
Patrolling the boundaries of belonging? Courts, law and citizenship

*Lisa Conant, Andreas Hofmann, Dagmar Soennecken and Lisa Vanhala**

1 INTRODUCTION

Courts and law play a central role in patrolling the boundaries of belonging to political communities, influencing who is included and who is excluded as citizens and/or rights holders. This chapter explores the complex ways in which courts mediate who gains access to different layers of citizenship. We also highlight areas where courts are of little importance. Scholars have long acknowledged that citizenship is about more than nationality. It is about a deeper sense of belonging. Indeed, early theories of citizenship – such as T.H. Marshall’s well known exposition of citizenship as consisting of civil, political and social rights – were developed by scholars who were interested in overcoming exclusionary political practices.¹ For example, early democracies linked property rights to political rights for adult men,² and also denied a majority of adults – women – rights to own property and vote despite both populations’ uncontested belonging to the nation.³ Similarly, states have long granted passports to other marginalized groups while simultaneously denying them civil rights enjoyed by other nationals. The consequences of this denial can be profound, resulting in ‘invisibility, the erasure of the individual from membership in the community’.⁴ Courts have played important roles in regulating this type of belonging for groups of people excluded on the basis of perceived differences related to race, gender identification, sexuality and (dis)ability, among others. The rights consciousness and agency of social movement activists and organizations in mobilizing both legal and political institutions has been key to progressive developments in these cases.⁵

Christian Joppke offers a framework for thinking about the ‘fullness’ of belonging within and beyond nation states.⁶ He distinguishes between three dimensions of citizenship: citizenship as status, which concerns state membership and the rules of access

* We are grateful to the editors and anonymous reviewers for comments that helped to improve this chapter. We also want to acknowledge Serena Cavin for her research assistance.

¹ See T.H. Marshall, *Citizenship and social class: And other essays* (Cambridge University Press 1950).

² National Archives, ‘The struggle for democracy’ (2018) www.nationalarchives.gov.uk/pathways/citizenship/struggle_democracy/getting_vote.htm.

³ Susan Sterett, ‘On citizenship’ (1999) 33(3) *Law & Soc’y Rev.* 777.

⁴ David Engel and Frank Munger, *Rights of Inclusion* (University of Chicago Press 2003).

⁵ Charles Epp, *Rights revolutions* (University of Chicago Press 1998); Thomas Keck, ‘Beyond backlash’ (2009) 43(1) *Law & Soc’y Rev.* 151; Lisa Vanhala, *Making rights a reality* (Cambridge University Press 2011).

⁶ Christian Joppke, ‘Transformation of citizenship’ (2007) 11(1) *Citizenship Studies* 37.

to it; citizenship as rights, which is about the entitlements and protections associated with citizenship; and citizenship as identity, which refers to the ideational and/or behavioural aspects of individuals seeing themselves as members of a collectivity as well as 'official views propagated by the state'.⁷ The chapter will highlight developments along these three dimensions. Given unprecedented levels of international migration and the concentration of migrants in high income countries, this chapter focuses on how courts and law mediate belonging in Western democracies that at least formally offer legal opportunities for migrant inclusion.⁸ We find that inclusive paradigms of belonging require the ongoing mobilization of support and remain vulnerable to retrenchment.

This chapter is structured as follows. Section 2 explores how a traditional immigration society like the United States has adjudicated disputes over membership. It then turns to an illustrative example of judicial intervention in more contemporary membership disputes: the conflicts over unauthorized residents in the US. Section 3 moves beyond statecentric understandings of belonging by exploring how law, courts and transnational migrants constructed a form of supranational citizenship that transcends the nation state. Drawing on the case of European Union (EU) citizenship, this section examines the crucial role that the Court of Justice of the European Union's (CJEU) jurisprudence has played in developing a citizenship of rights that expanded entitlements far beyond those which states originally granted to migrant workers, and the symbolic citizenship they introduced into EU treaties in 1992. Section 4 extends the analysis of intersections between migration and citizenship by focusing on the challenges which those claiming refugee status pose to traditional definitions of belonging. The final section concludes and sketches out contemporary developments that demand further attention.

2 CITIZENSHIP AS THE STATUS OF BELONGING TO A STATE

At a basic level, citizenship entails the status of belonging to a state.⁹ Law endows those who belong with the identity of 'citizens' by granting them the right to reside, allowing 'others' to naturalize while denying rights and status to yet others. Legally constructed by states, its correspondence to particular rights and any sense of shared identity varies across jurisdictions and over time. Nation building always involves the manufacturing of imagined communities beyond the fairly narrow circle of social relations that individuals encounter in daily life.¹⁰ The history of the US illustrates how law and

⁷ Ibid, 44.

⁸ United Nations, *International Migration Report* (2017) www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017_Highlights.pdf. In 2017 the US hosted the world's largest population of migrants, followed by Saudi Arabia, Germany, Russia, the United Kingdom, United Arab Emirates, France, Canada, Australia, Spain and Italy; only the Australian, European and North American hosts offer legal paths to full membership, even though they erect formidable obstacles to inclusion for many migrants.

⁹ Rogers Brubaker, *Citizenship and nationhood in France and Germany* (Harvard University Press 1992) 51.

¹⁰ Benedict Anderson, *Imagined communities* (Verso 1983).

courts forged a people out of exceptionally diverse groups of individuals. From its earliest days, law established the boundaries of belonging in the US, with the country's initial membership composed overwhelmingly of immigrants from distinct European nations. Absent a common ethnic or national identity, US citizens were constituted by legislation in a highly fragmented system of government that only infrequently moved membership-related controversies to the judicial branch for resolution. Congress restricted naturalization to 'white persons' in 1790, extended citizenship to blacks in 1866 and indigenous peoples in 1924, and excluded Asians from naturalization in 1875 and immigration in 1917.¹¹ Courts influenced these acts in both progressive and regressive directions, demonstrating how 'Rights talk is ambidextrous, pitching to the left or right'.¹² For example, in *United States v. Wong Kim Ark*, the Supreme Court declared that regardless of race or heritage, those born in the US were citizens, thereby ensuring that a multigenerational underclass of 'foreign' residents could not emerge as it has in countries that primarily confer citizenship based on descent.¹³ By contrast, in *United States v. Bhagat Singh Thind*,¹⁴ the US Supreme Court excluded Asian Indians from immigration by finding that they were not 'white' as understood in common speech and that Congress intended 'white' to apply only to those of European ancestry, even though courts had previously accepted arguments that social segregation in India rendered Asian Indians racially pure and conventional racial classification schemes of the era categorized them as Caucasian.¹⁵ Courts typically remained deferential to the 'plenary power' of Congress and the president over immigration and citizenship matters well into the postwar era.¹⁶ This began to change only in the 1980s, when undocumented migrants first became a major public policy issue and asylum seekers from Cuba, Haiti and Central America put pressure on the US asylum system.

Legal changes during the civil rights era set the stage for new conflicts over immigration and a significant expansion in unauthorized residents. A bipartisan coalition linking Cold War competition and civil rights adopted legislation to end racist national origin quotas and privilege family reunification, diversifying who was eligible to immigrate to the US while running against restrictive popular opinion.¹⁷ The concurrent end of legal labour migration from Mexico in 1965, despite persistent high demand for foreign workers, resulted in a growing unauthorized population that numbers more than 11 million today.¹⁸ With the vast majority active in the labour market, most unauthorized

¹¹ Robert Porter, 'Demise of the Ongwehoweh and the rise of Native Americans' (1999) 15 *Harvard Black Letter Law Journal* 107; Deenesh Sohoni, 'Unsuitable suitors' (2007) 41 (3) *Law & Soc'y Rev.* 587.

¹² Kitty Calavita, *Invitation to Law & Society* (2nd ed., University of Chicago Press 2016).

¹³ *United States v. Wong Kim Ark* 169 U.S. 649 [1898].

¹⁴ 261 U.S. 204 [1923].

¹⁵ Sohoni (n 11).

¹⁶ Peter Schuck, 'Transformation of immigration law' (1984) 84 (1) *Columbia Law Rev.* 1.

¹⁷ Mary Dudziak, *Cold War civil rights* (Princeton University Press 2000); Daniel Tichenor, *Dividing lines* (Princeton University Press 2002).

¹⁸ Robert Siegel and Selena Simmons-Duffin, 'How did we get to 11 million unauthorized immigrants?' (*All Things Considered*, National Public Radio 2017) www.npr.org/2017/03/07/518201210/how-did-we-get-to-11-million-unauthorized-immigrants.

immigrants fully participate, de facto, in economic and social life.¹⁹ The unauthorized behave as ‘Americans’ to the extraordinary extent that all men between the ages of 18 and 26 *must* register for the draft and may serve in the military, which currently produces the only legal route to citizenship status for unauthorized immigrants.²⁰ Responding to the ‘specter of a permanent caste of undocumented resident aliens, encouraged . . . as a source of cheap labor, but nevertheless denied the benefits that . . . society makes available to citizens and lawful residents’, the Supreme Court’s ruling in *Plyer v. Doe* is an early example of the judicial construction of ‘postnational membership’, where rights originally intended for nationals become entitlements for residents regardless of nationality.²¹ This ruling declared that a Texas law to exclude unauthorized immigrant children from public education was an unconstitutional violation of the Equal Protection Clause of the Fourteenth Amendment. More than a decade later, a US District Court for the Central District of California used this precedent to overturn Proposition 187’s exclusion of unauthorized immigrants from both public schools and health care.²²

Ongoing political contestation over unauthorized immigrants stymied legislation to offer more legal paths to citizenship and increasingly led to confrontations between the executive and courts. Under the Obama administration, the executive responded to Congressional failures by deferring enforcement action against unauthorized immigrants who arrived as children or are the parents of US citizens.²³ Texas led 26 states with Republican governors in a legal challenge against this deferral for parents, and both a federal district judge and the Fifth Circuit Court of Appeals concluded that the implementation of both programmes violated the Administrative Procedure Act. When the government appealed the case to the US Supreme Court, the eight sitting Justices divided 4–4, which upheld the restrictive appellate ruling.²⁴

The executive–judicial confrontation reversed orientation as the Trump administration pursued a more restrictive approach to immigration. Utilizing the same legal solution to legislative gridlock as Obama – the executive order – Trump rescinded deferred enforcement action for both parents and children,²⁵ issued orders to compel ‘sanctuary’

¹⁹ Pew Research Center, ‘5 Facts about illegal immigration in the U.S.’ (27 April 2017) www.pewresearch.org/fact-tank/2017/04/27/5-facts-about-illegal-immigration-in-the-us/.

²⁰ Selective Service System, ‘Who must register?’ (2017) www.sss.gov/Registration-Info/Who-Registration. The US military may be unusual in the extent to which it enlists immigrants regardless of legal status, but marginalized groups often serve at elevated rates in order to ‘prove’ their value to the nation and gain rights and recognition. See Ronald Krebs, *Fighting for rights* (Cornell University Press 2006); Department of Homeland Security, *Naturalization through military service* (2017) www.uscis.gov/news/fact-sheets/naturalization-through-military-service-fact-sheet.

²¹ *Plyer v. Doe* 457 U.S. 202 [1982]; Yasmin Soysal, *Limits of citizenship* (University of Chicago Press 1994); Postnational membership most often remains confined to economic and social rights and typically does not include political rights to vote or run for office in national politics.

²² 997 F. Supp. 1244 [1997].

²³ Department of Homeland Security, *Deferred action for childhood arrivals* (2012) www.dhs.gov/archive/deferred-action-childhood-arrivals; US Customs and Immigration Enforcement, *Deferred action for childhood arrivals (DACA) and deferred action for parents of Americans and lawful permanent residents (DAPA)* (2016) www.ice.gov/daca.

²⁴ Elaine Duke, ‘Memorandum on Rescission of Deferred Action for Childhood Arrivals (DACA)’ (2017) www.dhs.gov/news/2017/09/05/memorandum-rescission-daca.

²⁵ John Kelly, ‘Deferred action for parents of Americans and lawful permanent residents’

jurisdictions to enforce federal immigration law, banned most immigrants from a set of countries deemed likely to 'export' terrorists,²⁶ suspended all refugee admissions and attempted to deter illegal entry by subjecting adults to criminal prosecution and separation from their children.²⁷ Democratic attorneys general from several states and private plaintiffs immediately challenged these measures before federal courts. With much litigation pending, courts cast in different directions again. The status of those brought to the US illegally as children and parents of US citizens remains disputed as multiple federal district judges and appellate circuit courts challenge Trump's order, and the potential for conflict among federal courts increases the chance that the Supreme Court will be pressed to resolve the issue.²⁸ Federal district judges and appellate courts have also challenged Trump by declaring the unconstitutionality of (1) withholding federal funding from jurisdictions that limit cooperation with immigration enforcement and (2) holding those suspected of immigration violations beyond their scheduled release from local jails, but the scope of injunctions against Trump's orders and the policies themselves remain subject to further trials and appeals.²⁹

If the postnational membership of unauthorized residents remains hotly contested in the US, the historically recent spread of dual citizenship constitutes formal state recognition of greater fluidity and multiplicity in contemporary belonging. Often justified as a means to facilitate national incorporation of minorities and immigrants,³⁰ its existence serves as a marker of an open, welcoming citizenship policy.³¹ Typically pursued by transnationally connected individuals to maximize their rights, unintended interactions between law and courts have also resulted in the loss of rights or efforts to reduce rights. The evolution of EU citizenship and entitlements is discussed in the next section and highlights these dynamics.

3 SUPRANATIONAL CITIZENSHIP

European Union citizenship illustrates the multidimensionality of belonging to political communities and the dynamics of judicial intervention. The case demonstrates that courts – even supranational courts – can be instrumental in establishing a whole new layer of rights

recession memo ('DAPA') (2017) www.dhs.gov/publication/deferred-action-parents-americans-a-lawful-permanent-residents-recession-memo-dapa; Duke (n 24).

²⁶ White House, *Executive Order Enhancing Public Safety in the Interior of the United States* (25 January 2017) www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/; White House, *Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States* (6 March 2017) www.whitehouse.gov/presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-united-states-2/.

²⁷ *Ms. L. v. U.S. Immigration and Customs Enforcement* 18 cv 0428 DMS-MDD [2018].

²⁸ Priscilla Alvarez, 'The immigration fight that may soon land in the Supreme Court' *The Atlantic* (23 August 2018).

²⁹ Sudhin Thanawala, 'Federal court declares Trump's order illegal', *The Denver Post* (2 August 2018); Noelle Phillips, 'Sheriffs, ACLU in duel over detainers', *The Denver Post* (26 August 2018).

³⁰ Jeff Checkel, 'Why comply?' (2001) 55(3) IO; Judith Kelly, *Ethnic politics in Europe* (Princeton University Press 2006) 553.

³¹ Marc Howard, *The Politics of Citizenship in Europe* (Cambridge University Press 2009).

based on political belonging to a new entity beyond the nation state. Notions of a European citizenship have been discussed since the EU's first decade, but were only formalized in 1991.³² National governments, however, only intended to create a symbolic status that would foster a common identity. They did not envision that this status would entail new entitlements for all subjects. The 1958 EEC Treaty guaranteed the right to move freely within the EU only to workers in order to 'accept offers of employment actually made'. Some politicians, particularly within the European Commission, regarded this as the nucleus of something more far reaching.³³ But while the political discussion soon stalled, European courts, with the CJEU at the apex, were instrumental in converting what were originally purely economic rights of workers into a far broader set of European citizenship rights.

The language of rights was ingrained in the free movement provisions from the start.³⁴ The relevant secondary legislation in particular uses the term 'fundamental right'.³⁵ Both primary and secondary law, moreover, explicitly established a link between the right of free movement and the principle of nondiscrimination, which entails that migrant workers would have the same access to social benefits as nationals.³⁶ The crucial question that arose in early legal action brought by individuals was who was to be classified as a 'worker'. When the question of the actual definition of the term was first referred to the CJEU by a Dutch court in 1963, the Court held:

If the definition of this term were a matter within the competence of national law, it would therefore be possible for each Member State to modify the meaning of the concept of 'migrant worker' and to eliminate at will the protection afforded by the Treaty to certain categories of person . . . The concept of 'workers' in the said Articles does not therefore relate to national law, but to Community law.³⁷

As a concept based in EU law, who would and who would not be classified as a worker would therefore come down to a decision by the CJEU.

In the late 1970s, the Commission prepared a proposal for a directive on the 'right of all nationals of a Member State to remain on the territory of other Member States, even without carrying on any economic activity'.³⁸ Such residence rights should be granted to migrants 'no longer as persons engaged in economic activity but in their capacity as

³² A.C. Evans, 'European Citizenship' (1982) 45(5) MLR 497.

³³ Lionello Levi Sandri, Social Affairs Commissioner and later Vice-President of the Commission, explicitly used the term in a 1961 European Parliament debate: 'In the free movement of workers, I see not only the means to combine the factors of production most efficiently, but also the first features of a European citizenship' (EP Debates No. 48: 157, 22.11.1961, translated from the German edition).

³⁴ Evans (n 32) 501–2.

³⁵ Recital 3 of regulation 1612/68, for example, states: 'freedom of movement constitutes a fundamental right of workers and their families.'

³⁶ Article 49 EEC reads: 'Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States.' Recital 5 of regulation 1612/68 states: 'the right of freedom of movement, in order that it may be exercised, by objective standards, in freedom and dignity, requires that equality or treatment shall be ensured in fact and in law.' See Carlos Ball, 'The making of a transnational capitalist society' (1996) 37 *Harvard Int. L.J.* 307.

³⁷ Case 75/63 [1964] ECR 184

³⁸ European Commission, *Twelfth General Report on the Activities of the Communities in 1978* (1979).

Community citizens'.³⁹ While this proposal gathered dust, the CJEU began to expand the meaning of the term 'worker' to such a degree that its connection to economic activity became tenuous at best. A paradigmatic case included a British citizen living in the Netherlands who was employed in a part time position that paid less than the Dutch minimum wage. The Dutch authorities had denied her application for a residence permit on the grounds that her minimal employment could not qualify her as a 'worker'. The CJEU judgment used the language of fundamental rights to find in favour of the British citizen.⁴⁰ The terms 'worker' and 'employed persons', the CJEU argued, were concepts that 'define the field of application of one of the fundamental freedoms guaranteed by the Treaty and, as such, may not be interpreted restrictively'. EU law did not subject the right of free movement 'to any condition relating to the kind of employment or to the amount of income derived from it'. Ms Levin would therefore have to be treated as a worker as long as she pursued 'effective and genuine activities, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary'.⁴¹

Nearly a decade later, and after, as the Commission put it, 'a tortuous legislative procedure',⁴² Member States agreed on legislation to grant movement rights to non-economically active migrants. Yet this law highlighted that 'beneficiaries of the right of residence must not become an unreasonable burden on the public finances of the host Member State'.⁴³ In December 1991, national governments subsequently decided to include universal 'Citizenship of the Union' in primary law, including the right for Union citizens to 'move and reside freely with the territory of the Member States'. What remained unclear, however, was whether this treaty change introduced any new substantive rights for citizens or whether it was a largely symbolic rephrasing of the status quo.⁴⁴

The spectre frequently raised in disputes was the potential for 'welfare tourism' arising from a right to free movement, and the prohibition on discrimination that it entailed, when the purpose of migration lost its connection to employment. To this end, state representatives battled with European courts over the definition of different social benefits, trying in particular to exclude those they associated with subsistence rights for the poor (social/public assistance) rather than broader (and non-means tested) entitlements that employed persons or even all citizens enjoyed.⁴⁵ Member states sought to safeguard themselves against possible expenses arising from EU nationals moving to countries that offered more generous benefits than their home country only for the purpose of obtaining those benefits.⁴⁶

³⁹ European Commission, *Thirteenth General Report on the Activities of the Communities in 1979* (1980).

⁴⁰ Paul Craig and Gráinne de Búrca, *EU Law* (Oxford University Press 2011) 721.

⁴¹ Case 53/81 [1982] ECR 1050-1052.

⁴² European Commission, 'Proposal for a Council Directive on the right of residence for students', COM 93/209 [1993] OJ C66/16-17, explanatory memorandum.

⁴³ OJ [1990] C 175/85.

⁴⁴ Niamh Nic Shuibhne, 'The outer limits of EU citizenship' in Catherine Barnard and Okeoghene Odudu (eds), *The Outer Limits of European Union Law* (Hart Publishing 2009) 170-1; Craig and de Búrca (n 40) 824.

⁴⁵ Lisa Conant, 'Individuals, courts, and the development of European social rights' (2006) 39(1) CPS 76.

⁴⁶ Craig and de Búrca (n 40) 721.

The subject of social security entitlements for resident EU citizens was first explicitly raised before the CJEU in 1996. The case concerned a Spanish national who lived in Germany but had been unemployed for some time. German authorities refused her request for a child raising allowance ('Erziehungsgeld') on the grounds that she was not a German national and did not fall under any provision of EU free movement law. In their observations, the German, French and British governments explicitly held that the Treaty provision on citizenship merely subsumed existing rights under a new heading and did not give freedom of movement any new broader substance than earlier legislation did.⁴⁷ Contrary to these observations, the CJEU held that the new provisions on Union citizenship meant that citizens lawfully resident in another Member State enjoyed extensive protection against discrimination, including decisions concerning the grant of social security benefits.⁴⁸

The CJEU found in subsequent cases that treaty provisions on Union citizenship directly confer rights upon citizens, and that Union citizens enjoyed residence rights even where they were not economically active and only held sickness insurance in another Member State.⁴⁹ Similarly, and again contrary to the express opinion of Member State governments, it held that Union citizenship under certain conditions entitles migrants to social benefits and student maintenance grants as long as they could demonstrate a 'real link' to their host society.⁵⁰ The CJEU proclaimed that 'Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality'.⁵¹ In granting liberal access to social benefits, it argued that EU citizenship established 'a certain degree of financial solidarity between nationals of a host Member State and nationals of other Member States, particularly if the difficulties which a beneficiary of the right of residence encounters are temporary'.⁵²

In the recent past, the CJEU has started to apply a more restrictive approach in its citizenship case law, showing a sensitivity towards the growing public debate on welfare tourism,⁵³ as well as greater deference to the need to protect the public finances of host states, thereby permitting lawful residence requirements and three month waiting periods before granting eligibility for some benefits.⁵⁴ Yet EU citizenship would undoubtedly entail fewer substantive rights if the process had been left entirely to political decision makers.

In particular, many rights for third country family members of EU citizens who do not live in their home country⁵⁵ – from residence to entitlements to work, study and social

⁴⁷ Case 85/96 [1998] ECR I-2701.

⁴⁸ Case 85/96 [1998] ECR I-2726.

⁴⁹ Case 413/99 [2002] ECR I-7126.

⁵⁰ Case C-224/98 D'Hoop; Case C-192/05 Tas Hagen [2006] ECR I-10451; Case C-499/06 Nerkowska [2008] ECR I-3993; Cases C-11 and C-12/06 Morgan and Bucher.

⁵¹ Case 184/99, ECR [2001] I:6242.

⁵² Case 184/99, ECR [2001] I: 6245.

⁵³ Michael Blauberger et al, 'ECJ judges read the morning papers' (2018) 25(10) JEPP 1422.

⁵⁴ For example in Cases C-333/13 Dano [2014], C-67/14 Alimanovic [2015], C-308/14 Commission v UK [2016], C-299/14 García Peña [2016].

⁵⁵ And also, albeit to a lesser extent and even more controversially, third country nationals and their family members from states with EU Association and Cooperation agreements. See Lisa Conant, *Justice Contained* (Cornell University Press 2002).

benefits – are among those which elected leaders would not have granted in the absence of judicial intervention.⁵⁶ This is illustrated most starkly by their willingness to subject their own nationals to reverse discrimination in order to deny these rights as much as possible, as the UK did in the case of a dual Spanish–UK citizen when it denied entry to her third country husband. In this dispute, the CJEU decided that EU citizens who gained the right of residence for third country spouses by exercising rights to free movement cannot then be denied this spousal right when they demonstrate an increasing degree of integration into their ‘host societies’ by naturalizing.⁵⁷

4 REFUGEES AS RIGHTS BEARERS LACKING THE STATUS TO BELONG

Third country nationals’ rights before European courts, however, depend on family connections to a European citizen, among the privileged citizenships of the Global North. The international ‘worth’ assigned to our citizenship *qua* nationality randomly at birth – largely based on *where* or *to whom* we were born (and only rarely based on naturalization)⁵⁸ – governs our freedom of movement,⁵⁹ which privileges citizens of the Global North in efforts to cross international borders. A corresponding lack of such privilege for those from the Global South has become tragically apparent in the global refugee crisis. Although refugees are constructed as rights bearing subjects under the 1951 Geneva Convention for Refugees (‘the Convention’),⁶⁰ their right to be protected from return (*non-refoulement*) to their country of origin if they fear persecution there does not include the right to *enter* other states. This omission gives exceptional powers to states to determine who belongs, largely undisturbed by globalization, courts, and the rule of law. De facto, most refugees remain unable to access their rights under international law, with the majority stuck in ‘extended exile’ in refugee camps of the Global South.⁶¹ There, they linger in a protracted holding pattern, their situation frequently reduced to ‘bare life’ while ‘most would rather make a fuller life as ‘residents . . . or citizens’ elsewhere.’⁶²

While the Kenyan High Court prevented the government from closing the world’s largest refugee camp in Dadaab in February 2017, courts are only infrequently called upon to intervene in the governance of such facilities.⁶³ In fact, countries of the Global North have

⁵⁶ Ibid; Susanne Schmidt, *The European Court of Justice and the Policy Process* (Oxford University Press 2018); Case C-133/15 Chavez-Vilchez [10 May 2017].

⁵⁷ Case C-165/16 Lounes [2017].

⁵⁸ Ayelet Shachar and Ran Hirschl, ‘Citizenship as inherited property’ (2007) 35 *Political Theory* 253, 368.

⁵⁹ Kim Rygiel, *Globalizing Citizenship* (UBC Press 2010).

⁶⁰ Refugees are defined as persons who have left their country of nationality fearing persecution (on a certain number of grounds), and who have crossed an international border in the process. Others, notably those – typically much larger in number – who are also displaced but still in their country of origin, are awarded far fewer rights and protections in international law (‘displaced persons’).

⁶¹ Jennifer Hyndman and Winona Giles, *Refugees in Extended Exile* (Taylor and Francis 2016) 11.

⁶² Agamben in Mark Salter, ‘When the Exception Becomes the Rule’ (2008) 12(4) *Citizenship Studies* 365; Hyndman and Giles (n 61) 12.

⁶³ BBC, ‘Kenyan closure of Dadaab refugee camp blocked by high court’ (9 February 2017)

deliberately created such camplike spaces, ranging from Guantanamo Bay and Nauru, to Canada's security certificate detention regime,⁶⁴ to, more recently, the 'jungle' camp in Calais,⁶⁵ in order to produce 'states of exception', where law is used to suspend the rule of law permanently in the name of migration 'management', control and security.⁶⁶ As Ong cautions, it would be a mistake to understand citizenship simply as an 'opposition between those within the state and those outside of it'.⁶⁷ The logic of exception underlying the operation of these border spaces can create new practices of governance that have the potential to fundamentally remake our understanding of citizenship itself.

Those waiting to be resettled are frequently labelled something other than 'refugee' in law, to further marginalize them.⁶⁸ For instance, the roughly 2.7 million Syrians currently in Turkey cannot apply for refugee status there as Turkey only adopted the Convention with a 'geographic limitation', which allows it to limit its legal responsibility to refugees originating in Europe only. Refugees from outside Europe, such as those from Syria, become 'conditional' refugees and are granted only temporary protection under Turkish law until their resettlement (outside of Turkey) is complete.⁶⁹

The proliferation of temporary or 'subsidiary'⁷⁰ statuses in the Global North equally fosters conditions of precariousness and conditionality that complicate claims for legal inclusion by keeping refugees and others in a legal system of 'chutes and ladders'⁷¹ in which status can change frequently and where some refugees are constructed entirely as 'illegal',⁷² while others are kept in a constant state of insecurity, where deportation orders loom, family reunification is a privilege only for some,⁷³ and health care is an act of protest by those delivering it.⁷⁴

www.bbc.com/news/world-africa-38917681; Deborah Bloom et al, 'Kenya to appeal court block on closure of world's largest refugee camp' CNN (17 February 2017) www.cnn.com/2017/02/09/africa/kenya-dadaab-refugee-camp/index.html. Other examples are the conflicting decisions by the Papua New Guinean (PNG) Supreme Court and the Australian High Court in November 2017 regarding the legality of the Australian refugee detention camps on Manus, a Pacific island owned by PNG. See National Post, 'Australian court: Refugee camp in Papua New Guinea is legal' (17 August 2017) <http://nationalpost.com/pmnn/news-pmnn/australian-court-refugee-camp-in-papua-new-guinea-is-legal>.

⁶⁴ Mike Larsen and Justin Piché, 'Exceptional state, pragmatic bureaucracy, and indefinite detention' (2009) 24(2) *Canadian Journal of Law and Society* 203.

⁶⁵ Kim Rygiel, 'Bordering solidarities' (2011) 15(1) *Citizenship Studies* 1.

⁶⁶ Sherene Razack, *Casting out* (University of Toronto Press 2008).

⁶⁷ Ong in Razack (n 66) 13.

⁶⁸ Roger Zetter, 'Labelling refugees' (1991) 4 *Journal of Refugee Studies* 39.

⁶⁹ Metin Çorabatur, 'The evolving approach to refugee protection in Turkey' (*Migration Policy Institute*, 2016) www.migrationpolicy.org/research/evolving-approach-refugee-protection-turkey-assessing-practical-and-political-needs.

⁷⁰ Subsidiary protection in EU law (according to Art. 2(f) of Directive 2004/83/EC) is granted to persons who do not meet the UNHCR definition of refugees but who have shown that, if returned to their country of origin, they would face a real risk of suffering serious harm.

⁷¹ Luin Goldring and Patricia Landolt, *Producing and negotiating non-citizenship* (University of Toronto Press 2013) 10.

⁷² Catherine Dauvergne, *Making people illegal* (Cambridge University Press 2008).

⁷³ Saskia Bonjour and Laura Block, 'Fortress Europe or Europe of rights?' (2013) 15(2) *European Journal of Migration* 203; Anne Wijffelman, 'Child marriage and family reunification' (2017) 35(2) *Netherlands Quarterly of Human Rights* 203.

⁷⁴ Heide Castañeda, 'Medical aid as protest' (2013) 17(2) *Citizenship Studies* 227.

Refugees who risk their lives in attempting to travel to the Global North face yet another construct of sovereign state power, namely a range of so-called interdiction practices, also referred to as the ‘externalization’ of asylum and border controls.⁷⁵ This term captures a variety of practices enshrined in law that range from preventing refugees from seeking asylum in the country of their choice, given agreements that mandate they seek refuge in the first country considered ‘safe’ (e.g. the ‘Dublin’ Agreement, the US-CAN STCA), to vessels patrolling the high seas and the imposition of visa requirements on select countries of origin,⁷⁶ as well as ‘prescreening’ passengers at overseas airports.⁷⁷

These ‘remote control’⁷⁸ practices have only sparingly undergone examination in court, which early observers contended is precisely the point of this ‘venue shopping’ exercise.⁷⁹ By moving restrictive migration control policy instruments to the international, intergovernmental or private levels, policy actors escape judicial scrutiny at the domestic level. More recently, though, scholars have found that at least the EU’s asylum policy has been subject to a growing number of judicial rulings before the European Court of Human Rights (ECtHR) and, more recently, the CJEU (which acquired more competences in this regard only fairly recently, namely with the Lisbon Treaty in 2009),⁸⁰ calling into question the venue shopping strategy. However, similar policies to keep refugees at bay in other countries, such as Canada, Australia or the US, have not faced a comparable degree of legal challenge.⁸¹

Together, these migration control practices have become intrinsically linked with the securitization of asylum, which has led to the gradual redefinition of refugees in discourse, law and policy, from individuals worthy of inclusion and protection to national security threats.⁸² As a result, asylum has become increasingly unavailable in the Global North. While most refugees remain displaced internally or regionally within the Global South, an acute surge of refugees reached Europe in 2015. Welcomed briefly by Germany, incoming migrants were rejected by most EU states, and anxiety about terrorists exploiting the unregulated migration across the Mediterranean motivated EU deals to contain migrants in Turkey and Libya.⁸³ This restrictive shift is also reflected in refugee

⁷⁵ Jennifer Hyndman and Alison Mountz, ‘Another brick in the wall?’ [2008] *Government and Opposition* 249.

⁷⁶ Cynthia Levine-Rasky et al, ‘The exclusion of Roma claimants in Canadian refugee policy’ (2014) 48(1) *Patterns of Prejudice* 67.

⁷⁷ Ruben Zaiotti, *Externalizing migration management* (Routledge 2016).

⁷⁸ Zoldberg in Gallya Lahav, ‘Immigration and the state’ (1998) 24(4) *Journal of Ethnic and Migration Studies* 675, 683.

⁷⁹ Virginie Guiraudon, ‘European integration and migration policy’ (2000) 38(2) *Journal of Common Market Studies* 251.

⁸⁰ Christian Kaunert and Sarah Léonard, ‘The development of the EU asylum policy’ (2012) 19 *Journal of European Public Policy* 1396; Lisa Conant, ‘Who files suit?’ (2016) 38(4) *Law & Policy* 280.

⁸¹ Dagmar Soennecken, ‘Shifting back and up’ (2014) 2(1) *Comparative Migration Studies* 102; Dauvergne (n 72).

⁸² Francois Crépeau and Idil Atak, ‘The securitization of asylum and human rights in Canada and the European Union’ in Savinder Juss and Colin Harvey (eds) *Contemporary issues in refugee law* (Edward Elgar Publishing 2013); Scott Watson, ‘Manufacturing threats’ (2007) 3 *Journal of International Law and International Relations* 95.

⁸³ Diego Cupolo, ‘Money makes the EU–Turkey deal go round’ *Deutsche Welle* (18 March 2017)

jurisprudence. For instance, Canadian analyses show that the government aggressively (and successfully) expanded the exclusionary provisions available in refugee law before the refugee tribunal (IRB) and the courts.⁸⁴ Similarly, the CJEU preserved the traditional lack of the right to enter territory by ruling that the Belgian embassy in Beirut was not obligated to provide humanitarian visas to a Syrian family fleeing war and intending to seek asylum in Belgium.⁸⁵

Given the substantial variation of judicial involvement in refugee determinations internationally,⁸⁶ legal mobilization against these rights restrictive trends is difficult at best, although it has occurred both nationally⁸⁷ and internationally.⁸⁸ For refugee supporters wanting to mobilize inside and outside the courts, obstacles – ranging from politicians deliberately reducing access to domestic courts,⁸⁹ to conflicting meaning frames within the proasylum movement⁹⁰ – are substantial.

Other bottom up coalitions and mobilization efforts – from sanctuary practices,⁹¹ to nonstatus movements such as ‘no one is illegal’⁹² – openly challenge or contravene existing migration laws and call into question the exclusionary logic of existing citizenship regimes. Migrant struggles against exclusion, recent scholarship argues, should instead be reinterpreted as political ‘acts’ of citizenship.⁹³ Rather than the status mattering, the acts do. ‘Migrant struggles aimed at transgressing border controls are also at least potentially about new imaginings of political community that disrupts the sovereign imaginings of inside/outside, insiders and outsiders.’⁹⁴

5 CONCLUSION

The developments discussed here indicate that the influence of courts and law on citizenship ranges widely over time and across jurisdictions. While often assumed to play a

www.dw.com/en/money-makes-the-eu-turkey-deal-go-round/a-37990073; Deutsche Welle, ‘Amnesty international claims EU “complicit” in Libya migrant abuses’ (12 December 2017) www.dw.com/en/amnesty-international-claims-eu-complicit-in-libya-migrant-abuses/a-41750760.

⁸⁴ Asha Kaushal and Catherine Dauvergne, ‘The Growing Culture of Exclusion’ (2011) 23(1) *International Journal of Refugee Law* 54.

⁸⁵ Case C-638/16 X and X [2017].

⁸⁶ Rebecca Hamlin, *Let me be a refugee* (Oxford University Press 2014).

⁸⁷ Christopher G. Anderson and Dagmar Soennecken, ‘Taking the Harper government’s refugee policy to court’ in Emmett Macfarlane (ed.) *Policy change, courts, and the Canadian Constitution* (University of Toronto Press 2018).

⁸⁸ Evangelia Psychogiopoulou, ‘European courts and the rights of migrants and asylum seekers in Greece’ in Dia Anagnostou (ed.) *Rights and courts in pursuit of social change* (Hart Publishing 2014).

⁸⁹ Dagmar Soennecken, ‘The paradox of docket control’ (2016) 38(4) *Law & Policy* 304.

⁹⁰ Pierre Monforte, *Europeanizing contention* (Berghahn Books 2014).

⁹¹ Randy Lippert, *Sanctuary, sovereignty, sacrifice* (UBC Press 2006); Susan Bibler Coutin, ‘The oppressed, the suspect, and the citizen’ (2001) 26(1) *Law & Social Inquiry* 63; Harald Bauder, ‘Sanctuary cities: policies and practices in international perspective’ (2017) 55(2) *International Migration* 174.

⁹² Peter Nyers, ‘No one is illegal between city and nation’ (2011) 4(2) *Studies in Social Justice* 127.

⁹³ Isin in Nyers (n 92) 130.

⁹⁴ Rygiel (n 65), 7.

progressively liberalizing role, judges have ruled in both inclusive and exclusionary directions. In 2007 Joppke concluded that a postwar ‘transformation of citizenship’ created ‘a new world’ from which – ‘short of a collapse of civilization’ – ‘there is no way back to the world before, that of blood, hierarchy, and impassable boundaries. Restrictive trends in citizenship may touch the fringes, never the core of what has evolved over the past century.’⁹⁵

Unfortunately, the perspective at the time of writing reveals that ethnonationalist challenges to inclusive citizenship no longer exist only at the fringes, and a belief in the persistence of the ‘new world’ of citizenship can have dire consequences. A cruel irony of EU citizenship is that it confers so many economic and social rights to equal treatment that many exercising free movement rights never bothered to naturalize in even a longstanding ‘host’ state. Because the EU’s highly advanced form of postnational membership includes the political right to vote in only local and European Parliament elections, not national elections, most EU citizens living in the UK could not participate in the membership referendum in which they had so much at stake. This omission was potentially decisive to the outcome, as EU citizens in the UK constituted a larger number than the margin of winning Leave voters.⁹⁶ Among British voters, Brexit is at least partially a backlash against EU citizenship rights created by both EU law and expansive CJEU rulings. Prior to the referendum, David Cameron’s government tried to negotiate optouts from unwelcome social entitlements of EU citizenship, and the primary grievance of many Leave voters concerned unlimited EU immigration.⁹⁷

Contemporary events suggest that open, inclusive paradigms of belonging are vulnerable to retrenchment. While courts and law may change the status and rights of individuals, which may in turn inspire and justify changes in popular identification, judges cannot impose collective identification. Feeling connected to others is ultimately an individual act of volition. On a more hopeful note, the significant backlash against Trump, the failure of far right parties to win pluralities in Western European democracies, and the tortured reckoning with Brexit in UK politics indicate that advocates of more welcoming and inclusive approaches to belonging are not defeated. Ongoing comparative study of citizenship remains the most illuminating way forward to understand how the nature of belonging is evolving, and the role of law and courts in shaping this.

REFERENCES

- Alvarez P., ‘The immigration fight that may soon land in the Supreme Court’ *The Atlantic* (23 August 2018) www.theatlantic.com/politics/archive/2018/08/daca-trump-supreme-court/568174/
Anderson B., *Imagined Communities* (Verso 1983).

⁹⁵ Joppke (n 6), 47.

⁹⁶ Numbering approximately 2.9 million, 2.15 million of whom worked and were presumably old enough to vote, the population of resident EU citizens was larger than the number of votes by which ‘Remain’ lost: 1,269,501. See BBC ‘EU referendum results’ (24 June 2016) at www.bbc.com/news/politics/eu_referendum/results; BBC, ‘Reality check’ (8 July 2016) www.bbc.com/news/uk-politics-uk-leaves-the-eu-36745584.

⁹⁷ James McBride, ‘What Brexit means’ (*Council on Foreign Relations*, 9 June 2017) www.cfr.org/background/what-brexit-means.

Boundaries of belonging? Courts, law and citizenship

- Anderson C.G. and Soennecken D., 'Taking the Harper Government's Refugee Policy to Court' in Emmett Macfarlane (ed.) *Policy Change, Courts, and the Canadian Constitution* (University of Toronto Press 2018).
- Ball C., 'The Making of a Transnational Capitalist Society' (1996) 37 *Harvard International Law Journal* 307.
- Bauder H., 'Sanctuary Cities: Policies and Practices in International Perspective' (2017) 55(2) *International Migration* 174.
- Bibler Coutin S., 'The Oppressed, the Suspect, and the Citizen' (2001) 26(1) *Law & Social Inquiry* 63.
- Blauberger M. et al., 'ECJ Judges Read the Morning Papers' 25(10) *Journal of European Public Policy* 1422.
- Bloom D. et al., 'Kenya to appeal court block on closure of world's largest refugee camp' CNN (17 February 2017) www.cnn.com/2017/02/09/africa/kenya-dadaab-refugee-camp/index.html
- Bonjour S. and Block L., 'Fortress Europe or Europe of Rights?' (2013) 15(2) *European Journal of Migration* 203.
- BBC, 'EU referendum results' (24 June 2016) www.bbc.com/news/politics/eu_referendum/results
- BBC, 'Kenyan closure of Dadaab refugee camp blocked by high court' (9 February 2017) www.bbc.com/news/world-africa-38917681
- BBC, 'Reality check' (8 July 2016) www.bbc.com/news/uk-politics-uk-leaves-the-eu-36745584
- Brubaker R., *Citizenship and nationhood in France and Germany* (Harvard University Press 1992).
- Calavita K., *Invitation to Law & Society* (2nd ed., University of Chicago Press 2016).
- Castañeda H., 'Medical Aid as Protest' (2013) 17(2) *Citizenship Studies* 227–40.
- Checkel J., 'Why Comply?' (2001) 55(3) *International Organization* 553–88.
- Conant L. *Justice Contained* (Ithaca: Cornell University Press 2002).
- Conant L., 'Individuals, Courts, and the Development of European Social Rights' (2006) 39(1) *Comparative Political Studies* 76.
- Conant L., 'Who Files Suit?' (2016) 38(4) *Law & Policy* 280.
- Çorabatır M., 'The Evolving Approach to Refugee Protection in Turkey' (Migration Policy Institute, 2016) www.migrationpolicy.org/research/evolving-approach-refugee-protection-turkey-assessing-practical-and-political-needs.
- Craig P. and De Búrca G., *EU Law* (Oxford University Press 2011).
- Crépeau F. and Atak I., 'The Securitization of Asylum and Human Rights in Canada and the European Union' in Savinder Juss and Colin Harvey (eds) *Contemporary Issues in Refugee Law* (Edward Elgar Publishing, 2013).
- Cupolo D., 'Money makes the EU–Turkey deal go round' *Deutsche Welle* (18 March 2017) www.dw.com/en/money-makes-the-eu-turkey-deal-go-round/a-37990073.
- Dauvergne C., *Making People Illegal* (Cambridge University Press 2008).
- Department of Homeland Security, *Deferred Action for Childhood Arrivals* (2012) www.dhs.gov/archive/deferred-action-childhood-arrivals.
- Department of Homeland Security, *Naturalization through Military Service* (2017) www.uscis.gov/news/fact-sheets/naturalization-through-military-service-fact-sheet.
- Deutsche Welle, 'Amnesty International claims EU "complicit" in Libya migrant abuses' (12 December 2017) www.dw.com/en/amnesty-international-claims-eu-complicit-in-libya-migrant-abuses/a-41750760.
- Dudziak M., *Cold War Civil Rights* (Princeton University Press 2000).
- Duke E., 'Memorandum on Rescission of Deferred Action for Childhood Arrivals (DACA)' (2017) www.dhs.gov/news/2017/09/05/memorandum-rescission-daca.
- Engel D. and Unger F. *Rights of Inclusion* (University of Chicago Press 2003).
- Epp C., *Rights Revolutions* (University of Chicago Press 1998).
- European Commission, *Twelfth General Report on the Activities of the Communities in 1978* (1979).
- European Commission, *Thirteenth General Report on the Activities of the Communities in 1979* (1980).
- European Commission, COM 93/209. Proposal for a Council Directive on the right of residence for students [1993] OJ C66/16–17, explanatory memorandum.
- Evans A.C., 'European Citizenship' (1982) 45(5) *The Modern Law Review* 497.
- Goldring L. and Landolt P., *Producing and Negotiating Non-Citizenship* (University of Toronto Press 2013).
- Guiraudon V., 'European Integration and Migration Policy' (2000) 38(2) *Journal of Common Market Studies* 251.
- Hamlin R., *Let Me Be a Refugee* (Oxford University Press 2014).
- Howard M., *The Politics of Citizenship in Europe* (Cambridge University Press 2009).
- Hyndman J. and Giles W., *Refugees in Extended Exile* (Taylor and Francis 2016).
- Hyndman J. and Mountz A., 'Another Brick in the Wall?' [2008] *Government and Opposition* 249.
- Joppke C., 'Transformation of Citizenship' (2007) 11(1) *Citizenship Studies* 37.
- Kaunert C. and Léonard S., 'The Development of the EU Asylum Policy' (2012) 19 *Journal of European Public Policy* 1396.
- Kaushal A. and Dauvergne C., 'The Growing Culture of Exclusion' (2011) 23(1) *International Journal of Refugee Law* 54.
- Keck T., 'Beyond Backlash' (2009) 43(1) *Law & Society Review* 151.
- Kelly J., *Ethnic Politics in Europe* (Princeton University Press 2006).

Research handbook on law and courts

- Kelly J., 'Deferred action for parents of Americans and lawful permanent residents' recession memo ('DAPA') (2017) www.dhs.gov/publication/deferred-action-parents-americans-an-lawful-permanent-residents-recession-memo-dapa.
- Krebs R., *Fighting for Rights* (Cornell University Press 2006).
- Lahav G., 'Immigration and the State' (1998) 24(4) *Journal of Ethnic and Migration Studies* 675, 683.
- Larsen M. and Piché J., 'Exceptional State, Pragmatic Bureaucracy, and Indefinite Detention' (2009) 24(2) *Canadian Journal of Law and Society* 203.
- Levine-Rasky C. et al., 'The Exclusion of Roma Claimants in Canadian Refugee Policy' (2014) 48(1) *Patterns of Prejudice* 67.
- Lippert R., *Sanctuary, Sovereignty, Sacrifice* (UBC Press 2006).
- Marshall T.H., *Citizenship and Social Class: And Other Essays* (Cambridge University Press 1950).
- McBride J., 'What Brexit means' (*Council on Foreign Relations*, 9 June 2017) www.cfr.org/backgrounder/what-brexit-means.
- Monforte P., *Europeanizing Contention* (Berghahn Books 2014).
- National Archives, *The Struggle for Democracy* (2018) www.nationalarchives.gov.uk/pathways/citizenship/struggle_democracy/getting_vote.htm.
- National Post, 'Australian court: Refugee camp in Papua New Guinea is legal' (17 August 2017) <http://nationalpost.com/pmn/news-pmn/australian-court-refugee-camp-in-papua-new-guinea-is-legal>.
- Nic Shuibhne N., 'The Outer Limits of EU Citizenship' in Catherine Barnard and Okeoghene Odudu (eds), *The Outer Limits of European Union Law* (Hart Publishing 2009).
- Nyers P., 'No One Is Illegal between City and Nation' (2011) 4(2) *Studies in Social Justice* 127.
- Pew Research Center, '5 facts about illegal immigration in the U.S' (27 April 2017) www.pewresearch.org/fact-tank/2017/04/27/5-facts-about-illegal-immigration-in-the-us/.
- Phillips N., 'Sheriffs, ACLU in duel over detainees', *The Denver Post* (26 August 2018).
- Porter R., 'Demise of the Ongweheweh and the Rise of Native Americans' (1999) 15 *Harvard Black Letter Law Journal* 107.
- Psychogiopolou E., 'European Courts and the Rights of Migrants and Asylum Seekers in Greece' in Dia Anagnostou (ed.), *Rights and Courts in Pursuit of Social Change* (Hart Publishing 2014).
- Razack S., *Casting Out* (University of Toronto Press 2008).
- Rygiel K., *Globalizing Citizenship* (UBC Press 2010).
- Rygiel K., 'Bordering Solidarities' (2011) 15(1) *Citizenship Studies* 1–19.
- Salter M., 'When the Exception Becomes the Rule' (2008) 12(4) *Citizenship Studies* 365.
- Schmidt S., *The European Court of Justice and the Policy Process* (Oxford University Press 2018).
- Schuck P., 'Transformation of Immigration Law' (1984) 84(1) *Columbia Law Review* 1.
- Selective Service System, 'Who must register?' (2017) www.sss.gov/Registration-Info/Who-Registration.
- Shachar A. and Hirschl R., 'Citizenship as Inherited Property' (2007) 35 *Political Theory* 253.
- Siegel R. and Simmons-Duffin S., 'How did we get to 11 million unauthorized immigrants?' (*All Things Considered*, National Public Radio 2017) www.npr.org/2017/03/07/518201210/how-did-we-get-to-11-million-unauthorized-immigrants.
- Soennecken D., 'Shifting Back and Up' (2014) 2(1) *Comparative Migration Studies* 102.
- Soennecken D., 'The Paradox of Docket Control' (2016) 38(4) *Law & Policy* 304.
- Sohoni D., 'Unsuitable Suitors' (2007) 41(3) *Law & Society Review* 587.
- Soysal Y., *Limits of Citizenship* (University of Chicago Press 1994).
- Sterett S., 'On Citizenship' 33(3) *Law & Society Review* 777.
- Thanawala S., 'Federal court declares Trump's order illegal', *The Denver Post* (2 August 2018).
- Tichenor P., *Dividing Lines* (Princeton University Press 2002).
- United Nations, *International Migration Report* (2017), www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017_Highlights.pdf.
- US Customs and Immigration Enforcement, *Deferred action for childhood arrivals (DACA) and deferred action for parents of Americans and lawful permanent residents (DAPA)* (2016) www.ice.gov/daca.
- Vanhala L., *Making Rights a Reality?* (Cambridge University Press 2011).
- Watson S., 'Manufacturing Threats' (2007) 3 *Journal of International Law and International Relations* 95.
- White House, *Executive Order Enhancing Public Safety in the Interior of the United States* (25 January 2017) www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/.
- White House, *Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States* (6 March 2017) www.whitehouse.gov/presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-unit-ed-states-2/.
- Wijffelman A., 'Child Marriage and Family Reunification' (2017) 35(2) *Netherlands Quarterly of Human Rights* 203.
- Zaiotti R., *Externalizing Migration Management* (Routledge 2016).
- Zetter R., 'Labelling Refugees' (1991) 4 *Journal of Refugee Studies* 39.