dramatic than in the United States. The striking economic and educational successes of certain groups of Asian immigrants stand in marked contrast to the much greater difficulties of legally admitted Mexican and other Hispanic immigrants—and, of course, the economic position of most undocumented immigrants is much more precarious. On balance, legally admitted immigrants to the United States and Canada in the last quarter-century have been more highly educated and prosperous than the bulk of the postwar migrants to Europe.

Social rights. Because of their low economic status, vulnerability to unemployment, poor housing conditions, difficulties with the language, and so on, many noncitizens may have a special need for government-provided or government-subsidized benefits or social services of one kind or another. For what sorts of services and benefits are they eligible?

In principle, welfare states are closed systems. As Gary Freeman has written, they presuppose "boundaries that distinguish those who are members of a community from those who are not."¹⁷

Where are these boundaries drawn? Historically, they were drawn—at least in the theory of the welfare state—between citizens and noncitizens. Most justifications for social insurance, social services, and other welfare provisions on the level of the nation-state have been framed in the rhetoric of citizenship and national solidarity. The French Revolutionary Constitution of 1793, for example—one of the earliest documents to treat welfare as a responsibility of the national state—holds that "public relief is a sacred duty. Society owes subsistence to citizens in misfortune."¹⁸ And the far-reaching social legislation of Britain's postwar Labour government—in reference to which talk of the "welfare state" first came into currency—grew out of the experience of national mobilization during the war, with its heightened sense of national solidarity and its rhetoric of equal citizenship.¹⁹

In practice, however, the boundaries are drawn elsewhere. Citizenship status is in fact relatively insignificant as a basis of access to social services.²⁰ The community of eligibles for social services gener-

ally includes acknowledged immigrants as well as citizens of common market states. In this respect, access to social services mirrors access to the labor market. The main line of division in both cases is not between citizens and noncitizens, but between permanent residents (and, in Europe, resident foreigners from common market states) and others.

Eligibility conditions differ, of course, for different kinds of social services. Programs financed at least in part through beneficiaries' contributions are generally open to all contributors, regardless of their citizenship or immigration status. Such programs include old age pensions, unemployment insurance, accident and disability insurance, and, in some countries, health insurance.²¹ Noncontributory programs financed out of general revenues, on the other hand, tend to be open only to persons with a certain status. This usually includes citizens, permanent residents, and citizens of common market states. It also includes citizens covered by bilateral treaties (which European countries have concluded with numerous emigration countries) granting citizens of each country full social rights when resident in the other. Some services, finally—typically those providing emergency assistance to persons in dire need—are open to all comers, independent of past contributions or current legal status.²²

Eligibility conditions also vary from country to country, and sometimes from one state, province, or city to another within a country. Without going into detail, I'll sketch here in broad outline noncitizens' access to social benefits and services in each of our six countries.

In Germany, foreign workers qualify for the extensive array of social insurance benefits—financed by employer and employee contributions and including sickness, accident, retirement, unemployment, and vocational training and retraining benefits—on the same terms as German citizens.²³ Eligibility extends to all foreign workers, not simply to the small minority holding permanent resident permits. Only in the case of vocational training and retraining programs are these benefits restricted to persons having resided a certain length of time in Germany. Like German citizens, foreign workers must work for a certain length of time before qualifying for a pension; but if they leave the country before qualifying, they are repaid their own contributions (though not their employers' contributions).

Foreign residents also qualify for noncontributory benefits. These include child allowances, housing allowances, and "social help" (assistance for the needy, or "welfare" in the colloquial American sense).

There are, however, two restrictions on the receipt of "social help" benefits. First, the foreigner has no right to them if it is determined that he entered Germany with the intention of receiving them. (Throughout Europe, it is frequently asserted that generous welfare provisions serve as a magnet for migrants.) Second, and more important, receipt of "social help" for more than three months is a ground for deportation or for the nonrenewal of a residence permit. This does not apply to EEC citizens nor to the small minority of foreigners possessing the right of permanent residence; but it does effectively prevent the large majority of Turks and Yugoslavs from exercising in practice a welfare right that they possess in theory.

Sweden's extensive social benefits are, in general, available to all registered residents, regardless of citizenship status. Any foreigner with a residence permit can register as a resident and thus qualify for benefits, which, as in Germany, include child allowances and housing allowances as well as insurance and pension benefits. In Sweden, receipt of need-based welfare assistance does not endanger one's continued residence, as it does in Germany.

The Swedish pension system has two parts. The noncontributory "basic pension" provides a basic minimum benefit for all persons over 65 (as well as additional benefits for disabled persons and their dependent children). The supplementary pension system (ATP), financed by employer and employee contributions, provides benefits in proportion to earnings. The basic pension is reserved for Swedish citizens and persons covered by agreements with other countries. In fact, this restriction affects few foreigners, for Sweden has signed agreements with all major countries of emigration. The contribution-based ATP is open to all residents.

Asylum-seekers, pending examination of their claim for asylum, may not register as residents, and thus do not qualify for social benefits, but only for a special asylum-seeker benefit. Sweden is no exception here. All of our countries, concerned that social welfare benefits serve as a magnet for immigrants, inducing false claims for asylum on the part of immigrants who can enter the country in no other way, have moved to restrict asylum-seekers' access to social welfare benefits pending resolution of their claim.

In France, foreign workers qualify for social insurance benefits—covering sickness, disability, maternity, death, work injuries, retirement, and unemployment—on virtually the same terms as French citizens.²⁴ State-financed family allowances were originally restricted to families whose children had French citizenship. Since 1946, how-

ever, foreigners have been eligible as well. Because of their large families and low incomes, they receive a disproportionate share of these benefits.²⁵ This has upset the nationalist right, which argues that family allowances should encourage French women, not foreign women, to have more children.

Responsibility for *aide sociale*—comprising various forms of assistance for the needy—has recently been transferred from the national to the departmental level. Conditions vary with the particular program. Aid destined for children is given irrespective of citizenship or immigration status. Foreigners' eligibility for other *aide sociale* benefits depends on bilateral conventions or—in the absence of a convention—on their length of residence. Some noncontributory social benefits are given only to French or EEC citizens. Non-EEC citizens are ineligible, for example, for benefits from the “national solidarity fund,” destined for needy elderly persons, and for allowances to handicapped adults.

Most resident noncitizens in the United Kingdom are citizens of EEC or Commonwealth countries. As such they enjoy full equality with British citizens in the area of social rights. Other legally resident noncitizens, too, are eligible for social insurance benefits (covering sickness, accident, unemployment, and retirement) and for social assistance and family allowances. Legally resident noncitizens are disadvantaged not in their formal eligibility for social benefits but in the special scrutiny with which, if they are nonwhite, their applications for benefits tend to be examined. Social service bureaucrats have been enlisted as adjuncts in the government's attempt to root out illegal immigrants and deny them access to social benefits; and this has colored the experience of many legal immigrants.²⁶

In Canada, immigrants qualify for social benefits on terms of equality with citizens, with one important exception. Nearly half of recent immigrants have been sponsored by relatives, who agree to meet immigrants' financial obligations for up to 10 years. Such immigrants qualify for work-based social insurance programs, but not for need-based welfare benefits. Nonimmigrants' access to benefits varies with the benefit, with the particular category of nonimmigrant, and with the province.

In the United States, as in Canada, many immigrants, and a high percentage of low-income immigrants, are sponsored by relatives; they must include the assets and income of the sponsoring relative when calculating their eligibility for food stamps or welfare benefits (Aid to Families with Dependent Children) during their first three years as permanent residents. As a result, few immigrants are eligible for these

benefits during those years, although they are not formally barred from these programs.²⁷ Aliens legalized under the 1986 legislation are ineligible for cash assistance and food stamps for five years after legalization.²⁸ With these exceptions, permanent residents are eligible for state and federal social programs on the same terms as citizens. Restrictions on permanent residents' participation in state social programs have been invalidated by the Supreme Court. Restrictions on their participation in federal welfare programs, it appears, would be constitutionally permissible; however, Congress has not enacted such restrictions. Eligibility for most major federal programs includes not only permanent resident aliens but also refugees and asylees and other aliens “permanently residing in the United States under color of law.” This last expression probably includes aliens who are “paroled” into the country and deportable aliens to whom “withholding of deportation” has been granted.²⁹

Citizenship, then, is not an important determinant of access to social benefits in any of our six countries. David North analyzed nine factors bearing on immigrants' eligibility for social benefits, and found citizenship to be the least significant of the nine.³⁰ The factors included:

—*Physical presence in the territory.* This might seem trivial. In fact, it is quite important, since many immigrants return, some for short interludes, others permanently, to their country of origin, and since many immigrant families are split between two countries. In such cases, it matters a great deal whether work performed in another country counts towards establishing eligibility for pension, whether disability or retirement pensions are transportable across national boundaries, whether medical insurance is valid while abroad, or whether one can receive family allowances for children living abroad. Within the EEC, benefits are fully portable across state boundaries, and work performed in one member country counts toward the establishment of eligibility for pensions and other work-based benefits in another. Outside the EEC, there are many bilateral agreements that make similar provisions for the portability of benefits and for the cumulativeness of eligibility-establishing periods of work in different countries. Such agreements, however, do not cover all noncitizens.

—*Legality of residence and/or work.* As concern increases in Europe and North America about illegal work and residence, eligibility rules increasingly include references to legal status. There are some notable exceptions.³¹ Social insurance benefits based in part on workers' contributions tend to be paid regardless of legal status, once the beneficiary is in the system and has paid contributions that have been

credited to his account. Most states, however, are trying to prevent aliens whose residence or work is illegal from registering for social insurance programs. The United States has done this, in theory at least, by denying social security numbers to illegal aliens; in practice, this regulation appears relatively easy to circumvent.³²

The other factors cited by North as affecting eligibility more significantly than citizenship have already been discussed above. These include *specific noncitizen status* (i.e., permanent resident, temporary visitor, candidate for asylum, etc.); the *nature of the program* (i.e., social insurance vs. family allowances vs. emergency medical care); the *country of origin* (as noted above, citizenship in a common market state guarantees full social benefits throughout the common market, while citizens of certain other countries enjoy full social benefits as a result of bilateral treaties with the country of residence); the *zeal with which eligibility rules are enforced*; the *state or province of residence* (in federal states); and the *length of residence*.

Formal eligibility for social services and benefits does not, of course, guarantee that noncitizens will take advantage of them. For a variety of reasons—including lack of information, fear or distrust of bureaucracy, difficulties assembling the paperwork required to demonstrate eligibility, and impatience, indifference, misunderstanding, or hostility on the part of the social service employees—noncitizens may systematically underutilize certain social services to which they are formally entitled. On the other hand, the social workers who serve as gatekeepers for many programs and services may sometimes overlook legal eligibility conditions or not inquire too closely into them and thus grant certain noncitizens (undocumented immigrants, for example) benefits to which they are not formally entitled.³³ The widespread public perception is that immigrants overuse public services, causing them to deteriorate in quality, and straining local and national budgets. The various studies that have attempted to determine whether immigrants are net contributors or net beneficiaries of welfare state institutions are inconclusive: data are fragmentary, and much depends on which factors one includes in the analysis.³⁴

Conclusion. In the area of economic and social rights, we have seen, citizenship matters relatively little, while status as a permanent resident, or (in Europe) as a citizen of a common market state, matters a great deal. What does this say about the way membership is organized today?

A dual membership structure has emerged in Europe and North America. Membership is organized in two concentric circles.³⁵ The

inner circle, representing membership of the national political community, is composed of citizens. The outer circle, representing membership of the national social and economic community, includes, in addition to citizens, permanent resident aliens and (in Europe) resident citizens of common market states.

Membership of the political community entails certain privileges and certain duties not extended to members of the wider social and economic community. These include, first and foremost, the right to vote in national elections, and thus the right to take direct part in the formation of national policy. It also includes the right to take employment that involves the exercise of public authority. And it includes the duty of military service. These privileges and obligations express the specifically political dimension of membership.

To be sure, the structure of membership is not quite so neat as this model suggests. Some of the privileges enjoyed by citizens cannot be explained—or justified—by a theory of the “sovereign functions of the political community.” Noncitizens’ exclusion from public sector employment in many states, for example, is much more sweeping than what is required in order to “preserve the basic conception of political community.”³⁶ The superior immigration opportunities enjoyed by the relatives of citizens (compared to the relatives of permanent resident aliens) have nothing to do with political community. Nor does the idea of political community explain why citizens alone cannot be deported.

On the other hand, certain political rights are enjoyed not only by citizens but by social and economic members as well. Resident foreigners have the right to vote in local and regional elections in some states. They may be free to join political parties. And they generally enjoy, within limits, freedom of expression, association, and assembly. (This freedom is not absolute: foreigners can be deported for political activities that would be constitutionally protected if engaged in by citizens.)

Yet the model of two concentric circles does capture an important truth about the way membership is organized today. We are accustomed to thinking of citizenship as the sole form of membership of the modern nation-state. In fact it is not. There are two forms of membership of the nation-state: citizenship and what Tomas Hammar has called denizenship.³⁷ Denizens, as well as citizens, belong to the nation-state; they are part of the national community. This is nicely illustrated by the explicit “Canadians first” employment policy that Canada adopted between 1982 and 1986 as a response to mounting unemployment. The essence of this policy was to restrict economic

immigration and promote instead the retraining and mobility of Canadian workers. In the implementation of this policy, persons with landed immigrant status counted as "Canadians" though they were not—at least not yet—Canadian citizens.

Alongside the traditional, "self-consciously political definition of national community"³⁸ has emerged a broader conception of national community, one based on the indubitable fact that long-term resident foreigners are full-fledged participants in social and economic life.³⁹ As Joseph Carens argues in this volume, such persons are members of the national community in fact; increasingly, they are members of the national community in law as well. Not full members: they do not share in the specifically political rights and obligations of membership. But they are members nonetheless, virtually indistinguishable from citizens in their economic and social rights, and possessing an ordinarily nonrevocable right to remain in the country.

What are we to make of this extrapolitical membership? On the one hand, it brings immigrants into the enjoyment of a wide range of economic and social rights even while they remain, for whatever reason, outside the political community. On the other hand, this very fact probably diminishes the incentive to naturalize. Paradoxically, inclusion in the social and economic community may facilitate (self-) exclusion from the political community. Secure status as a denizen, a member of the outer circle, may dissuade an immigrant from becoming a citizen, a member of the inner circle. As a way station on the road to full citizenship, denizenship is desirable. But in the long run, denizenship is no substitute for citizenship. European and North American countries of immigration must transform their denizens into citizens, enjoying political as well as economic and social rights. Nothing less is required by their self-understanding as democracies.

NOTES

Introduction

The author gratefully acknowledges comments and suggestions from Frank Loy, Zsuzsa Berend, David North, and Bill Heffernan.

1. One significant exception is Barbara Schmitter's study, "Immigration and Citizenship in West Germany and Switzerland" (unpublished Ph.D. dissertation, University of Chicago, 1979).

2. Other countries, of course, might have been chosen. Australia might have been included as a classical country of immigration, the Netherlands as a country of postcolonial immigration, or Switzerland as a country of labor immigration. But, in order to prevent the discussion from becoming too unwieldy, we have limited the scope of our inquiry to these six.

3. The following paragraphs draw on my paper "Immigration and the Nation-State in France and Germany," forthcoming (in German) in *Der Staat*.

4. Mark Miller, "Policy Ad-Hocracy," *Annals of the American Academy of Political and Social Science*, vol. 485 (May 1986).

5. Dominique Schnapper, "La 'France plurielle'?" Paper presented at conference sponsored by Columbia University and New York University on "A France of Pluralism and Consensus?" October 9–11, 1987.

6. See the discussion in Kay Hailbronner's essay in this volume.

7. French and German traditions of nationhood and citizenship are analyzed in greater detail in my paper "Immigration and the Nation-State," n. 3 above.

8. See Ann Dummett, *Citizenship and Nationality* (London: Runnymede Trust, 1976).

9. James Kettner, *The Development of American Citizenship, 1608–1870* (Chapel Hill: Univ. of North Carolina Press, 1978), 9, 60–61, and part III generally.

10. Hans Kohn, *American Nationalism*, cited by Philip Gleason, "American Identity and Americanization," in *Harvard Encyclopedia of American Ethnic Groups*, ed. S. Thernstrom (Cambridge: Harvard University Press, 1980), 31.

11. An article in the *New York Times* of November 7, 1987, for example,

generation," *Zeitschrift für Ausländerrecht und Ausländerpolitik*, no. 2 (1982), 91–2.

32. The current controversy about immigration and citizenship in France was launched by Jean-Yves Le Gallou and the Club de l'Horloge in their book *La préférence nationale: réponse à l'immigration* (Paris: Albin Michel, 1985). See also Jean Weydert, "Acquérir la nationalité française," in *Etudes* (April 1986), 453–463; and Jacqueline Costa-Lascoux, "Nationaux seulement, ou vraiment citoyens," in *Projet*, no. 204 (March–April 1987), 45–57. For the most thorough discussion, see *Etre français aujourd'hui et demain* (n. 3 above).

Chapter 6. Political Participation and Representation of Noncitizens

1. Jan Rath, "Voting Rights of Immigrants in Europe." (Paper presented at the European Consortium for Political Research Workshop, Göteborg, Sweden, April 1–6, 1986).

2. Information kindly provided by David North.

3. See William Rogers Brubaker's essay on citizenship and naturalization in this volume.

4. Georges Tapinos, *L'immigration étrangère en France* (Paris: Presses Universitaires de France, 1975).

5. Rath, 9–10.

6. See Tomas Hammar's essay on dual citizenship in this volume.

7. Rath, 9–10.

8. See Gilles Kepel, *Les banlieues de l'Islam* (Paris: Seuil, 1987).

9. Rath, 7–12.

10. *Ibid.*, 12–14.

11. See Marion Fitzgerald and Zig Layton-Henry, "Opposition Parties and Race Policies, 1979–83," in Z. Layton-Henry and P. Rich, eds., *Race, Government, and Politics in Britain* (London: Macmillan, 1986).

12. John Nordheimer, "British Nonwhites Seek Bigger Voice," *New York Times*, June 8, 1983.

13. *Le Monde*, June 18, 1976.

14. See, generally, Mark J. Miller, *Foreign Workers in Western Europe: An Emerging Political Force* (New York: Praeger, 1981), 67–74.

15. See Floriane Benoit, *Citroen: le Printemps de la dignité* (Paris: Editions Sociales, 1982).

16. See Mark J. Miller, "Industrial Policy and the Rights of Labor: The Case of Foreign Workers in the French Automobile Assembly Industry," in *Michigan Yearbook of International Legal Studies*, vol. VI, 361–182.

17. *L'Humanité*, April 28, 1979.

Chapter 7. Membership without Citizenship

The author thanks Bill Heffernan, Tomas Hammar, William Marr, and David North for their helpful comments and criticisms.

1. The long-term residence, even the settlement, without naturalization, of scattered individuals—particularly members of international elites, such as the professional employees of multinational corporations—does not pose a serious challenge to democratic theory. The challenge is posed, rather, by the settlement without citizenship of immigrant groups, particularly economically, culturally, or socially disadvantaged groups.

2. For statistics on naturalization, see my essay on citizenship and naturalization in this volume.

3. Statistisches Bundesamt, 23F, Table "Ausländer am 30.06.1987 nach ausgewählten Staatsangehörigkeit, Aufenthaltsdauergruppen und Aufenthaltsstatus."

4. As of June 24, 1988, 1,731,683 persons had applied for legalization on the basis of residence since 1982, while the special legalization program for farm workers had received 648,692 applicants.

5. *1986 Statistical Yearbook of the Immigration and Naturalization Service*, 8–11; William Marr, 1985 SOPEMI report on Canada, 21.

6. The United Kingdom is an exception. Here, certain positions are reserved for persons who are not aliens—including British citizens, Irish citizens, citizens of independent Commonwealth countries, and others. And a handful of positions is reserved for persons born in the United Kingdom.

7. These and other Supreme Court decisions are quoted and analyzed in "Immigration Policy and the Rights of Aliens," *Harvard Law Review*, vol. 96 (1983), 1405.

8. For Britain, see Stephen Castles, *Here for Good* (London: Pluto Press, 1984), 136. For France, see *Les Etrangers* (Recensement Général de la Population de 1982, Série "Boulier", RP 82/5), 54.

9. Kay Hailbronner, "Die Rechtsstellung von Ausländern in der Bundesrepublik Deutschland" in *Die Rechtsstellung von Ausländern nach staatlichem Recht und Völkerrecht*, ed. Jochen Abr. Froweign and Torsten Stein, 2 vols. (Berlin: Springer Verlag, 1987), 393.

10. Jürgen Kühl, "Zur Bedeutung der Ausländerbeschäftigung für die Bundesrepublik Deutschland," in Helga Reimann and Horst Reimann, eds., *Gastarbeiter*, 2nd ed. (Opladen: Westdeutscher Verlag, 1987), 32.

11. Jacques Voisard and Christine Ducastelle, "La question immigré en France en 1986" (Fondation Saint-Simon, 1986), 16.

12. For Sweden: Tomas Hammar and Sven Alur Reinans, SOPEMI report: "Immigration to Sweden in 1985 and 1986" (Stockholm University, Centrum för Invandringsforskning, Report 4, February 1987), 22. For Germany: Der Bundesminister für Arbeit und Sozialordnung, "Ausländer-Daten," May 1987. For France: Voisard and Ducastelle, 15.

13. Kühl, "Ausländerbeschäftigung," 32.

14. Castles, *Here for Good*, 148–49.

15. Voisard and Ducastelle, "La question immigré," 16.

16. John Salt, 1986 SOPEMI Report for the United Kingdom, 27–28.

17. Gary Freeman, "Migration and the Political Economy of the Welfare State," in *Annals of the American Academy of Political and Social Science*, vol. 485 (May 1986), 52.
18. Quoted in Freeman, 53.
19. Asa Briggs, "The Welfare State in Historical Perspective," *European Journal of Sociology* II (1961), 22–8.
20. See David S. North et al., "Non-citizens' Access to Social Services in Six Nations," a report prepared for the German Marshall Fund conference out of which this book has grown.
21. Premiums for some of these programs may, in some countries, be paid entirely by the employer. This is the case, for example, for workers' compensation in the United States. Participation in employer-financed programs is open to all persons for whom contributions have been made.
22. There are also certain programs designed specifically for and restricted to noncitizens, or certain groups of noncitizens. These may include reception or orientation programs, special programs in schools, language training for adults, vocational training measures, housing programs, or general counseling services. Such programs may be more closely adapted to the specific needs of noncitizens. On the other hand, they raise all the problems associated with nonuniversalist social programs directed at special constituencies—ghettoisation, bureaucratic paternalism, etc. An analysis of these programs lies beyond the scope of this essay.
23. Information on Germany is drawn from Hailbronner (n. 9 above).
24. Information on France is drawn from Laurent Richer, *Le droit de l'immigration* (Paris: Presses Universitaires de France, 1986); Christian Nguyen Van Yen, *Droit de l'immigration* (Paris: Presses Universitaires de France, 1986).
25. Comprising 7 percent of the population, foreigners account for 15 percent of total family allowance payments. These payments can be quite substantial; for foreign families from outside the EC with four or more children, family allowances have the effect of nearly doubling pre-allowance income. *Le Figaro*, July 11–12, 1987; *Le Monde*, July 22, 1987.
26. B. Guy Peters and Patricia K. Davis, "Migration to the United Kingdom and the Emergence of a New Politics," *Annals of the American Academy of Political and Social Science*, vol. 485 (May 1986), 135–36.
27. North et al., "Non-Citizens' Access," 17.
28. *Ibid.*, 8.
29. T. Alexander Aleinikoff, "United States Immigration, Nationality, and Refugee Law," in *Die Rechtsstellung* (n. 9 above), 1623.
30. North et al., "Non-Citizens' Access."
31. For the United States, see Peter H. Schuck, "The Status and Rights of Undocumented Aliens in the United States," *International Migration*, vol. 25 (1987), 125–138.
32. David S. North, "Immigration and Income Transfer Policies in the

- United States," New TransCentury Foundation, Center for Labor and Migration Studies, 1980, 7–12.
33. Los Angeles County estimated that it saved \$60,000,000 a year in welfare payments by introducing a system of verifying the legal status of alien welfare claimants in 1979. *Ibid.*, 60–61.
34. Aristide Zolberg, "Contemporary Transnational Migrations in Historical Perspective: Patterns and Dilemmas," in U.S. Immigration and Refugee Policy, ed. Mary M. Kritz (Lexington, MA: Lexington Books, 1983), 36; Freeman (n. 17 above), 57.
35. T. Alexander Aleinikoff has suggested the model of different levels or concentric circles of membership for the United States in an unpublished paper, "Aliens, Citizens, and Constitutional Membership."
36. Both quotations are from U.S. Supreme Court decisions and refer to the legitimate exclusion of aliens from certain positions involving the exercise of public authority. *Cabell v. Chavez-Salida*, 454 U.S. 432 at 445, and *Sugarman v. Dougall*, 434 U.S. 634 at 647.
37. See Tomas Hammar's discussion of citizens and denizens in his contribution to this volume.
38. Peter H. Schuck, "The Transformation of Immigration Law," *Columbia Law Review*, vol. 84 (1984), 24.
39. See "Immigration Policy and the Rights of Aliens," *Harvard Law Review*, vol. 96 (1983), 1292 and 1303–08.