1 Migration and Citizenship: Rights and Exclusions

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1. Introduction

The dominant idea has long been that rights were connected to nationality and citizenship, thereby granting aliens with very limited protection.

—De Guchteneire and Pécoud (2009, p. 6)

In a time of increasing migration, citizenship as a form of classification has come to assume the kind of importance once reserved for other kinds of discriminatory and exclusionary classifications of status. Distinctions in ancient times or in ante-bellum United States between free men and slaves, in French and Portuguese colonial empires between évolués or assimilados and other colonial subjects, in Nazi-occupied Europe between Aryans and Jews and Roma, or racial classifications in Apartheid South Africa, were all means of granting or denying social and political rights. Although citizenship has many other aspects, for migrants its primary significance is the extent to which it enables them to gain access to a territory and to rights within it.

In the contemporary world, having one’s human rights protected and enforced is usually dependent upon one’s status in a state. The rights of non-citizens sometimes appear to be legitimately overlooked when no particular body or state is assigned obligations towards them in the place where they are living. This can be seen most clearly in the case of migrants, both those moving to a country in which they will be non-citizens and those who, in being described as newcomers, are deprived of full citizenship. Migrants’ rights vary according to the state within which they find themselves, and how they are categorized or classified in
those states: for example, whether they are refugees or migrant workers, and according to the state’s current policies about these groups.

International conventions on refugees make it clear that people recognized as refugees should enjoy broadly the same rights as citizens in their country of refuge. However, the threshold of a grant of refugee status is extremely high, and governments often try to avoid these responsibilities by requiring unrealistic levels of proof of persecution or danger. Many more international migrants, however, do not seek refugee status but travel for the purpose of finding employment. Of the estimated 214 million migrants in the world today, about 16 million are refugees (United Nations, 2009). Rights of labour migrants have been even more contested than those of refugees, and despite attempts to produce international agreements on their rights, little has been ratified.

This chapter explores the rights of different kinds of migrants in the context of contemporary and historical understandings of citizenship. Its purpose is to explore some key assumptions contained in contemporary uses of the term, especially as they pertain to welfare rights. By focusing on these, we try to show that many rights that are taken for granted are linked to, though not necessarily dependent on, citizenship, and that the absence of citizenship status can enable governments to limit the rights of non-citizens, particularly migrants.

2. Presence, residence and citizenship

The three terms presence, residence and citizenship are relevant to migrants. Although they are often taken to be distinct, it is not obvious exactly what the distinctions between them are, nor what these distinctions imply. Prima facie, presence is a momentary descriptor while residence happens over time. However, a more precise distinction is needed because different rights can come with the different statuses. In the UK, presence is necessary and sufficient to receive emergency health care, while residence is needed to obtain education and voting rights. Moreover, residence, particularly ‘permanent residence’, is often a necessary precursor for obtaining citizenship.

The state can exert coercive power over physically present individuals in a way it does not and cannot exert over someone, even a citizen, who is not territorially present. Thus a state generally cannot prosecute citizens for crimes committed in other states or for actions carried out abroad that are not legal in the state of which the person concerned is a citizen. Common examples of such actions include the use of drugs