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Migration and Citizenship

Legal Status, Rights and Political Participation

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1 Citizenship and migration – concepts and controversies

Rainer Bauböck

Introduction

Citizenship is a very old concept that has undergone many transformations. Since the times of Athenian democracy and the Roman Republic its core meaning has been a status of membership in a self-governing political community. This idea has been revived at every transition from authoritarian regimes to democratic ones. However, this is not the only meaning of citizenship. In periods of decline or absence of popular rule, the concept has been often reduced to a formal legal status with certain attached privileges or duties guaranteed or enforced by political authorities. In contemporary liberal democracies political citizenship has to compete with other affiliations in all kinds of associations, organisations, or communities in civil society. Recent governmental discourses about citizenship also tend to emphasise virtues of self-reliance and the responsibilities of individuals to contribute to the wider society more than active participation in political life (Smith 2001).

This report does not aspire to discuss all facets of the history of the concept and contemporary citizenship discourses. It will use citizenship in its broad political meaning that refers to individual membership, rights and participation in a polity and it has a specific thematic focus on conceptions of citizenship and comparative research questions that emerge from migration studies. Studying migrants’ social networks and organisations as well as their cultural and religious identities is still crucially important since these are among the most important factors influencing their political opportunities and activities. Our research agenda differs thus from other clusters in the IMISCOE network in its focus on citizenship as the object of study, not in the context variables that we consider when explaining citizenship policies or migrants’ choices and political behaviour.

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Migration highlights the political core and the boundaries of citizenship.

In migration contexts, citizenship marks a distinction between members and outsiders based on their different relations to particular states.
Free movement within state territories and the right to readmission to this territory has become a hallmark of modern citizenship. Yet, in the international arena citizenship serves as a control device that strictly limits state obligations towards foreigners and permits governments to keep them out, or remove them, from their jurisdiction. A migration perspective highlights the boundaries of citizenship and political control over entry and exit as well as the fact that foreign residents remain in most countries deprived of the core rights of political participation.

These exclusionary aspects of citizenship raise some difficult problems for the theory of democracy. Such questions are often ignored in discussions that start from the false assumption that liberal democracies have already achieved full political inclusion and equality and focus then on questions of social equality, economic opportunities, political participation and cultural liberties among citizens. As Joseph Carens has put it: 'Citizenship in the modern world is a lot like feudal status in the medieval world. It is assigned at birth; for the most part it is not subject to change by the individual's will and efforts; and it has a major impact upon that person's life chances' (Carens 1992: 46).

The conceptual field of citizenship can be roughly outlined by distinguishing three dimensions. These are, first, citizenship as a political and legal status, second, legal rights and duties attached to this status, and, third, individual practices, dispositions and identities attributed to, or expected from those who hold the status. On each of these dimensions specific questions arise that are relevant for the study of migration and immigrant integration.

Citizenship status

Citizenship and nationality

From an international perspective, citizenship can be understood as a sorting device for allocating human populations to sovereign states. Under international law, the relation between states and their citizens is a legal bond that must be respected by other states and that entails certain duties between states, such as the obligation to readmit a person to the state whose citizen he or she is. International law also supports the right of states to determine under their domestic law who their citizens are. A principle of self-determination applied to citizenship inevitably creates conflicts between states over persons that are either claimed by no state or by more than one. Several international conventions deal with statelessness and multiple citizenship as areas of concern for the international community. Apart from addressing these intrinsic problems of self-determination, international law also tries to ensure that state practices in the determination of citizenship do not conflict with human rights norms regarding gender equality, racial discrimination, the status of children and of refugees.

In international law citizenship is generally called nationality. This is a somewhat ambiguous term, since in many languages it is also used for membership of an ethno-national group that need not be established as an independent state. In a related sense, the concept is also used for distinguishing states composed of several 'nationalities' from nation states. Unless otherwise stated, this report will not use the term nationality in this sense. We treat citizenship and nationality not as synonymous but as two sides of the same coin. Nationality refers to the international and external aspects of the relation between an individual and a sovereign state, whereas citizenship pertains to the internal aspects of this relation that are regulated by domestic law.

Citizenship is, however, also a much thicker concept than nationality in the strictly legal sense. It is, on the one hand, wider in its scope, since it may refer to different types of political communities within and beyond independent states. On the other hand, it is also somewhat narrower because its normative connotations of membership in a self-governing community do not easily apply to regimes that lack appropriate institutions of popular government and can be characterised as non-self-governing. In other words, authoritarian states rule over their nationals, but these nationals can be called citizens only in a very limited sense.

Nationality as a device for regulating territorial movement

Migration is a form of human mobility that involves crossing territorial borders and taking up residence in another municipality, region, or country. In the contemporary world, most such geographic entities are organised as jurisdictions with precisely defined political borders. Some of these territorial borders are completely open for migration; some operate as funnels that permit a free flow in only one direction (entry or exit). The borders of municipalities and provinces are generally open within democratic states. Free internal movement is today not merely conceived as a right of citizens but as a human right. Once they have been admitted into the country, immigrants have the same right as native citizens to move around in search for better opportunities. This is clearly a modern liberal norm that was absent in earlier regimes, and it is still not fully respected in contemporary ones. For example, in Switzerland, residence permits of foreign nationals are generally valid only for a particular canton. In China, internal movement is severely restricted not only for foreign nationals but for citizens, too. All sovereign states, on the other hand, claim a right to control their borders. There is a human right of free exit, which is, again, not re-
spected by most authoritarian regimes (Dowty 1987), but there is no corresponding right of migrants to enter the territory of another state. In this respect, citizenship operates as a filtering device in two basic ways. First, states are obliged to (re)admit their own nationals to their territory. These include nationals born abroad who have inherited their parents’ citizenship. Second, states may impose specific restrictions on certain nationals (e.g. through visa requirements) while opening their borders for others (such as European Union citizens migrating to other Member States).

Co-ethnic immigration preferences have been insufficiently studied.

Several states (among others Israel, Italy, Japan, Germany, Greece, Spain and Portugal) have also adopted preferences for foreign nationals whom they consider as part of a larger ethnic nation or as cultural and linguistic relatives who will more easily integrate in the destination country. These policies identify certain groups of non-citizens as potential citizens already before entering the territory. With some notable exceptions (e.g. Thränhardt 2000, Levy & Weiss 2002, Münz & Ohliger 2003, Joppke 2005), ethnic immigration preferences are a rather neglected topic in comparative migration research. This may partly be due to the fact that co-ethnic immigration does not fit well into dominant migration theories that focus on economic push and pull factors and on the sociology of migration networks. From these perspectives, it is not easy to understand why states would encourage the immigration of co-ethnics who crowd out other migrants with better skills and – in the German, Israeli and Japanese case – are sometimes not even familiar with the destination states’ language. There is also a normative puzzle, which has not been fully explored, concerning the legitimacy of such distinctions. In the 1960s and 1970s, the exclusion of particular ethnic and racial groups from immigration was abandoned in the US, Canada and Australia and is now also regarded as illegitimate in European immigration states. The question whether preferential admission on similar grounds, which is still widespread and potentially growing, also amounts to discrimination, is disputed and has not been fully addressed yet. Migration research must be combined with studies of nation-building and nationalism for explaining the persistence of such preferential treatment as well as for evaluating it.

Membership, ties and belonging

Citizenship is not only a device for sorting out desirable and undesirable immigrants; it also establishes a second gate that migrants have to pass in order to become full members of the polity. As a membership status, citizenship has certain features distinguishing it from related concepts that describe various forms of affiliation between individuals and territorially bounded societies.

There is emerging literature on modes of belonging that focuses on migrants’ constructions of their own identities in relation to different places, groups and countries (e.g. Christiansen & Hedetoft 2004, Rummens 2005, Sicakkan & Lithman 2004). Seen from a different angle, such affiliations may be called ties or stakes. The notion of migrants’ social, cultural, economic and political ties focuses our attention less on identities and more on social relations and practices that can be directly observed and that structure individual lives. Such ties may be called ‘stakes’ once we consider them as linking individual interests with those of other persons and communities, including large-scale political communities.

Of these three modes of affiliation, ‘belonging’ is the most flexible and open-ended one. Migrants may not only develop a sense of belonging to several societies, regions, cities, ethnic and cultural traditions or religious and political movements; they can also feel to belong to imagined communities located in a distant past or future. Modes of belonging will, however, not be purely subjectively defined since they always refer to some socially constructed entity and are shaped by discourses within these about who belongs and who does not. Migrating between distinct societies also creates multiple social ties and political and economic stakes, but, different from their sense of belonging, these must be grounded in some factual dependency of an individual’s activities and opportunities on her or his affiliations.

Citizenship is a more discriminating concept than both ties and belonging because it is a status of membership granted by an established or aspiring political community. Citizenship is neither a purely subjective phenomenon (as is a sense of belonging) nor is it objective in the sense that it can be inferred from external observation of a person’s social circumstances and activities. Citizenship is instead based on a quasi-contractual relation between an individual and a community. In contrast with belonging and ties, membership is also a binary concept rather than one that allows for gradual changes. Citizenship marks a boundary between insiders and outsiders. This boundary may be permeable or impermeable, it may be stable or shifting, and it may be clearly marked or become somewhat blurred. But it is always recognizable as a threshold. If you cross it, your status, rights and obligations in relation to a political community change as a consequence.

These considerations point to two different tasks for research. There is an agenda for empirical research on ‘misalignments’ (Sicakkan & Lithman 2004, Hampshire 2005) between citizenship, ties and belong-
We need to study mismatches between citizenship, ties and belonging as well as institutional reforms that may reduce these.

ing: and there is a task for comparative as well as normative legal and political analysis of political institutions and practices that examines how migrants' multiple and shifting affiliations are taken into account in determining their membership status (see e.g. Castles & Davidson 2000).

In an influential analysis of membership rules in liberal states, Michael Walzer (1983) has drawn analogies with families, clubs or neighbourhoods. States behave like families when they automatically confer their citizenship by descent and if they give preference to co-ethnic immigrants; they are like clubs in discretionary naturalisation of those who are expected to contribute to the common good of the polity; and they are like open neighbourhoods if they give citizenship to all born in the territory or if they extend equal rights to all residents. From a normative perspective, Walzer defends state rights to control immigration along those criteria suggested by the analogy with families and clubs but insists that the gate to citizenship status must be open to all permanent residents. Excluding settled immigrants from access to full citizenship amounts to political tyranny (Walzer 1983: 62), since it subjects a part of the permanent population to legislation without representation. Many contemporary theorists of democracy support a basic norm of inclusion along these lines. Robert Dahl, for example, postulates that 'the demos must include all adult members of the association except transients and persons present temporarily de facto' (Dahl 1989: 129). This leaves open where to draw the line between transients and permanent members and whether to include settled immigrants through an extension of rights or through naturalisation.

Any such norm of inclusion constrains the receiving polity's options to exclude permanent resident immigrants from citizenship or to admit them only selectively. The club analogy suggests a quite different approach that affirms these as legitimate policy options. Along these lines, some public choice economists have recently analysed citizenship as a 'club good'. Club goods are different from public goods, such as clean air or national security, from whose consumption no one can be excluded, because access to a club good depends on membership. The economic theory of club goods, as developed first by James Buchanan (1965), suggests that rationally acting clubs accept new members as long as benefits from their financial contributions or positive externalities exceed costs to the present members, such as integration costs or crowding out effects with regard to the use of club goods (Straubhaar 2003). This argument is, however, more plausible for immigration control than for naturalisation (Jordan & Dīvell 2003). The economic rationale for controlling access to citizenship depends on the relative benefits attached to this status compared to that of foreign nationals. As we will discuss below, large gaps between these two statuses have become less common than they used to be in the past. Nevertheless, this is not an irreversible trend, and economic arguments for rationing access to citizenship may eventually become stronger.

Comparative trends with regard to rules of access and loss of citizenship are extensively discussed in chapter 3 of this report. However, there is a more general puzzle about these rules that has been recently addressed by some legal and political theorists. What justification is there for distinguishing between automatic acquisition at birth and naturalisation regarded as a contract based on active consent by both the immigrant and the receiving polity? Why should immigrants have to apply for naturalisation rather than being granted automatic access to this status after some time of residence? Ruth Rubio-Marin (2000) has suggested that the imperative of democratic inclusion would justify making acquisition of citizenship by immigrants automatic under the condition that they have a right to retain their previous nationality. Dora Kostakopoulou (2003) argues that naturalisation is altogether an outdated institution that should be replaced by automatic civic registration based on residence and conditional on absence of criminal record. Other authors object that automatic jus domicili was a historic practice in some monarchial regimes that relied on the idea of subjecthood without consent. Naturalising foreign nationals against their will may not only infringe on their individual freedom of choice between alternative legal statuses but also on the rights of states of origin to protect their nationals abroad (Bauböck 2004a). Finally, native citizens may expect that newcomers who have ties to other countries publicly declare their intention to join the political community before they can fully participate in its collective decision-making process.

Such observations reflect, however, the reality of the current nation-state system rather than a general necessity of self-governing communities to control the admission of newcomers to their membership. At the substate level, regional citizenship in autonomous provinces of federal states or local citizenship in municipalities is automatically acquired through residence. At the supranational European level, control over admission to Union citizenship rests with the Member States rather than the EU itself.

Contemporary studies on citizenship in migration contexts have focused on modes of acquisition through ius sanguinis, ius soli or naturalisation rather than on ways of losing citizenship through voluntary renunciation, automatic expiration or involuntary withdrawal. The
There is more research on rules of admission than on loss of citizenship. Yet policies on withdrawal and renunciation also structure migrants' choices and vary widely across states.

Agenda for comparative analyses of citizenship loss will be discussed in chapter 2 of this report. From a normative perspective, there is, on the one hand, little consensus on whether immigrants' admission to citizenship should be automatic, an option that can be freely chosen, or a discretionary decision of the state. On the other hand, liberal theorists agree that emigrants ought to be released from citizenship upon request. A considerable number of states, however, still assert the old doctrine of perpetual allegiance (see text box 2 on page 49). Other aspects of citizenship loss have been much less discussed in the literature: Should individuals be allowed to renounce the citizenship of their country of permanent residence under the condition that they acquire another nationality, e.g. through marrying a foreign national? Should states also have a right to deprive their citizen residents of nationality under similar circumstances? Should sui generis transmission of citizenship abroad be limited to one or two generations? Or should those who have been born outside the country and have acquired citizenship through descent lose it unless they 'return' to their country of citizenship before the age of majority? While the analogy with voluntary associations endorses an unconditional right to free exit, the notion of stakeholdership in a democratic polity suggests strict limits for involuntary as well as voluntary loss of citizenship among residents and might also be usefully explored in answering questions about legitimate withdrawal and retention outside the territorial jurisdiction.

Citizenship rights and duties

Types of citizenship rights

The general status of citizenship can be further differentiated in terms of the individual rights that it entails. A classification proposed by the constitutional lawyer Georg Jellinek (1892) is in many ways still useful today. Jellinek distinguishes a negative status of liberty that entails mere freedom from unlawful coercion from a positive status that implies a duty by the state to promote the interests of individuals through a system of public rights and an active status that entitles its holders to participate, or be represented in, democratic institutions. A similar typology, but with a different sequence derived from a historical theory about the evolution of citizenship, is proposed by T. H. Marshall in his 1945 lectures on social citizenship and class (Marshall 1955). In this account the earliest elements of citizenship are civil rights that correspond to the institution of independent courts. These are supplemented in a second stage with political rights associated with the rise of parliamentary sovereignty. The third and most recent element is social citizenship that starts with public schooling but is only fully developed in the post World War II European welfare state.

Marshall's essay triggered a whole new literature on citizenship. Key issues in this discussion were: the question whether social citizenship should be seen as strengthening the egalitarian ethos implicit in the general idea or rather as weakening active political citizenship through passive dependency on the welfare state; a critique of the underlying evolutionary theory that did not fit the pattern in several continental European states where social citizenship had preceded political participation rights or where citizenship developed in a less gradual way as a result of historic upheavals and regime changes; and a debate whether Marshall's list needed to be supplemented by more recent emphases on environmental and cultural citizenship rights.

Citizenship rights of non-citizen residents

The debate on Marshall's analytical model has also raised interesting questions for migration research. A first question concerns foreign nationals' access to the three bundles of citizenship rights. Even irregular migrants can formally claim certain basic rights of civil citizenship that are considered human rights, e.g. due process rights in court or elements of social rights, such as emergency health care or public schooling for their children. On the one hand, these rights are obviously precarious since they effectively depend on a right to residence and because most states of immigration accept only few constraints on their discretionary powers of deportation and expulsion of migrants in an irregular status. On the other hand, regularisation measures have been frequent in all Mediterranean EU states and have also been occasionally implemented in traditional immigration states, such as France or the USA.

Immigrants in a regular status have access to additional rights. On the civil rights dimension, freedom of speech, association and assembly was strongly restricted for foreign nationals in most democratic countries before World War II. There are remaining limitations in certain states concerning political activities, e.g. public demonstrations or the right to form political parties and to sit on their boards. However, by and large, core civil rights have been extended to legal foreign residents, again with the important exception of migration-related rights.
such as protection against expulsion, the right to return from abroad, and family reunification in the country of residence.

Inclusion of legal immigrants into means-tested programmes of social citizenship is still partial and reversible

The most significant inclusion of foreign nationals has probably occurred with regard to social citizenship. In democratic states with a longer history of immigration, there is nowadays comparatively little legal exclusion of foreign nationals in the provision of public education, health and housing and with regard to financial benefits such as social insurance payments in case of unemployment, sickness, work accidents or retirement. This is very different in needs-based and means-tested public welfare systems where foreign nationals are frequently excluded or receive reduced benefits. The rationale behind this discrimination is that immigrants are supposed to be either self-supporting or to be supported by their sponsors. In contrast with virtually all other citizenship rights, inclusion of migrants into social citizenship is also not an irreversible process. In the 1990s legal residents in the US and in Australia have been deprived of welfare benefits (Aleinskiöf 2000, Zappala & Castles 2000). In a broader conception of social citizenship, one should include not merely legal equality of public entitlements but also protection against discrimination in employment, housing, education and health. The two anti-discrimination directives of the European Union, which will be discussed in chapter 3, have obliged Member States to expand and harmonise their policies in this area without, however, covering discrimination on grounds of third country nationality. An even more substantive conception of social citizenship would look at unequal rates of poverty or opportunities for upward social mobility. In this respect, the gaps in achieving full social citizenship for immigrants are obviously still very large.

Political participation and representation is the dimension of citizenship from which foreign nationals remain generally excluded. However, even in this area we find patterns of partial inclusion. In the US an alien franchise was very widespread at state level until World War I. Today, non-citizens cannot vote in the US, in Canada and Australia, but they do enjoy active voting rights even in national elections in New Zealand. Several Latin American countries also do not require national citizenship for the vote. In Europe, the UK grants full voting rights to Irish and Commonwealth citizens. Another significant European development is the emergence of a ‘residential citizenship’ at municipal level that is disconnected from nation-state membership. Thirteen of the 25 Member States of the EU now grant the local franchise to all foreign citizens who meet residence requirements (see table a in the annex). Additionally, all EU citizens residing in another Member State enjoy the franchise in local and European Parliament elections. This development may be interpreted as a gradual emancipation of local citizenship from state citizenship, with the former becoming more open than the latter for the inclusion of immigrants (see Aleinskiöf & Klußmeyer 2002, chapter 3).

Legal incorporation of foreign residents can be measured by comparing their rights across immigration countries. Indicators should allow for ranking states as well as measuring convergence and progress over time.

Comparative analyses of the rights of foreign nationals that go beyond documenting legal developments are still rare. Based on a comprehensive legal comparison of six European countries (Davy 2001), Harald Waldrauch (2001) has developed an index of obstacles for the legal integration of foreign nationals that measures how inclusive or discriminatory the legislation on foreign residents is in different policy areas in each country. Unfortunately, this study has not been updated or extended to other countries. The Brussels-based Migration Policy Group has initiated a comparative project on ‘Benchmarking citizenship policies’ (British Council 2005). A comprehensive and reliable set of standardised indicators for citizenship inclusion of migrants could be of great importance for researchers and policy makers alike. Ideally, these indicators should be applied to a large sample of countries and be updated each year. This would permit not only ranking countries but also measuring convergence and divergence across time as well as progress with regard to equality and inclusion within each country and for specific sets of rights. The methodological hurdles for standardised comparison of different country’s legislations on foreign nationals are formidable but not insurmountable. It would be desirable, but much more difficult, to also include information on the implementation of laws and sociological indicators for migrants’ actual access to rights.

Such comparative studies on migrants’ access to citizenship and rights as foreign residents allow the testing of two widespread assumptions that we may call the convergence and liberalisation hypotheses. The convergence hypothesis claims that citizenship policies of democratic countries of immigration are moving closer to each other. This might be explained as a result of first, spontaneous policy transfers through learning from successful examples, second, integration into international and supranational institutions, such as the Council of Europe and the European Union, which then develop a harmonisation agenda with regard to citizenship policies and, third, globalisation that
increases interdependencies between states, limits their sovereignty and exposes them to similar immigration flows from a growing diversity of origins. The liberalisation hypothesis assumes furthermore that this convergence is moving towards more liberal standards of inclusion. This direction has been attributed either to the emergence of a global human rights discourse and regime (Soyos 1994) or to the growing impact of constitutional courts that share interpretations of legal norms across national boundaries (Joppke 2001). The secular trend of extending citizenship rights in Western democracies to long-term foreign residents has led Tomas Hammar (1999) to suggest that a distinct status of ‘denizenship’ has emerged between temporary residence and full citizenship. This claim has triggered a debate that will be addressed in chapter 3 of this report. The conventional and liberalisation hypotheses have so far been generally tested based on anecdotal evidence from a limited number of case studies. A much more comprehensive and methodologically sophisticated approach is needed.

While there are many studies on migrant denizenship, less research has been carried out on other forms of ‘quasi-citizenship’ that are not based on residence but on special bilateral relations with other states or on cultural and ethnic preferences for certain immigrants. The most prominent example of this is, of course, European Union citizenship, which will also be discussed in chapter 3. Other cases include Commonwealth citizens in the UK, Nordic citizens in the Nordic states and Latin Americans in the Iberian peninsula.

In the 1990s citizenship debates in political theory have strongly focused on the cultural dimension that is neglected in Marshall’s approach because he assumes a homogeneous national culture as a background. Various scholars, among them Iris Young (1990), Jeff Spinner-Halev (1994), Willem Kymlicka (1999), Veit Bader (1997), Jacob Levy (2000), Bhikhu Parekh (2000), have extensively discussed cultural claims and rights of immigrant minorities, often by comparing them to the claims of indigenous peoples and territorially concentrated national minorities. This important dimension of citizenship will not be discussed in this report since it is the topic of a separate thematic IMISCOE cluster (BG).

The migration-citizenship nexus generates questions not only about immigrants’ access to rights but also about the impact of immigration on the citizenship regime of the destination country. For example, there is a long tradition of studies on the impact of the ‘ethnic vote’ in the US. This concern, which can be safely predicted to grow also in European states with large numbers of naturalised immigrants, will be discussed in chapter 4. Other literature focuses on the impact of immigration on welfare regimes, the balance between contributions paid and benefits received by migrants, and the sustainability of welfare-state regulation of working conditions or wages in case of large scale immigration. These mostly economic analyses are addressed in other thematic clusters of our network (B4 and B5). From a citizenship perspective, Ewald Engelken (2003) has recently argued that the tension between high levels of social protection in European welfare regimes and openness for newcomers can be mitigated through a pluralistic regime of differentiated rights combined with flexible enforcement.

External and transnational citizenship

While there is a substantial body of theoretical literature and of empirical case studies on migrants' access to rights in destination countries, much less attention has been devoted to external citizenship rights that migrants enjoy in their countries of origin. These include minimally the right to return and to diplomatic protection. Sending states differ with regard to property rights concerning inheritance and property in land, which are of particular importance for migrants who want to keep their return options open. Finally, external citizenship may also include certain welfare benefits, cultural support and the right to vote. A growing number of sending states have introduced absentee ballots and some (among them Colombia and Italy) have even reserved seats in parliament for the expatriate constituency (Itzigsohn 2000, Bäuböck 2003a). Long-distance voting raises a number of normative problems. Should expatriates be represented in parliaments whose legislation will not apply to them? Should they have a vote even if they have not been exposed to public debates about the candidates and issues? A stakeholder approach to citizenship may allow affirmative answers for those migrants whose ongoing ties to their ‘homelands’ involve them deeply in its present political life and future destiny (Bäuböck 2003a). The lack of comparative and normative studies on external citizenship rights is a major gap in current research. Closing it is also important from a 'receiving state' citizenship perspective since sending-state policies in this area are a major factor determining immigrants’ choices between return migration, permanent settlement as a foreign resident, and naturalisation.

The lack of comparative and normative studies on external citizenship rights is a major gap in current research.

Relations between migrants and countries, regions or local communities of origin have been at the centre of studies on transnational migration. In its broadest sense, this term signals a paradigm change in migration research from a traditional approach of regarding migration
as a unidirectional movement that ends with settlement and assimilation in the destination society. Transnational migration studies emphasise instead: that migration is often a process of going back and forth several times between different countries, that even immigrants who are long-term residents may retain strong ties to countries of origin and participate in these countries’ developments, e.g. by sending home remittances, and that also sedentary populations who never migrate themselves participate in transnational networks and activities when they are linked to migrants through family and ethnic networks. The Oxford-based transnational communities project, led by Steven Vertovec, and several other scholars (e.g. Glick Schiller, Basch & Blanc-Szanton 1995, Pries 1997, Paist 2000, Portes 2001, Levitt 2001, Nyberg-Sarsen 2002, Guarnizo 2003) have established migrant transnationalism as an important and growing field of theoretical and empirical research.

Claims about the importance of this phenomenon are, however, disputed by scholars who emphasise, on the one hand, that transnationalism is not a historically new phenomenon and, on the other hand, that active involvement in transnational practices may be quite limited among first generation migrants and will gradually fade away over subsequent generations. Rogers Brubaker (2001) has identified a ‘return of assimilation’ in French public discourses, in German public policies and in American academic research. However, authors like Brubaker or Richard Alba and Victor Nee (2003) use a rather sophisticated concept of assimilation that has been clearly enriched by the transnationalism debate and deviates from common usage of the term in public debates.

Empirical research on transnational citizenship should study how migrants combine, or choose between political identities and statuses and how citizenship policies of states impact on each other.

Political theorists who have combined the concepts of transnationalism and citizenship have interpreted the term transnationalism in a somewhat broader sense than most of the sociological and anthropological literature (Bauböck 1994, Klerer 1997). Transnational citizenship refers not only to migrants’ political activities directed towards their countries of origin but also to institutional changes and new conceptions of citizenship in states linked to each other through migration chains. Transnational citizenship may be described as overlapping memberships between separate territorial jurisdictions that blur their political boundaries to a certain extent. This phenomenon includes external citizenship rights in states of origin, denizenship and cultural minority rights in states of migrant settlement, and multiple nationality. Transnational citizenship is an analytic concept that has often been associated with post-national approaches. The latter suggest that migration and other phenomena of globalisation undermine the political significance of nation states and their boundaries (Glick Schiller, Basch & Blanc-Szanton 1994, Soysal 1994, Jacobson 1996). Transnational citizenship is, however, still about migrants’ affiliations with distinct and clearly bounded political communities. Empirical research in this field ought to study, on the one hand, how migrants combine, or choose between various political identities and statuses and, on the other hand, how the policies of the states involved impact on each other.

Research on immigrant communities must study under which conditions legitimate religious and political transnationalism becomes linked to dangerous fanaticism and radicalism.

Within the broad field of transnational studies, specific emphasis has been placed by some authors on the notion of diasporic identities and citizenship. The term diaspora is defined in quite different ways in the literature (Cohen 1997, Vertovec 2000). We suggest that diasporic identities and practices refer to a specific kind of transnationalism characterised by its persistence across several generations, by strong networks and shared identities between communities dispersed across several ‘host states’, and, most importantly, by a shared mission to build, or fundamentally transform, a political or religious homeland community. Diasporic citizenship provides therefore a much stronger basis for political mobilisation than other kinds of transnational linkages. Often, it is driven by an unfinished nation-building project in support of which expatriates are rallied. Alternatively, it may emerge from strong solidarity among religious communities dispersed across different countries. The Jewish diaspora before the Zionist nation-building project and the contemporary revival of ideas about a global Islamic umma illustrate such manifestations of religious diaspora. A sense of belonging to a religious diaspora may remain confined to the spiritual realm and pastoral linkages between dispersed communities. But under conditions of social marginalisation and politicisation of religious differences it may also trigger transnational political activism, and eventually political radicalism. Studying these conditions and drawing the line between legitimate forms of religious and political transnationalism and dangerous radicalism is an important topic for research.
Duties of non-citizen residents

In republican theories of citizenship, rights are always connected with duties. However, as T. H. Marshall already observed, there is a 'changing balance between rights and duties. Rights have been multiplied, and they are precise' (Marshall 1965: 129). By contrast, legal duties are either very general (the duty to obey the law) or few and specific rather than universal. Compulsory education is the most universal among citizenship duties, paying taxes depends on income, military service has historically been a male duty only and is currently abolished in more and more democratic states, jury service is a duty that only few citizens ever have to fulfil.

Are there specific patterns how such duties apply to non-citizen immigrants? Duties of education and paying taxes or social security contributions are not attached to nationality but to residence, income and employment. By contrast, military and jury service are generally regarded as linked to citizenship status since these duties have historically been at the very core of ancient and early modern notions of citizenship. Even this is, however, not a universal pattern. Although international law does not allow forcing foreign nationals into the army, permanent residents in the US would be liable to perform military service if the government decided to reintroduce the draft.

Citizenship duties are thus applied to migrants in a less gradual and differentiated way than citizenship rights. Yet, receiving countries have periodically asserted a specific duty of immigrants to assimilate or integrate and have used the naturalisation process as an occasion for asserting a duty of loyalty that remains at best implicit for native citizens. Austria, Germany, Denmark, Finland, the Netherlands and Sweden have introduced publicly funded integration courses for newcomers that consist mainly of language training with some additional practical orientation and information on the legal and political system of the receiving country. Initially, participation in such courses was generally voluntary, but there is now a shift towards mandatory participation and financing through fees. Sanctions for non-participation range from fines to loss of welfare benefits and ultimately even of residence permits. The Netherlands have recently even extended the duty to learn the host country's language to family members abroad who apply for reunification. These are asked to pass a language test before entering Dutch territory.

Government institutions in the states concerned have commissioned comparative studies on the experience in other countries or evaluation reports where such programmes have been in place for some time (e.g. Enzinger 2004, Michalowski 2004). There is also new literature in political theory on language rights that addresses the normative question whether or how immigrants should be forced to learn the language of the receiving society (Kymlicka & Patten 2003, Bauböck 2003b). What is missing so far are policy analyses that explain this significant shift and new orientation in integration policies in European states.

Citizenship virtues and practices

Republican theorists from Aristotle, Cicero, Machiavelli and Rousseau to the present have always emphasised that citizenship is not only about legal status, rights and duties but also about civic virtues that are necessary in order to sustain self-government over time. In contrast with legal duties, civic virtues may be defined as the disposition of citizens to regard the common good of the polity as an important part of their own interests. Civic virtues range from habitual participation in elections to what may be called heroic virtues of civil disobedience against unjust laws or the readiness to fight in defending one's polity against tyranny or external aggression. In large representative liberal democracies whose citizens experience political institutions as rather remote, discourses about civic virtue are often regarded as outdated and somewhat suspicious as they can easily lead to pressure for conformity and hostility towards outsiders. In contemporary Europe, republican rhetoric about the need for shared values and loyalty towards constitutional principles is, indeed, more often invoked in response to perceived threats from immigration and cultural and religious diversity than in response to political passivity or xenophobic attitudes among native citizens. Political theorists have occasionally entered these debates (Kymlicka & Norman 1994, Van Gunsteren 1998, Oldfield 1999, Pettit 1997, Bauböck 2002).

A more important agenda for research emerges from empirically studying citizenship practices among migrant populations. These include participation in elections, running for public office, political mobilisation for specific issues, forming associations and joining interest groups and political parties. In a transnational perspective, such practices should be studied both in relation to countries of settlement and of origin. Chapter 4 discusses this research agenda extensively. There are important tasks in this area for quantitative research based on statistical data and surveys that include large enough migrant samples, but there is an even stronger need for qualitative research. Focus group discussions could be a particularly well-suited research instrument for exploring migrants' self-interpretation of citizenship practices in a setting that allows for deliberation and the formation of group attitudes.
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Notes

Introduction

1. We invited two top experts from outside the IMISCOE network to the Vienna workshop, Gerard René de Groot (Maastricht University), who discussed recent developments in legislation on nationality in Europe, and Kees Groenendijk (Nijmegen University), who analysed European policy making on the status of third country nationals.

2. However, see Brubaker (2009) who analyses recent discourses on assimilation in which the concept is interpreted in a way that closely resembles the use of integration in this report.

Chapter 1

1. For recent overviews see Faullis (2002) and Heather (1999, 2004).

2. See also Shachar (2009) who argues that birthright citizenship is an unjust institution that sustains global inequality.

3. Some states distinguish between citizenship and nationality as two different legal statuses. For example, Mexican expatriates who live permanently abroad are called nationals rather than citizens. The former enjoy rights of diplomatic protection, return to Mexico and land ownership there, but had not possessed the voting rights of Mexican citizens until a law extended the franchise to them in June 2005.

4. Among similar lines, Glick Schiller (2009) and Glick Schiller and Levitt (2004) distinguish between transnational ways of belonging and ways of being, with the latter referring to actual social relations and practices rather than to identities associated with these.

5. Building on Tiebout (1956), Frey & Fischbacher (1998) have used a similar approach to argue for functional, overlapping and competing jurisdictions in which the economic rationale of club membership would be counterbalanced by direct democracy.

6. A club model of citizenship suggests the opposite question: Why do only immigrants have to naturalise? If the political community is a voluntary association, then not only immigrants should naturalise but all native-born citizens should also be asked at the age of majority whether they want to join. Such a conception of voluntary citizenship has been occasionally advocated by libertarian theorists. Many people could then choose to remain stateless or to opt for the citizenship of an external state with which they are not connected through ties and stakes. Instead of defining common rights and duties for the members of a territorial jurisdiction, citizenship would become a strongly differentiated and determinantalised status and would thus be deprived of its inclusive and egalitarian ethos. Jordan & Dorell (2005) suggest that economic
globalization may result in a partial deterritorialisation, not of citizenship itself but of certain rights. Non-territorial and globally operating clubs could substitute certain elements of ‘social citizenship’ by providing health care and higher education to members who can afford to pay.

7 Control over naturalisations by lower-level units within a polity is also characteristic for Switzerland where citizenship of the federation is formally derived from cantonal and municipal citizenship and where naturalisation requirements are defined differently in the various cantons.

8 In the US some of the initial decisions in the 1990s welfare reform that deprived permanent residents of federal welfare benefits were subsequently reversed or compensated by state-based welfare.

9 This claim is broadly supported by historical research on migration, e.g. Hoender (2002) and Moch (1993).

Chapter 2

1 Mobility rights enjoyed by EU nationals, and by extension, by citizens of the European Economic Area and Switzerland are conceptually different from those of third country nationals. Their status can be interpreted as preferential treatment of nationals of certain countries that is common in many states beyond the European context. From 2003, the implementation of the directive on the status of long term residents (Directive 2003/109) will approximate their mobility rights to those of Union citizens (see chapter 3).

2 For an analysis of regularisation programmes across Europe see De Bruijcker, Schmittner & de Sere (2000). Note that de facto refugees in many third world countries are kept in a similarly precarious legal position, irrespective of the length of their stay (Holborn 1975, Xibelebs 2003).

3 The 1991 Immigration Law in Greece, for example, introduced permanent residence permits. However, these have been granted only in exceptional cases and have remained largely irrelevant for the bulk of the immigrant population. This is due to the facts that the country has become a major immigrant receiving state only recently and that it imposes an extremely long waiting period (fifteen years of continuous possession of a short-term permit) and in addition demands at least ten years of employment for which social security contributions have been paid.

4 See Jandl, Kraler & Stepen 2003 for brief references to the discriminatory effects of immigration legislation.

5 There are few data on this group. However, it seems plausible to assume that a considerable number of seasonal workers do not return upon termination of their contract, especially if hired for another term. This may frequently be the case in employment that is only affected by seasonal fluctuations in demand, but not necessarily limited to specific times of the year (e.g. construction, tourism), or in other types of short-term employment. Overskilling may be facilitated by the fact that work permits for seasonal employment can often also be obtained from within the country. Data collected in the course of the regularisation programme initiated by the 1986 Immigration Reform and Control Act in the US, however, suggests that seasonal workers in agriculture were indeed the main source of irregular migration to the US (see Meisner 2004, Papademetriou 2004).

6 A similar discrepancy may also be important in the case of other rights theoretically enjoyed after a certain period of residence or employment in certain countries (e.g. right to family reunion, non-restricted or unlimited work permits etc.).

7 Regularisation programmes usually aim at ‘capturing’ the undocumented immigrant population and thus at reassessing state control, even though they may enhance access to rights, notably residence, employment and social security rights. The new German Immigration Law of 30 July 2004 is one of the few instances where legislators recognized and responded to the problem associated with keeping irregular but documented migrants in a precarious legal status for too long. Thus, all that the practice of ‘tolerance’ (Zulassung) – the status given to principle removable aliens whose expulsion deportation can temporarily not be enforced – continues, ‘chain toleration’ (Rettenduldung) – i.e. successive periods of toleration – is now effectively prohibited. Henceforth, authorities may grant a residence permit, if the period during which the deportation order cannot be enforced is likely to exceed six months. If an alien has a ‘tolerance’ status for eighteen months, a residence permit shall be regularly granted. After seven years of residence, the alien may be granted a permanent residence permit (see Act 24 (1) Immigration Law).

8 Kondo’s survey of immigration and citizenship regulations in ten ‘western’ countries (2001) includes classical immigration countries alongside European immigration countries and Japan, but does not reflect on the different positions of permanent residence within national immigration regimes.

9 A much stronger bias works against the developing world, in particular the developing countries in Africa and Asia. Outside small circles of area specialists, immigration policies of Asian or African countries hardly ever draw the attention of mainstream migration scholars. If one takes the status of labour migrants in the Gulf countries or major African receiving countries (e.g. Nigeria, Libya and Gabon, for all of which some scholarly work exists) as representative for non-European developing countries in general, it seems that there is a general trend to regard the presence of ‘outsiders’ as temporary and passing and, as a corollary, to discourage their ‘integration’. This is reflected both in legal regulations and perhaps more important, by state practice. By and large, refugees are also treated as ‘temporary guests’, no matter how long the duration of their stay.

10 For example, the Czech Republic’s citizenship law of 1993 grants citizenship to all those who have maintained permanent residence in the country for five years (two years for Slovaks) and have had no criminal record for five years. Compared with the residency requirements of other new Member States, such as Latvia and Estonia, which have been intent on denying citizenship to ethnic Russians, the Czech case may seem relatively liberal. In practice, however, Czech citizenship legislation was far from ethnically blind. Permanent legal residence required that an individual be registered with the local authorities – and one third of the Roma population in 1994 was not. Due to this fact, 100,000 Roma – about one third of their population in the country – lost their citizenship, and nearly 50 percent of those rendered stateless had lived in the country since birth (Neiler 1999).

11 The British Home Office’s attempts to denaturalise the radical Muslim cleric Abu Hamza al-Masri, and to eventually expel him, is perhaps indicative of a major change of attitude. The British Home Office had Ali Hamza’s British citizenship revoked in April 2000 under a provision of the Nationality, Immigration and Asylum Act 2002 that allows people with dual nationality to be stripped of British citizenship if they act in a way that is judged ‘seriously prejudicial’ to Britain’s ‘vital interests’ (quoted in the Independent, 7 April 2001). Mr. Hamza appealed against the Home Office’s decision arguing that he was no dual citizen and that would be rendered stateless, were British nationality to be revoked. The British Home Office argued that as a person born in Egypt, Abu Hamza is entitled to Egyptian nationality and thus can be considered a dual national in the meaning of the Nationality, Immigration and Asylum Act. The case is still under review.
7 Agreement Establishing an Association between the EEC and Turkey, signed at Ankara, 12 September 1963, approved on behalf of the Community by Council Decision 64/393/EEC of 29 December 1963 (OJ 1964 C 115, Decision of the Association Council No. 1765 on the implementation of Article 12 of the Ankara Agreement (adopted at the 23rd meeting of the Association Council on 20 December 1972), Decision No. 57/87 of the Association Council of 19 September 1987 on the development of the Association, Decision No. 3/80 of the Association Council of 19 September 1980 on the application of the social security schemes of the Member States of the European Communities to Turkish workers and members of their families. As both decisions never have been published in the OJ, the court first had to decide on their legal status. In the case Meyram Demirtel vs. Stadt Schwäbisch Gmünd (Case 12/85), it declared that the Decisions of the Association Council formed a part of the acquis communautaire.
9 Engin Ayaz vs. Land Baden-Württemberg, C-275/03, 30 September 2004.
13 See footnote 1 of this chapter.
17 For a critical evaluation see Baußch (2004b).

Chapter 4
1 Using a social capital approach, Fennema and Tillie have argued that dense associative networks within ethnic groups enhance political trust and participation (Fennema & Tillie 2001, 2004; Jacobs & Tillie 2004; Heedsum 2004).
2 The United Kingdom is exceptional in this regard since it restricts active voting rights as well as eligibility in national elections to all Commonwealth and Irish citizens.
3 An ethnic block vote in this second sense includes also ethnic group patterns in voting in referenda and plebiscites.

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