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Denationalization, Inclusion, and Exclusion: Negotiating the Boundaries of Belonging

SUSAN B. COUTIN*

While volunteering in the offices of a Central American community organization in Los Angeles in September, 1999, I sat looking at the small box that presented itself on a computer screen in front of me. "Part 7. Information about your PARENT/PARENTS. Citizenship." "And your father was a Guatemalan citizen?" I bothered to ask. The man across the desk stared at me. I was helping him complete an application for U.S. residency under the terms of the 1997 Nicaraguan Adjustment and Central American Relief Act (NACARA).¹ He had just told me his father's name and place of birth (Guatemala City), and had tried unsuccessfully to recall his father's birthdate. "Yes," the man answered, in an "of course" tone of voice. Feeling a bit foolish, I mentally justified my question. People move. They change citizenship. And citizenship is sometimes ambiguous. I recalled that an attorney had once told me that even he could not figure out whether his client, who had two birth certificates, was Salvadoran or Honduran. As I continued filling out the man's application, I came to the questions about his mother. Despite my mental justifications, this time I simply said, "And your mother, of course, is Guatemalan."

The incongruity between the assumptions that placed this citizenship question on a U.S. Immigration and Naturalization Service form and the applicant's seeming surprise at being asked his father's citizenship is at least partially explained by Linda Bosniak's provocative discussion of the denationalization of citizenship. Bosniak notes that citizenship has at least four dimensions: (1) legal status, (2) rights, (3) political activity, and (4) collective

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1. NACARA created an "amnesty" for Nicaraguans who were beneficiaries of the Nicaraguan Review Program and permitted some 300,000 Salvadorans and Guatemalans to apply for suspension of deportation, an immigration remedy that had been eliminated by the Illegal Immigration Reform and Immigrant Responsibility Act in 1996. See Susan Bibler Coutin, *From Refugees to Immigrants: The Legalization Strategies of Salvadoran Immigrants and Activists*, 32 *INT'L MIGRATION REV.* 901 (1998). See also SUSAN BIBLER COUTIN, *LEGALIZING MOVES* *supra* note *.

identity.² From a legal standpoint, the applicant's parents' citizenship is significant. To obtain U.S. residency through NACARA, the applicant who I was assisting had to demonstrate that deportation would be an extreme hardship to him, or to a legal permanent resident, or to a U.S. citizen relative. If his parents were citizens or legal permanent residents of the United States, then their legality would confer a "right" of sorts, on this applicant. He could argue that he had family ties in the United States, and that being deported would disrupt those ties, thus creating an extreme hardship for both the applicant and his parents. In addition, the applicant's parents would have the right to submit a family visa petition on his behalf, thus opening another immigration avenue should his NACARA application be delayed or denied. At the same time, this applicant's unsuccessful effort to recall his father's birthdate had evoked a social reality in which the facts that are requested on immigration forms—birthdate, alien numbers, financial assets—are unimportant. Having evoked this social reality, the question that defined the applicant's father solely in terms of legal status seemed particularly reductionistic.

Both this anecdote and Bosniak's article draw attention to the contradictions inherent in institutionalizing categories that nationalize citizenship, even as the realities that privilege State-based definitions of citizenship are transformed. Individuals who have been excluded from State membership live these contradictions. This Comment on Bosniak's article examines these contradictions in order to consider the danger and value of denationalization for those who have been excluded.

As Bosniak notes, citizenship is a legitimizing term: "To describe a set of social practices in the language of citizenship serves to legitimize them and grant them recognition as politically consequential, while to refuse them the designation is to deny them that recognition."³ If citizenship is key to legitimation, and if immigration "gatekeepers"⁴ link citizenship inextricably to the nation-State, then to practice denationalized forms of citizenship is to risk being defined as illegitimate. At the same time, those who are denied formal membership must develop other, often informal and extrastatal, forms of membership,⁵ including: living and working in a country in which one lacks

2. Linda Bosniak, *Citizenship Denationalized*, 7 IND. J. GLOBAL LEGAL STUD. 447, 455 (2000).

3. *Id.* at 452-53.

4. TOMAS HAMMAR, *DEMOCRACY AND THE NATION STATE: ALIENS, DENIZENS AND CITIZENS IN A WORLD OF INTERNATIONAL MIGRATION* (1990).

5. Tomas Hammar, *Legal Time of Residence and the Status of Immigrants*, in *FROM ALIENS TO CITIZENS: REDEFINING THE STATUS OF IMMIGRANTS IN EUROPE 187-197* (Rainer Baubock ed.,

legal status, participating in transnational networks, and acting as a citizen of something other than a State. The multiple dimensions of citizenship give rise to strategies for legitimizing informal or extrastatal forms of membership. Thus, unauthorized immigrants who demonstrate civic involvement, social deservedness, and national loyalty can argue that they merit legal residency. In other words, individuals can move between the multiple meanings of citizenship, using one dimension to confer another. Similarly, to term membership in nonnational communities, organizations, and groupings as "citizenship" is to legitimize these entities. Movements between membership and exclusion, one dimension of citizenship and another, the national and the nonnational, and legitimacy and illegitimacy, may be as important as redefinitions of citizenship itself.

The Salvadoran immigrants I interviewed in Los Angeles between 1995 and 1997 were well aware of the legitimizing nature of citizenship. Many Salvadorans who entered the United States during the 1980s and early 1990s did so without visas and therefore became undocumented immigrants. Their lack of legal residency was a "deeply exclusionary" experience.⁶ One Salvadoran activist complained to me during an interview, "We need to be here legally or it's like we're not here." Similarly, a formerly undocumented community college student noted that, without a work permit, "you don't exist. Well, they know you are there, but they ignore you. They don't see you as like you exist. And this is the people who raise children, and you know, whenever they come, [other people say,] 'Well, they're illegals.'" ⁷ According to these comments, despite performing such useful tasks as raising children, undocumented immigrants are excluded through policies that define wage labor—a key marker of presence, personhood, and citizenship⁸—as a privilege that States can either grant or deny to particular categories of persons.⁹ Because they lack authorization, the undocumented can only work clandestinely.

1994).

6. Bosniak, *supra* note 2, at 503.

7. Interview with research participant, Aug. 17, 1997. Interviewees' names have been omitted for reasons of confidentiality.

8. David M. Engel & Frank W. Munger, *Rights, Remembrance, and the Reconciliation of Difference*, 30 L. & SOC'Y REV. 7; ROBERT J. THOMAS, *CITIZENSHIP, GENDER, AND WORK: SOCIAL ORGANIZATION OF INDUSTRIAL AGRICULTURE* (1985).

9. See Linda S. Bosniak, *Human Rights, State Sovereignty and the Protection of Undocumented Migrants Under the International Migrant Workers Convention*, 25 INT'L MIGRATION REV. 737 (1991).

Low wages problematize unofficial workers' material existence, while lack of employment records impedes legal recognition of their physical and temporal presences. Undocumented workers labor in sweatshops, fields, homes, and elsewhere, often in conditions that violate federal and state labor codes. The undocumented are further excluded by policies that make their family ties legally inert for immigration purposes. Lacking legal status themselves, undocumented immigrants cannot petition for the legalization of their parents or other relatives. Nor do they have the right to leave and reenter the United States so that they can visit relatives abroad. Lacking travel documents, their entries and exits are clandestine. Instead of petitioning for relatives (as legal citizens can), they smuggle them into the country. Finally, the unauthorized are excluded through practices that limit their mobility. Subjected to detention and deportation if apprehended, the undocumented avoid areas where they might encounter U.S. immigration officials. One Guatemalan migrant characterized this situation as "democracy with a stick."¹⁰ He explained: "If you are illegal, you don't have freedom of movement. You go from your workplace to your house and as much as possible you avoid contact with the authorities."¹¹

Excluded from formal membership in their countries of residence, undocumented immigrants develop covert, informal, and often extrastatal strategies and networks. Undocumented immigrants exchange information about job opportunities,¹² sometimes even recruiting workers from their hometowns.¹³ Migrants look to friends, family, and former neighbors for assistance in finding housing, surviving a period of unemployment, or bringing another relative into the country. Migrant communities in the United States also feature illicit and quasi-illicit services, such as document forgers, unlicensed legal practitioners,¹⁴ and money changers. Employers who hire unauthorized workers also participate in these networks.¹⁵ Covert networks take transnational form, with migrants' hometowns relying on remittances from migrant workers, migrant workers depending on hometown kin for dependent care, and employers utilizing migrant networks to fill labor needs.¹⁶

10. Interview with research participant, Oct. 7, 1996, Los Angeles.

11. *Id.*

12. HECTOR DELGADO, *NEW IMMIGRANTS, OLD UNIONS: ORGANIZING UNDOCUMENTED WORKERS IN LOS ANGELES* (1993).

13. JACQUELINE MARIA HAGAN, *DECIDING TO BE LEGAL: A MAYA COMMUNITY IN HOUSTON* (1994).

14. SARAH J. MAHLER, *AMERICAN DREAMING: IMMIGRANT LIFE ON THE MARGINS* (1995).

15. Kitty Calavita, *Employer Sanctions Violations: Toward a Dialectical Model of White-Collar Crime*, 24 L. AND SOC'Y REV. 1041 (1990).

16. HAGAN, *supra* note 13; Michael Kearney, *The Effects of Transnational Culture, Economy,*

Salvadorans have also developed transnational political organizations, ranging from refugee committees to committees in support of factions of the *Frente Farabundo Martí para la Liberación Nacional* (FMLN), the coalition that opposed the Salvadoran government during the civil war.¹⁷ In the past, these transnational political organizations have funneled financial and military support to the guerrillas during the 1981-92 Salvadoran civil war, provided services to refugees who sought shelter in the United States, opposed U.S. intervention in El Salvador, and advocated refugee status or other forms of legal residency for Salvadoran and Guatemalan immigrants. Through such formal and informal transnational networks, undocumented immigrants could evade state authorities and official practices. These nonnational and clandestine groupings and activities enable undocumented immigrants to use one dimension of citizenship to confer another.¹⁸

Individuals who lack formal State membership nonetheless participate informally in society. U.S. immigration law recognizes such informal participation as grounds for conferring legal residency. Prior to 1996, individuals who could prove seven years of continuous presence, good moral character, and that deportation would be an extreme hardship, were eligible for suspension of deportation, and thus, U.S. residency. NACARA extended suspension eligibility to some 300,000 Salvadorans and Guatemalans, including the man whose application I was preparing in September, 1999. Demonstrating attachment to the United States, participating in civic activities (such as volunteer work), and developing strong community ties (the nonlegal dimensions of citizenship) are means of proving extreme hardship and thus obtaining legal residence. Such claims are grounded in what some have described as an implicit contract between migrant workers and the States in which their labor is employed.¹⁹ According to this implicit contract, when migrants contribute to a society through their labor, the society incurs certain obligations to migrants, such as the obligation to recognize them as full social and legal persons. Through various forms of social participation (going to school, forming a family, obtaining an address, working), migrants imitate

and Migration on Mixtec Identity in Oaxacalifornia, in *THE BUBBLING CAULDRON: RACE, ETHNICITY, AND THE URBAN CRISIS* 226 (Michael Peter Smith & Joe R. Feagin eds., 1995).

17. See generally HUGH BYRNE, *EL SALVADOR'S CIVIL WAR: A STUDY OF REVOLUTION*, (1996); COUTIN, *supra* note 1; TOMMIE SUE MONTGOMERY, *REVOLUTION IN EL SALVADOR: FROM CIVIL STRIFE TO CIVIL PEACE* (2d ed. 1995).

18. This process can also work in reverse. A denial of, or failure in, one dimension of citizenship (e.g., collective sentiment) can also justify exclusion from others (e.g., legal status).

19. Bosniak, *supra* note 9; Hammar, *supra* note 5; *PUBLIC CULTURE BOOK, CITIES AND CITIZENSHIP* (James Holston ed., 3d ed. 1999).

citizens and thus act on the rights that this implied contract promises.²⁰ The informal and somewhat underground networks that enable undocumented migrants to survive can thus create grounds for legalization.

The use of one dimension of citizenship to acquire another occurs in migrants' relationships to their countries of origin as well. During the 1981-92 civil war, Salvadoran migrants were directly and indirectly excluded from El Salvador through political violence, economic devastation, and direct persecution. Although migrants were legal citizens of El Salvador, they were not guaranteed the practical rights (residency, political participation, and freedom from persecution) accorded by their citizenship. After leaving El Salvador, many migrants continued to provide financial support to their families and home communities. By the 1990s, emigré remittances had become a mainstay of the Salvadoran economy²¹ and the Salvadoran government had begun to advocate on behalf of these formerly excluded citizens. In the mid-1990s, Salvadoran officials, who saw emigrés' continued ability to send remittances as economically necessary, joined Salvadoran activists in campaigning for a grant of legal residency to Salvadoran nationals living in the United States.²² The political importance of Salvadoran expatriates is demonstrated by the fact that prior to the 1999 Salvadoran elections, presidential candidates held community forums in Los Angeles. Similarly, in February, 2000, a flyer publicizing a community forum in Los Angeles with an FMLN mayoral candidate for the city of San Miguel, El Salvador, announced in Spanish: "We sustain the economy of the country, now we should sustain it with our political participation." Indeed, Salvadoran leaders have recently courted the U.S. Salvadoran community.²³ At a press conference in Los Angeles, for instance, the president of the Salvadoran Chamber of Commerce and Business told reporters: "We want to make this community feel that being outside of the country doesn't mean it is not part of it. That it feels it is part of us."²⁴ In fact, in 1997, Victoria Velásquez de Avilés, the Salvadoran Ombudswoman for Human Rights, made the immigration and legal rights of

20. See Joseph William Singer, *The Reliance Interest in Property*, 40 STAN. L. REV. 611-751. I am grateful to Richard Perry for this point.

21. Cecilia Menjivar et al., *Remittance Behavior Among Salvadoran and Filipino Immigrants in Los Angeles*, 32 INT'L MIGRATION REV. 97 (1998).

22. Patrick J. McDonnell, *Immigrants' Plight at Issue in Costa Rica Talks*, L.A. TIMES, May 8, 1997, at A32.

23. Alfredo Santana, *El Salvador se hace presente en Los Angeles*, LAOPINIÓN, June 23, 1998, at 2D.

24. María del Pilar, *Ministro Salvadoreño promueve su país*, LAOPINIÓN, June 26, 1998, at 9B, 2B.

Salvadorans living outside of El Salvador a cornerstone of her work. Emigrés' participation in transnational community, familial, and political networks has contributed to increasing recognition of their legal and political rights as Salvadoran citizens.

Just as one dimension of citizenship can legitimize the conferral of another, so too does using the term "citizenship" for participation in nonnational groupings confer legitimacy on these entities. Bosniak rightly notes that, "talk[ing] about citizenship in ways that locate it beyond the boundaries of the nation-state . . . [acknowledges] the increasingly transterritorial quality of political and social life, and the need for such politics where they do not yet exist."²⁵ Such usages also acknowledge the transterritorial quality of membership, and thus signal the new and not-so-new groups in which people are situated. These groups include immigrant hometown associations that raise funds for development in migrants' communities of origin, transnational political movements that raise funds and garner political support for popular struggles, and transnational family economies. Such groups sometimes perform quasi-governmental functions and thus usurp State authority. For example, some Salvadoran immigrants have worked without authorization, transferred funds and goods to family members through unauthorized channels, smuggled relatives across borders, falsified documents and identities, driven without licenses or insurance, and located family members in multiple national spaces. Normally, only States are entitled to issue identity documents, authorize the international movement of goods and persons, and decide who is entitled to drive, work, or operate a business. Undocumented immigrants have sometimes assumed the authority to make these decisions themselves, and sometimes have even authenticated their actions (such as a decision to work without authorization) by manufacturing their own documentation. When individuals who have engaged in such illicit practices acquire legal status at least in part because of these activities, then illicit practices are themselves at least somewhat legitimized. There is thus a sense in which denationalized and nationalized citizenship may be interdependent. The realm of "legitimate" nationalized citizenship in some way relies on a denationalized, extrastatal, and/or transnational²⁶ domain of "illegitimate" citizenship (perhaps including dual citizenship) that, in turn, can sometimes undergo "nationalization." For instance, living outside of one's country of origin and sending remittances can be deemed an act of patriotism, and working in a country in which one lacks

25. Bosniak, *supra* note 2, at 450.

26. Obviously, the transnational is not necessarily extrastatal.

legal status can be considered a contribution to a national economy. In each of these examples, the denationalized is reclaimed by the national.

The complex relationships between national and denationalized citizenship redefine naturalization as well. Naturalization is often celebrated as a moment in which the multiple meanings of citizenship coalesce. At mass naturalization ceremonies that I attended in Los Angeles in 1996 and 1997, judges exhorted as many as 5,000 newly naturalized U.S. citizens to exercise their right to vote, get involved in their communities, and take pride in being Americans.²⁷ In contrast to such conflation of sentiment, status, rights, and political participation, Salvadoran immigrants who wanted to be naturalized, but were ineligible to do so, described legalization and naturalization as strategic moves, rather than as personal transformations. One woman told me, "I will always be Salvadoran, regardless of where my citizenship is or what piece of paper I have. I will never forget my little house or my little town, humble though it is. I am not American."²⁸

Interviewees cited the freedom to travel internationally, the ability to petition for undocumented relatives, the right to vote, and better retirement benefits as the primary advantages of U.S. citizenship. Some pointed out that with either legal residency, or U.S. citizenship, they would be better connected to families and communities abroad than they are as asylum applicants who jeopardize their applications if they leave the United States. One Salvadoran woman stated: "The day that I receive papers, that very day, I'm catching a plane to go to El Salvador again. It's been eleven years since I've seen my parents."²⁹ Interviewees also noted that more restrictive immigration policies have sharpened distinctions between U.S. citizens and legal permanent residents and have thereby made naturalization more important. As another woman put it: "The way things are going, in the future, the residents will be treated like illegals." Immigrants' legalization strategies seem to reflect their transnational goals (*e.g.*, to travel and immigrate family members) and their desire to counter exclusion as much as, or even more than, their national allegiance. Moreover, in the case of Salvadorans, such transnational and strategic considerations have been at the heart of activists' legal campaigns since at least the early 1980s, when large-scale immigration from El Salvador to the United States began. During the Salvadoran civil war, activists sought

27. U.S. Immigration and Naturalization Service officials showed new citizens a music video of the song, "I'm Proud to Be an American."

28. Interview with research participant, Apr. 3, 1996, Los Angeles.

29. Interview with research participant, Apr. 5, 1996, Los Angeles.

refugee status for Salvadoran migrants, not only to prevent deportations, but also to force the U.S. government to acknowledge human rights abuses being committed by the Salvadoran government. Paradoxically, Salvadoran immigrants' ability to acquire U.S. residency derives from such transnational political activity, including the Salvadoran government's recent advocacy on behalf of its citizens' immigration rights.³⁰

Thus, the moment in September, 1999, when the NACARA applicant and I confronted State-based definitions of citizenship was preceded by a complex (and in some ways denationalizing) history. Central Americans, such as this applicant, left their home countries during a period of civil war and political repression. Their Guatemalan or Salvadoran citizenship did not guarantee political and legal rights in their homelands and proved a liability in the United States, marking them not only as nonnationals, but also, in some cases, deportable. Undocumented Central American immigrants who remained in the United States nonetheless founded organizations in solidarity with political struggles in Central America, sent remittances to family members, participated in underground and illicit labor markets, and sought legal status in the United States. These activities eventually resulted in limited immigration benefits, such as NACARA, which restored suspension eligibility to certain Salvadorans and Guatemalans. To obtain U.S. residency, eligible Salvadorans and Guatemalans would have to define their work histories, family situations, and community ties as indications of productivity, rootedness, and acculturation, even though these histories, situations, and ties were created despite State efforts to bar their presence. Moreover, immigrants' goals in seeking legal residency and U.S. citizenship include the ability to travel internationally and to petition for relatives. These contradictory movements between nationalization and denationalization expose the interdependency of these processes. By challenging the presumed superiority of State-based definitions of citizenship and noting ways in which citizenship is denationalized, Bosniak's article helps to make sense of the struggles in which NACARA beneficiaries and other immigrants are engaged.

30. Transnational political work can be highly nationalistic. For instance, Salvadoran immigrants' support for political struggles in El Salvador were grounded in a national revolutionary project. The Salvadoran government's advocacy on behalf of emigrés' immigration rights is both nationalist and denationalist. Such advocacy claims Salvadoran emigrés as citizens and as part of the Salvadoran nation in order to assist these immigrants in obtaining legal status in the United States.

