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# Social Citizen as Guest Worker: A Comment on the Changing Identities of Immigrants and the Working Poor

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# SOCIAL CITIZEN AS "GUEST WORKER": A COMMENT ON IDENTITIES OF IMMIGRANTS AND THE WORKING POOR

FRANK W. MUNGER\*

## INTRODUCTION: GLOBAL MIGRATION AND THE AMERICAN WELFARE STATE

As we enter the twenty-first century, two important and controversial trends in American society are well under way. The first is the growing presence of immigrants who have entered the United States seeking political security and economic opportunity.<sup>1</sup> Since 1970, the United States has experienced a tide of immigration unseen since the great migrations to our shores in the late nineteenth and early twentieth century.<sup>2</sup> A substantial proportion of these immigrants are undocumented, drawn to the United States by the prospect of finding work in our expanding low-wage labor market.<sup>3</sup> This trend has frequently evoked the language of crisis, and many of our policies toward these new members of our society have been unwelcoming and harsh, particularly post-9/11.<sup>4</sup> Accompanying

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\* Frank Munger, Professor New York Law School. J.D. 1968, Ph.D. 1977, University of Michigan. The essay is a revised version of a talk prepared for New York Law School's Faculty Presentation Day, March, 2004. In another form, portions of the essay were presented to a workshop on Transnational Citizenship and Human Rights at the Kennedy School, April, 2004. The present version for this special issue of the *New York Law School Law Review* preserves the style of the talk that was intended to provoke further thought about these issues. I am grateful to my colleagues Lenni Benson, Steven Ellmann, and Ruti Teitel for helpful comments. The brevity of this essay and my stubbornness (or shortsightedness) are responsible for the shortcomings that remain. Comments will be welcomed. Send to: [fmunger@nyls.edu](mailto:fmunger@nyls.edu).

1. U.S. CITIZENSHIP AND IMMIGRATION SERVICES, FISCAL YEAR 2001 STATISTICAL YEARBOOK, Table 1, *available at* <http://uscis.gov/graphics/shared/aboutus/statistics/IMM01yrbk/ExcIMM01/Table1.xls> (last visited Jan. 16, 2005).

2. *Id.*

3. Office of Policy and Planning, U.S. Immigration and Naturalization Service, Executive Summary: Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000, January 31, 2003, *available at* [http://uscis.gov/graphics/shared/aboutus/statistics/III\\_Report\\_1211.pdf](http://uscis.gov/graphics/shared/aboutus/statistics/III_Report_1211.pdf) (last visited Jan. 16, 2005).

4. For example, House Judiciary Committee Chair, James Sensenbrenner's long time advocacy for stricter immigration controls has received a great deal of support from congressional conservatives since 9/11. Congressman Sensenbrenner's homepage is <http://www.house.gov/sensenbrenner/wc20011102.htm> (last visited Jan.

the symbolic politics of threat, there is another theme that reveals a more complex relationship between immigration, a growing low-wage labor market, and the desire of American businesses to exploit immigrant labor.<sup>5</sup>

The second trend, also beginning in the 1970s, marks retrenchment in social welfare for U.S. citizens. Successive national administrations have reduced or eliminated parts of the public and private social safety nets that are the foundation for social citizenship.<sup>6</sup> Social citizenship, the package of rights and entitlements that economically developed societies provide to protect individuals from the ravages of the labor market and the economy, has been materially eroded by policies emphasizing personal responsibility and private enterprise.<sup>7</sup> Like immigration policy, social welfare policy resonates with the symbolic politics of social protection and personal responsibility, while at the same time sustaining a supply of low-wage labor by eliminating more generous alternatives.<sup>8</sup>

As in the 1890s, our responses to immigrants are a bellwether of deeper social changes. One particular change — the creation of an employer-friendly, low-wage work force — is not merely an unintended consequence of the expanding flow of undocumented workers, but also an outcome consistent with U.S. domestic policies supporting formation of a reserve army of employable low-wage workers that includes both working poor citizens and immigrants.

Global immigration and the shrinking welfare state are arguably part of a coherent pattern of structural change in labor markets.<sup>9</sup> Both increase the pool of poor, unemployed, work-hungry individuals in developed societies. The more that the developed economic powers, led by the United States, encourage freer labor markets and open economies, the more that the American labor

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16, 2005), and see also William Fisher, *Challenges 2004-2005: US Politician Targets Immigration*, available at [http://www.ipsnews.net/new\\_notia.asp?idnews=26850](http://www.ipsnews.net/new_notia.asp?idnews=26850) (last visited Jan. 16, 2005).

5. See *infra* note 42 and accompanying text.

6. See *infra* note 10 and accompanying text.

7. On the meaning of social citizenship, see MICHAEL B. KATZ, *THE PRICE OF CITIZENSHIP: REDEFINING THE AMERICAN WELFARE STATE* (2001).

8. *Id.*

9. See, e.g., WILLIAM GREIDER, *ONE WORLD, READY OR NOT: THE MANIC LOGIC OF GLOBAL CAPITALISM* (1997); *WORKING UNDER DIFFERENT RULES* (Robert B. Freeman, ed., 1994).

market becomes a magnet for migration. Can it be a coincidence that the wages of the bottom tier of workers in the United States have barely budged while the economy as a whole has experienced record profits?

Perhaps most surprising, there has been little resistance to changes that have benefited businesses and upper tier employees greatly but moderate and low-wage workers very little. Such quiescence invites important questions. What factors have influenced the self-perceptions of citizens who have been left behind by our economic miracle, leaving them, seemingly, without complaint? Formal citizenship still divides American workers and immigrants, yet their status as social citizens, in several senses, is gradually approaching equivalence. What is the relationship between the social citizenship of the working poor and the identity of immigrants who are left outside the national body altogether?

Answers to these questions will help us understand domestic policies, national politics, and, indeed, global social change. After all, not only does the United States have a powerful role in the institutions that regulate the formal terms of the global economy, the International Monetary Fund, World Bank, and World Trade Organization, but the United States has an equally influential informal role, for what transpires in the United States is seen the same evening on CNN in Korea, Bangladesh, Slovakia, and Brazil.

In this brief essay, I describe the weakening social citizenship of this low-wage work force. I describe the declining conditions of low-wage labor in America. I suggest that this decline pre-dated immigration and has long been supported by changes in domestic social policies. The shrinking safety net for the employed and unemployed, together with the declining conditions of low-wage labor, track a significant change in the role of the welfare state and the meaning of social citizenship as workers have assumed more and more of the risks of the labor market. In particular, I observe an apparent convergence between the social citizenship of the lowest-wage workers, who are legal citizens, and the social status of immigrants, who often are not. I note that this change has occurred with remarkably little resistance, and I suggest that the key to explaining this important change in the welfare state lies in understanding how the identity of social citizens takes shape, both in

public discourse about policy and as self-concept guiding individual choice and action. The identities of members of the indigenous working class and immigrant groups may be converging, mutually constituted through law, public discourse about citizenship, and everyday social interactions, but the relationship is also complex. In conclusion, I suggest a range of questions for further exploration of the important role that immigrants, and their identities, are playing in the global reconstruction of welfare states and social citizenship.

### I. THE WEAKENING SOCIAL CITIZENSHIP OF LOW WAGE WORKERS

Over the past thirty years, the conditions of work for the lowest paid workers have declined.<sup>10</sup> Low-wage workers have experienced loss of job security, benefits, employer flexibility,<sup>11</sup> and declining wages — declining because the minimum wage, even after recent increases, has not kept up with inflation since the mid-1970s.<sup>12</sup> In the 1980s, during the height of profit-making and economic expansion, the bottom half of the work force experienced little gain. The bottom 20% lost ground — their real wages *declined*.<sup>13</sup> Today, 17% of American workers in the labor force earn too little money to raise them above poverty.<sup>14</sup> For women, the percentage is much higher.<sup>15</sup> One-third of workers approaching retirement report that they have no retirement savings.<sup>16</sup> Forty-three million Americans

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10. See generally Freeman, *supra* note 9; ANNETTA BERNHARDT ET AL., *DIVERGENT PATHS: ECONOMIC MOBILITY IN THE NEW AMERICAN LABOR MARKET* (2001).

11. *Id.* According to Bernhardt, “flexibility” in the labor market has meant employee flexibility to accommodate employer needs. Social policies in developed countries increasingly favor a flexible work force. See JOEL F. HANDLER, *SOCIAL CITIZENSHIP AND WELFARE IN THE UNITED STATES AND WESTERN EUROPE: THE PARADOX OF INCLUSION* (2004).

12. SHELDON DANZIGER & PETER GOTTSCHALK, *AMERICA UNEQUAL* 128 (1995).

13. JOEL F. HANDLER & YEHEZKEL HASENFELD, *WE THE POOR PEOPLE: WORK, POVERTY, AND WELFARE* (1997).

14. Year round attachment to the labor force means that an individual is working or looking for work fifty weeks a year. The poverty level at the time these figures were compiled was \$15,208 for a family of four. See LAWRENCE MISHEL ET AL., *THE STATE OF WORKING AMERICA 2001-2002*, 322 (2001).

15. *Id.*

16. See, e.g., Christine Dugas, *Retirement Crisis Looms As Many Come Up Short*, USA TODAY, July 19, 2002, at A1.

have no health insurance.<sup>17</sup> Yet Americans lead the developed nations in number of hours worked per year and least vacation time.<sup>18</sup> This is the labor market that immigrants are entering and in which many will remain.

The deteriorating conditions of the low-wage labor market may be attributed in part to global competition in production,<sup>19</sup> but much of this decline has occurred as a result of the growth in low-wage service sector jobs for which there is no global competition or as a result of the weakening of unions.<sup>20</sup> Low-wage workers have felt the full effects of change because of a simultaneous weakening of the safety net that might have protected an earlier generation. The welfare state that emerged from the New Deal held the promise of economic security for American workers, and for half a century there was a growing sense of entitlement to security if one worked — pension, health insurance, a degree of security in employment and of income replacement through unemployment or workers compensation benefits when work failed — all were part of the deal.<sup>21</sup> At mid-century, even factory workers could look forward to owning a home and sending their children to college, not only as a result of a growing economy and strong union representation, but also because of federal home loan guarantees, federal regulation of employer pension and health plans, educational loan guarantees, and the indirect effects of federal funding for economic development such as road and housing construction.<sup>22</sup>

Over the past three decades we have seen changes in social citizenship — most dramatically, perhaps, in the message of moral responsibility delivered to the poor by welfare reform that focused

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17. U.S. Bureau of the Census, Current Population Reports: *Health Insurance Coverage in the U.S.: 2002* (Sept. 2003), available at <http://www.census.gov/prod/2003pubs/p60-223.pdf> (last visited Jan. 16, 2005). Even more striking is that one out of three individuals under 65 was without health insurance for some portion of the year. See *One Out Of Three Non-Elderly Americans Were Uninsured In 2002-2003*, July 16, 2004, available at [http://www.familiesusa.org/site/PageServer?pagename=Media\\_One\\_in\\_Three\\_report\\_release](http://www.familiesusa.org/site/PageServer?pagename=Media_One_in_Three_report_release) (last visited Jan. 16, 2005).

18. See generally MISHEL, *supra* note 14, at 397.

19. See GREIDER, *supra*, note 9.

20. DANZIGER & GOTTSCHALK, *supra* note 12, at 137.

21. KATZ, *supra* note 7, at 17-32.

22. *Id.* See also JENNIFER KLEIN, FOR ALL THESE RIGHTS: BUSINESS, LABOR, AND THE SHAPING OF AMERICA'S PUBLIC-PRIVATE WELFARE STATE (2003).

on an overriding obligation to work (and to replicate the middle class ideal of a nuclear family).<sup>23</sup> Welfare has ended for most former recipients — the rolls have been cut in half — although the latest Urban Institute studies show that most have not found steady employment and most live at or below the poverty line.<sup>24</sup>

The moral message of self-sufficiency, self-denial, and work extends far beyond the poor as the welfare state itself has been diminished by a steady assault on benefits for the poor, the working class, and even middle class citizens.<sup>25</sup> As noted, such safety net features, as the minimum wage, have fallen far behind inflation over the past thirty years even after the recent increases.<sup>26</sup> Unemployment compensation has become increasingly restrictive, so that the number of unemployed covered by this program has fallen by half, and only one-third of those who lose jobs now qualify for benefits.<sup>27</sup> Workers compensation is under assault by employers who claim that the system's generosity encourages false claims.<sup>28</sup> Bankruptcy reform is aimed at what is perceived to be the self-indulgent, improvident consumers who overspend ample incomes.<sup>29</sup> Everywhere, the reduction in benefits of the welfare state is justified by claiming excessive dependency caused by the moral hazard of benefit levels that are too generous.<sup>30</sup>

Employers have correspondingly reduced the private welfare on which working people relied, claiming that the bottom line requires cutting or eliminating health and pension benefits that employees themselves must now find a way to pay for.<sup>31</sup> For many low-wage workers, employers offer no benefits; but when benefits are

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23. HANDLER & HASENFELD, *supra* note 13.

24. PAMELA LOPREST, HOW ARE FAMILIES THAT LEFT WELFARE DOING? A COMPARISON OF EARLY AND RECENT WELFARE LEAVERS (2001).

25. KATZ, *supra* note 7. See also Mari Matsuda, *Were You There? Witnessing Welfare Retreat*, 31 U.S.F. L. REV. 779 (1997).

26. DANZIGER & GOTTSCHALK, *supra* note 12.

27. Debora Maranville, *Workplace Mythologies and Unemployment Insurance: Exit, Voice, and Exhausting All Reasonable Alternatives to Quitting*, 31 HOFSTRA L. REV. 459, 462-63 (2002).

28. Martha McCluskey, *The Illusion of Efficiency In Workers Compensation Reform*, 50 RUTGERS L. REV. 657 (1998).

29. Elizabeth Warren, *The Growing Threat to Middle Class Families*, 69 BROOK. L. REV. 401 (2004).

30. See generally KATZ, *supra* note 7.

31. KATZ, *supra* note 7; KLEIN, *supra* note 22.

offered, employees often cannot afford to pay for them.<sup>32</sup> Employment at will, employer flexibility, and the restructuring of low-wage work have created jobs that are insecure, and for many, offer no prospect of an upwardly mobile career.<sup>33</sup> Not only has the job market changed, but the moral message about work has changed as well. The responsibility of the welfare state for economic security when work fails is more limited and increasingly work *is* the safety net.

The effect of these changes has been to bring the social citizenship of poorest workers and that of immigrant labor close together. When President Bush announced a guest worker program he claimed to be rewarding hard-working immigrants with the opportunity to earn citizenship.<sup>34</sup> Bush described the meaning of full citizenship as a job with a living wage and opportunities leading to ownership of a business.<sup>35</sup> Notably, as the social safety net for poor citizens vanishes, Bush's promise to guest workers is likewise the meaning of social citizenship for the indigenous low-wage worker. Of course, citizenship as a legal status still has meaning. There are still many benefits of citizenship not enjoyed by legal or undocumented aliens, but as a practical matter citizenship is no guarantee of protection against poverty or arbitrary treatment by employers or public authorities.<sup>36</sup>

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32. BERNHARDT, *supra* note 10.

33. *Id.*

34. See *President Bush Proposes New Temporary Worker Program*, available at <http://www.whitehouse.gov/news/releases/2004/01/20040107-3.html> (last visited June 23, 2004).

35. While Bush described social citizenship as an opportunity to work and to take one's chances in the labor market — just like American citizens — his guest worker program actually promised no such thing. The legal status of a citizen remains almost as remote as before for beneficiaries of his program. President Bush specified that when the renewable three year work permit expired, guest workers would be expected to return to their home countries. President Bush stated, "This program expects temporary workers to return permanently to their home countries after their period of work in the United States has expired." *Id.* Thus, to reenter the United States after the expiration of a guest worker permit, immigrants must return home to get in line for a visa, a process often involving long delays and guaranteeing no success.

36. For Hispanic Americans and other non-whites often targeted by I.N.S., U.S. citizenship is no shield against arbitrary arrest and detention until papers are produced. I.N.S. policies include the use of profiling to apprehend status violators. See Kevin Johnson, *Race Profiling in Immigration Enforcement*, American Bar Association, available at <http://www.abanet.org/irr/hr/winter01/johnson.html> (last visited Jan. 16, 2005).



## II. CONVERGENCE BETWEEN IMMIGRANT AND INDIGENOUS WORKING POOR

Immigrant and indigenous working poor experience the same labor market. Further, employers and government safety net programs treat them in increasingly similar ways.

We might note these similarities in particular:

- The dominant political economic theory says that low pay, no benefits, and flexible work for both immigrants and low-wage workers is good for society.
- Changes in the labor market have created a sharply divided, two-tiered labor market with relatively well-paid and secure jobs for some and increasing numbers of insecure and low-paying jobs for the rest. Immigrants and indigenous poor often compete in the low end of the labor market.
- The arguments that justify flexible labor also translate into a down-sized welfare state. The symbolic politics of personal responsibility is closely linked to the idea that [big] government produces dependence. Conversely, independence from government benefits promotes individual responsibility and self-sufficiency. The same symbolic politics of personal responsibility has emerged not only to explain domestic retrenchment of welfare programs (e.g., The Personal Responsibility and Work Opportunity Reconciliation Act of 1996) but also related legislation placing new restrictions on immigrants (e.g., Illegal Immigration Reform and Immigrant Responsibility Act of 1996).<sup>37</sup>
- Recent law reform efforts reinforce these values in private sector employment as well as in public benefits. Proposed policy changes reducing regulation of the labor market are supported by a strongly favorable view of the private sector: the labor market is efficient and fair, and presumed to allocate resources for the greatest benefit of the society.<sup>38</sup>
- For indigenous workers whose income is in the bottom 20%, pay remains low and real wages have declined, failing to keep pace with the general increase in wealth over the past twenty years. Doctrines of employment at will leave most low-wage

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37. Pub. L. No. 104-208, 110 Stat. 3009 (1996).

38. See McCluskey, *supra* note 28.

workers without job security.<sup>39</sup> The government has done little while pensions and health benefits have been cut or eliminated. Union resistance has been undercut by weak enforcement of the labor laws.<sup>40</sup> Workers compensation programs are under attack, while safety net programs on which many workers rely such as Medicare, Women Infants and Children, and subsidized child care are regularly under funded or capped to limit costs.<sup>41</sup>

- For immigrants, employment is still more risky. The Supreme Court has interpreted the National Labor Relations Act to permit gross exploitation by denying undocumented workers a legal remedy for unpaid wages.<sup>42</sup> In one sense, the Court's decision in this case simply formalizes the de facto arbitrariness of the employment relationships of indigenous workers who frequently work "at will" and under conditions and levels of pay forbidden by law. Thus, indigenous and immigrant low-wage labor face surprisingly similar working conditions. Minorities with no job, or who work intermittently in the secondary labor market, are perceived as part of the criminal underclass.<sup>43</sup> Workers with little education, who lack "soft skills" in the perceptions of employers, or who are disadvantaged by other veiled forms of racial or gender coding are excluded from the labor market — a kind of domestic banishment (or virtual deportation) leading to social isolation.<sup>44</sup>

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39. See BERNHARDT, *supra* note 10.

40. Ellen Dannin, *Lawless Law? The Subversion of the National Labor Relations Act*, 34 LOY. L.A. L. REV. 197 (2000).

41. McCluskey, *supra* note 28; KATZ, *supra* note 7. See, e.g., Jennifer Mezey, *Myths About Adequacy of Current Child Care Funding*, Center for Law and Social Policy, Mar. 29, 2004, available at [http://www.clasp.org/publications/cc\\_myths.htm](http://www.clasp.org/publications/cc_myths.htm) (last visited Jan. 18, 2005).

42. *Hoffman Plastics Compounds, Inc. v. Nat'l Labor Relations Bd.*, 535 U.S. 137 (2002).

43. Jonathan Simon, *Governing Through Crime*, in THE CRIME CONUNDRUM: ESSAYS ON CRIMINAL JUSTICE (Lawrence Friedman & George Fisher eds., 1997).

44. Ironical contrasts between policies affecting immigrants and indigenous poor are apparent as well. During the 2003 fall term, several law students affiliated with New York Law School's Justice Action Center examined the effects of a provision of the Violence Against Women Act that protects immigrant women who are victims of abuse from the typically harsh deportation regime. Based on interviews and other research, they concluded that, ironically, immigrant women seem to receive far better and more sensitive treatment than women on welfare administered by New York's welfare-to-work

- The labor market is structured to create direct competition between indigenous low-wage labor and immigrants. Indeed, President Bush's proposed guest worker program favored immigrants as members of a coveted low-wage work force.<sup>45</sup> Thus, the Bush guest worker proposal was intended to be an important resource for businesses as well as a measure that would control illegal immigration.<sup>46</sup> Significantly, laws imposing sanctions on employers who hire illegal immigrants remain largely unenforced.<sup>47</sup>
- Voting is for full social citizens. America has invited immigrants under guest worker programs, but they cannot vote. But a non-voting laboring class is nothing new. Election registration procedures exclude many, as the Bush-Gore Presidential election illustrated.<sup>48</sup> Difficulties complying with registration procedures often have a race or class bias simply because the poor families often have unstable residences, and lack the information or self-confidence to persist through bureaucratic complexities to maintain voter registration. The National Voter Registration Act of 1993, the so-called "motor voter" law that permits convenient registration at multiple public offices, has been problematic and, in some states, never been fully implemented.<sup>49</sup> Outreach to the non-voting poor is always tangled in partisan politics. Election campaigns

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program who are denied legally available protections due them under New York's Family Violence Option.

45. President Bush made this clear as he lauded immigrant workers for "taking hard jobs and clocking long hours in important industries." *See supra* note 34.

46. A recent strike against several large supermarket chains in Los Angeles by unionized grocery store workers earning on average \$25,000 per year illustrates the point well. The companies insisted that they had to eliminate company-funded health benefits and to cut wages drastically in order to stay in business. The source of their competition — a source able to pay less and to hire workers without benefits — was WalMart, a non-union company that, as it happens, relies heavily on immigrant workers who are often undocumented. President Bush's proposal would guarantee a regular supply of such workers.

47. *See* Ruben Garcia, *Ghost Workers In An Interconnected World: Going Beyond the Dichotomies of Domestic Immigration and Labor Laws*, 36 U. MICH. J.L. REFORM 737, 743-44 (2003).

48. *See, e.g., Florida Election Bias Exposed In Report*, June 5, 2001, available at [http://www.guardian.co.uk/US\\_election\\_race/Story/0,2763,501882,00.html](http://www.guardian.co.uk/US_election_race/Story/0,2763,501882,00.html) (last visited Jan. 17, 2005).

49. Sean Matsler, *Compulsory Voting in America*, 76 S. CAL. L. REV. 953, 958 (2003).

often effectively exclude issues of importance to the working class and working poor. The practical result is that there is a huge class difference in voting rates.<sup>50</sup> Neither immigrants nor the working poor are represented politically when their interests depart from those of employers or the middle class mainstream.

Of course, a marked divide remains between the legal status of citizens and the legal status of immigrant aliens, documented and undocumented. Citizens still have considerable advantages. Yet the similarities I describe are drawing the social citizenship of low wage workers — indigenous workers and non-citizen immigrants — closer together.

### III. LOW-WAGE WORK AND THE SYMBOLIC POLITICS OF IDENTITY

Social citizenship entitles members of our society to a package of legal benefits and responsibilities, from fair labor standards to free public education. Equal social citizenship is the essence of the welfare state, but in practice, benefits have always been economically stratified. In the late twentieth and twenty-first centuries formal stratification of welfare state benefits has increased. Those at the bottom of economic order, with the fewest marketable resources, are always entitled to the fewest benefits. Those with most private resources receive much larger benefits from our welfare state.<sup>51</sup>

The recent changes in the safety net that I described previously have added a new dimension to this picture. The strengthening link between the labor market and entitlement to social benefits is converting social citizenship from a universal expectation to a mere opportunity based on an individual's success in the labor market. Further, the distinctions between the low-wage citizen labor force

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50. Dan Balz, *Study Finds National Voting Disparity*, WASH. POST, July 9, 2001, available at <http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&contentId=A33673-2001Jul8&notFound=true> (last visited Jan. 17, 2005).

51. While welfare for the poor has been steadily reduced and onerous conditions have been added, subsidies such as the home mortgage interest tax deduction that benefits middle and upper income home owners evoke little concern. While the Food Stamp and Medicare programs evoke critical scrutiny, the strong political support for much more costly programs that benefit upper income groups, such as Medicare and Social Security, exempt them from similar downsizing proposals.

and the non-citizen low-wage labor force are rapidly disappearing. Low-wage workers, it might be said, are being treated as immigrants in their own society. Put another way, the emerging "labor market opportunity theory" of social citizenship has made all low-wage earners guest workers. Put yet another way, we are witnessing the emergence of a global reserve labor force of low-wage workers who are effectively non-citizens everywhere — global non-citizens. While the low-wage labor-force in the United States still has distinct advantages in terms of workplace regulation of environmental quality and occupational safety, these advantages are under attack by the World Trade Organization as barriers to free trade.

Conservatives, who dominate contemporary policymaking, and their critics have advanced opposing theories explaining the reduction in rights of social citizenship. Conservatives argue that imperatives of global market and economic efficiency have necessitated more limited social welfare provisions by both business and government policies.<sup>52</sup> Critics of such downsized social welfare policies question the benefits of reliance on relatively unregulated labor markets, a reduced safety net, and privatization of essential welfare state benefits.<sup>53</sup> For two decades, the balance in this debate has been decidedly in favor of the conservatives' position.<sup>54</sup> Some scholars have noted the success of conservatives in linking "special interests" (among them the needy poor who benefit from some government programs) with divisive social issues: welfare is linked to race; declining economic security is linked to unions and taxes; government regulation is linked to the perceived class elitism and secularism of "liberals."<sup>55</sup> Further, the claim of conservative ideologues that the welfare state has encouraged dependency finds fertile ground in the anxieties that many American citizens are experiencing about the meaning of their social citizenship.<sup>56</sup>

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52. See, e.g., The Cato Institute's influential studies and reports, available at <http://www.cato.org> (last visited Jan. 17, 2005).

53. HANDLER & HASENFELD, *supra* note 13; see also JAMIE PECK, *WORKFARE STATES* (2001).

54. KATZ, *supra* note 7, at 17-32.

55. THOMAS EDSALL & MARY EDSALL, *CHAIN REACTION: THE IMPACT OF RACE, RIGHTS, AND TAXES ON AMERICAN POLITICS* (1992).

56. Several scholars have pursued the relationship between the declining fortunes of the working and middle classes, anxiety about dependency, and backlash against programs for the poor. See ROBERT WUTHNOW, *POOR RICHARD'S PRINCIPLE: RECOVERING*

Much of the turmoil about social policies (including immigration) reflects contention about the meaning of social citizenship — what it means to be a citizen and what are the obligations and benefits of citizenship.<sup>57</sup> Political mobilization in support of social citizenship policies always occurs in conjunction with a public discourse that can shape and alter perceptions of the individuals who might benefit from these policies.<sup>58</sup> Politicians evoke particular images of “good” and “bad” community members to reinforce support for particular policies or political parties. Our perceptions of each other, and ourselves, may be influenced by this discourse but they are also shaped over long periods of time, indeed over an individual’s lifetime, and they continue to evolve, depending on contingencies of place, time, and social interaction.<sup>59</sup> Public discourse may bring into play particular elements of the identities of one’s self or another’s, yet identity is formed as an individual connects and interprets a wide variety of interactions over a lifetime.<sup>60</sup> Although scholars have begun to explore the relationship between an individual’s identity and the role that individual rights play in that individual’s life, we know much less about the reciprocal influence of this process linking identity and rights on perceptions of others.

Until we fully explore the creation of citizen identity we cannot understand why reductions in the benefits of social citizenship — and the converging fortunes of immigrant and low-wage workers — have been accepted by those who are most harmed by them. Considering social citizenship from this point of view leads to new and important questions about the role of identity in constructing beliefs about the meaning of citizenship. In turn, we must examine how citizenship becomes active in contemporary society, including legislative politics, informal social interaction, community responses to poverty, unemployment, or exclusion, and political par-

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THE AMERICAN DREAM THROUGH THE MORAL DIMENSION OF WORK, BUSINESS, AND MONEY (1998).

57. See HANDLER & HASENFELD, *supra* note 13.

58. ROGERS SMITH, CIVIL IDEALS: CONFLICTING VISIONS OF CITIZENSHIP IN U.S. HISTORY (1999); KENNETH KARST, BELONGING IN AMERICA: EQUAL CITIZENSHIP AND THE CONSTITUTION (1991).

59. See, e.g., DAVID ENGEL & FRANK MUNGER, RIGHTS OF INCLUSION: LAW AND IDENTITY IN THE LIFE STORIES OF AMERICANS WITH DISABILITIES (2003).

60. *id.*

ticipation by individuals who make up the domestic and global labor force. These questions establish an agenda for further research.

#### IV. IMMIGRANTS AND SOCIAL CITIZENSHIP — CRITICAL QUESTIONS ABOUT IDENTITY

What I have said so far should in no way be considered critical of the role of immigrants. Immigrants have always contributed to the continuing vitality and renewal of American society. At this particular historical moment, like the decades at the turn of the last century, the symbolic politics of immigration and the symbolic politics of the welfare state (then only an idea beginning to emerge) are intertwined. Immigrants and the working poor have always had grounds for economic and political solidarity, and that has never been clearer than at the present time. Yet making a common cause to achieve a fairer and more egalitarian welfare state requires better understanding of the symbolic politics that shapes the political and social identity of each group, often dividing them, but also, potentially, uniting them.

The questions that I will pose for further consideration reflect my interest in the symbolic politics of the American welfare state. I am led to questions about the way that moral politics shapes identities, uniting or dividing as a society, and the coincidence of efforts to weaken social citizenship and covertly encourage mass immigration. I do not think that the decline of the welfare state is a direct response to immigration. But there has been a subtle shift in the identity of the working poor who have lost the most as a result of the decline in social citizenship. Identity is a powerful factor in a regime of rights as well as in politics. Just as legal rights may become active according to an individual's perception of the self as a rights bearer or as one who is not a rights bearer, or influenced by negative perceptions of the self as a rights bearer, so in a more general sense the belief that one stands in a certain relationship to a community and may call on that community for recognition or support may be a powerful influence on individual behavior that leads

toward (or away from) economic security, participation, and social inclusion.<sup>61</sup>

Moral identities play a direct role in politics, and, therefore, in policy formation (and, in turn, the latitude of the private sector to shape the labor market without interference from government regulation). Rogers Smith's study of early citizenship restrictions in the United States describes the contours of moral politics familiar in our own time. Politicians' appeals often reinforce the identity of an ideal citizen that flatters the constituency the politician seeks to unite. Moral politics thrives on identifying social insiders and outsiders, and our perceptions of who belongs in our society and on what terms are shaped and reshaped through the political process. Such appeals have often divided constituencies whose shared interests should make them allies.<sup>62</sup>

Of particular relevance may be the changes in civic culture associated with the great waves of immigration that began in the last quarter of the nineteenth century. Among other effects associated with that immigration, the "moral panic" of the late 1890s–1920s reshaped the identity of citizens as nativist reformers sought to defend what they perceived to be the higher moral standards of the indigenous Protestant culture under siege by a tide of immigrants from other cultures.<sup>63</sup> Thus, immigration contributed not only to the temperance movement and ultimately to prohibition but also to many of the so-called "blue" laws that reinforced Protestant morals and stigmatized, indirectly but importantly, Catholic immigrants. Likewise, many Progressive Era urban social reforms responded to conditions created by millions of immigrants who settled in urban centers such as New York.<sup>64</sup> A decade later, legislation protecting workers reflected not only growing public sympathy but also the

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61. A study of the effects of new disability rights on persons with disabilities showed that negative perceptions of affirmative action in other (non-disability) contexts made some persons with disabilities reluctant to assert rights that would have benefited them under the Americans With Disabilities Act, even though many disability rights advocates would maintain that such rights were not a form of affirmative action, but rather rights to a non-discriminatory workplace. See ENGEL & MUNGER, *supra* note 59.

62. See SMITH, *supra* note 58; see also KATZ, *supra* note 7.

63. JOSEPH GUSFIELD, *SYMBOLIC CRUSADE: STATUS POLITICS AND THE AMERICAN TEMPERANCE MOVEMENT* (1986).

64. See, e.g., ANTHONY PLATT, *THE CHILD SAVERS: THE INVENTION OF DELINQUENCY* (1977).



voting power of the flood of immigrants who swelled the working class.

There are few signs of moral panic in response to immigrants today.<sup>65</sup> Yet there are many signs that America is increasingly aware of the presence and role of immigrants. The emerging awareness of immigrants overlaps a long, quiet revolution in the discourse about moral identity and social citizenship. As described earlier, this discourse emphasizes individual responsibility, risk, and the idea that most economic dependency arises from improvidence.<sup>66</sup> As a result, the public has become less certain about an individual's entitlement to protection from the misfortunes of health and unemployment. The working poor, like immigrants, are increasingly on their own — praised when productive but demonized when they fail.

I conclude this brief essay with questions about how the identity of American workers and the workers' own expectations for social citizenship are being influenced by globalization of the low-wage workforce. These are the questions on which I would focus my attention:

First, I think it is important to distinguish between identity and citizenship. Citizenship is an expression of the state. Identity is a (narrative) construction of an individual's life experience. Law is a mutually constitutive element of culture, identity and transnational experience. Citizenship, in turn, is a foundational element of positive law — the status of its subject.<sup>67</sup> Thus, transnational identity and citizenship interact, and we may ask, as a first question, how they become mutually constitutive? How have immigrant, transna-

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65. The concept of moral panic should be distinguished from the post 9/11 concern about security that has tightened immigration procedures. Moral panic concerns perceptions of immigrants as a threat to an ideal moral identity. While post 9/11 immigration procedures have fallen heavily on male migrants from the Mideast, I have perceived remarkably little general stereotyping of either Muslims or Arabs or qualities associated with them, unlike the symbolic concerns about drinking, sexual license, and poverty that emerged during the Progressive Era partly in response to immigration.

66. See KATZ, *supra* note 7.

67. The U.S. Constitution establishes more or less territorial criteria for some fundamental rights rather than restricting them to those who are formally citizens. But since entry into the United States is itself governed by citizenship laws and because Congress can treat non-citizen residents in distinct and disadvantageous ways, citizenship remains a powerful symbolic and material divide.

tional identities affected the meaning of citizenship? How do the patterns of mutual construction differ? Note, for reasons I develop below, in this context I prefer the term transnational identity rather than global identity. In my view, “global” refers to an ideological discourse among elites, while “transnational” is a useful descriptive term that refers to the concrete experiences of migrants.

A related question arises from the observation that citizenship is a restrictive legal policy, in liberal societies as well as others. Citizenship is the legal/political construct that enables political and civil rights, and it is constructed in contrast to other symbolic identities — citizens versus “others.” Immigrants in a liberal society encounter the restrictive identities reinforced by the liberal concept of citizenship. This interaction between identity and citizenship is interesting in its own right — sometimes disempowering immigrants but sometimes actually empowering them. An example of the latter (i.e., the enabling effect of immigrant identity on the social citizenship of immigrants) is the recent move by several state and local governments to accord undocumented immigrants certain rights enabling them to work and participate in American society — e.g., some states have authorized drivers licenses for undocumented residents.<sup>68</sup> Many studies have noted the priority given immigrants by employers of low-wage labor.<sup>69</sup> Aihwa Ong notes the advantages of particular transnational identities in her study of transnational Asian experience.<sup>70</sup> More generally, which elements of transnational identities position some immigrants more favorably than others?

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68. Other examples include decisions by state courts to permit undocumented workers to sue for wages under state fair labor laws in spite of the Supreme Court's interpretation of the N.L.R.A. in *Hoffman*. Further, many local governments have determined to separate their law enforcement process from I.N.S. even as I.N.S. (and its post-TSA successors) try to extend the reach of federal policy to local law enforcement. See National Immigration Forum, available at <http://www.immigrationforum.org/> (last visited Jan. 17, 2005).

69. See, e.g., KATHERINE NEWMAN, NO SHAME IN MY GAME: THE WORKING POOR IN THE INNER CITY (1999); PHILIP KASINITZ, MISSING CONNECTIONS: SOCIAL ISOLATION AND EMPLOYMENT ON THE BROOKLYN WATERFRONT (1994).

70. AIHWA ONG, FLEXIBLE IDENTITIES: THE CULTURAL LOGICS OF TRANSNATIONALITY (1999).

Third, to examine the citizenship-identity interaction, I would draw on the work of Lynne Haney.<sup>71</sup> Haney's research on Hungarian welfare policies under early socialist, late socialist, and liberal regimes tracks the evolution of welfare policies reflecting different state roles in creating expectations for women's identities. Early policies supported multiple identities, enabling women to assert their interests in many institutional arenas. Later socialist policies, and still later liberal policies, narrowed the range of acceptable identities, and limited the state's intervention. Under liberal policies, intervention affected only a narrow range of institutional roles. Under all regimes, the state's interventions reflexively shaped women's "maneuverability." Under socialist policies women gained the most maneuverability while under liberal policies, they gained the least. Liberal policies encouraged women to become further embedded in institutional arrangements that limited their participation in society.<sup>72</sup>

Haney's research suggests a pattern. States seek to integrate members of the society according to a model citizen identity. Individuals may be regulated directly. More importantly, welfare/immigration laws regulate reflexively — they shape organizations and institutions that, in turn, influence an individual's "maneuverability" within and among these arenas of activity. Individuals may find that they can maneuver to achieve greater welfare under one reflexive regime than another. Further, the individual herself may have a different identity because the mutually constitutive relationship between identity and law influences the self-perceptions and capacities of individuals.

This mutually constitutive relationship between citizenship law and immigrant identity should be explored, and it is particularly suited to comparative study of immigrants. The research project might be stated this way: How do model citizenship identities shape immigration policies, and how do different identities of immigrant's reflexively interact with different policy regimes?

Fourth, has "guest worker" or "immigrant" subtly influenced the paradigm for social citizenship of the low-wage worker in the American welfare state or other welfare states? What are the impli-

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71. LYNNE HANEY, *GENDER AND THE POLITICS OF WELFARE IN HUNGARY* (2002).

72. *Id.*

cations of the weakening of social citizenship in the United States and other capitalist societies? Is there an emerging "global citizenship" that reflects new limits on welfare states under pressure from pro-market (pro-smaller government, devolution, and privatization) ideology? I suspect that "global citizenship" is an elite concept framed in reaction to the conservative, pro-market discourse, but that this term does not reflect the actual transnational identities emerging from migration and its consequences.

Fifth, in this context, what is the significance of increasing social hierarchy in western welfare states, especially the United States? While citizens of unequal wealth have never had universal or equal access to the American welfare state, inequality among citizens is increasing. Has the identity of immigrants become a factor legitimating the increasing inequality of access to the welfare state within national societies?

Sixth, important recent scholarship demonstrates that individual identities change with experience in new legal cultures, and that such changes reciprocally affect successive transnational experience.<sup>73</sup> How does the sequence of experiences affect identity (e.g., migration from China to the United States will almost certainly have very different outcomes from the impact on identity of migration from the United States to China)? What does this asymmetry tell us about citizenship?

Seventh, under what circumstances has transnational or immigrant identity facilitated the expansion of social citizenship? In an era of growing multiculturalism, positive interconnections among ethnic groups are not hard to find. Two examples set the stage for examination of the impact of multiculturalism and identities on low-wage labor. First, immigrants have helped collective labor

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73. Recent research highlights the evolution of consciousness of law and authority as migrants enter a new culture. A study of immigrants from the Dominican Republic, for example, showed that Dominicans brought to this country had particular expectations that made it difficult for them to seek or assert legal rights to which they might be entitled. However, after living in the United States for a time, experiencing America's entrepreneurial legal culture and style of governance, Dominicans who returned to the Dominican Republic carried new expectations and practices with them that changed the course of politics in their communities of origin. See PEGGY LEVITT, *THE TRANSNATIONAL VILLAGERS* (2001).

rights become active in the United States.<sup>74</sup> Immigrants are not formally entitled to labor rights but they have been organized by some labor unions, asserting a de facto right to organize, thereby broadening the field of labor rights not only for immigrants but for all low-wage workers. Immigrant workers gain access to collective bargaining while indigenous workers gain allies and power. Professor Linda Bosniak's<sup>75</sup> analysis of participatory citizenship notes the expansion of labor organizing to include illegal immigrants. Her helpful analysis suggests a further step, namely examining the impact of participation on individual identity and the discourse of citizenship. Research on identity and rights suggests that a key component of this participatory activity is the redefinition of rights in relation to identity — immigrants are asserting (and being encouraged to assert) a right to be a social citizen.

A second example illustrates the growing inclusiveness of public perceptions of immigrants in some localities in the United States even while many of these immigrants are excluded from formal citizenship. Public discourse in some regions of the country has favored extending social citizenship rights to illegal immigrants — e.g., permitting undocumented workers to apply for driver's licenses and other public benefits that facilitate integration of this a critical element of the labor force.<sup>76</sup> Public discourse creates a space for this transformation of individual identity from excluded alien to valued community member. Individuals may use this space in different ways, but in social interactions with others they have more room to maneuver when public discourse attributes a positive identity to them as community members. Conversely, they have less room to maneuver when the discourse narrows the social capital we grant to them — as in the debate about welfare that resulted in the termination of benefits to many legal aliens and severe reductions for citizens who are needy. Identity can be a form of social capital that influences inclusion and exclusion. For particular individuals,

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74. See Linda Bosniak, *Universal Citizenship and the Problem of Alienage*, 94 Nw. U. L. REV. 963 (2000). See also Linda Bosniak, *Constitutional Citizenship through the Prism of Alienage*, 63 OHIO ST. L.J. 1285 (2002).

75. Linda Bosniak, *Citizenship and Work*, N.C. J. INT'L L. & COM. REG. 497 (2002).

76. See the useful compilations of materials and discussion available at <http://immigration.about.com/od/ussocialeconomicissues/i/DriverLicIssue.htm> (last visited Jan. 17, 2005) and at <http://www.nilc.org/immspbs/DLs/> (last visited Jan. 17, 2005).

public discourses that alter identity may contribute to efficacy and participation, having little effect on some but leading others toward greater social inclusion and entrepreneurship.

### CONCLUSION

We have just begun to explore contemporary interaction between immigrants and our own culture and the influence of this interaction on public policies that affect both immigrants and indigenous workers. America is not simply a passive recipient of global migration. American policies have directly and indirectly encouraged immigration as a corollary to our role in the world economy. We have been leading advocates of free trade and open labor markets, even while we strengthen formal policies that restrict entry in the name of national security and, more ambivalently, in the name of preserving U.S. jobs for U.S. citizens. While we have sometimes celebrated the role of immigrants in our society, the actual reception of immigrants often renders this celebration a hollow promise. New immigrants are particularly vulnerable, and many advocates believe that this vulnerability should be protected by human rights in the name of a new status, "global citizenship."<sup>77</sup> Beyond the aspirations of human rights advocates, however, global or transnational identity of immigrants may have great significance as a factor influencing not only the future of immigrants themselves, but also the nature of the economies they help sustain and the nature of nations and citizenship. While in the short term, the increasing transnational flow of low-wage workers may seem to fuel a race to the bottom for social citizenship rights, in the longer run immigrants and indigenous workers alike may be brought together to make common cause in advocating development of rights that span national boundaries.

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77. See Linda Bosniak, *Citizenship Denationalized*, 7 IND. J. GLOBAL LEGAL STUD. 447.

