CITIZENSHIP RIGHTS, VOTING RIGHTS, MIGRATION AND MOBILITY

The boundaries of citizenship in Europe

Blanca Garcés



A young migrant shows images of the trip he made in a boat to reach the Spanish State. Picture by Jordi Borràs

At the beginning of the 1990s, while Francis Fukuyama (1992) was predicting the end of History and the final victory of liberal democracies, Yasemin Soysal (1994), was proclaiming the end of citizenship as an exclusive category. According to Soysal, the centrality of human rights as a universal principle, both in national and international law and in popular and scientific discourse, would eventually force rights of citizenship to be extended to non-citizens and, as such, would weaken the conventional dichotomy between nationals and foreigners. That is why Soysal foresaw new forms of "postnational citizenship", in which recognition ceased to be anchored in cultural belonging and was based on deterritorialised notions of individual rights and values. In other words, Soysal was announcing a postnational world in which foreigners would end up having most of the civil and social rights and many of the political rights that had up to then been restricted to native citizens.

More than 25 years later, those prophecies have come to nothing and are now just an example of the (neo)liberal overconfidence of the 1990s. The course of history seems more tumultuous than ever and the liberal democracies (starting with the United States) are in

evident decline on the international stage. The response to the pandemic has only served to confirm that decline. It has also become harder to defend the *de facto* universality of the rights of citizenship beyond borders and place of birth. The experience of any migrant from the South shows that, contrary to Soysal's predictions, the border has grown deeper and is more widely present than ever. The first border is a paper border and it is made of visas for those who dream of leaving. The second border appears at the point of entry, once again in the form of papers for those who are entering officially and in the form of deserts, seas, fences and walls for those who are illegally crossing the physical border. Finally, the border does not disappear once someone is in a country. Within the country, there is a third border –less tangible but no less significant– that restricts rights of citizenship (civil, social and political) in function of legal categorisations that distinguish between undocumented immigrants, asylum seekers, temporary residents and permanent residents.

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This article seeks to reflect on that third form of border, which is not the physical border of a country but the boundaries of citizenship in the broad sense of belonging to a community. Whilst the concept of citizenship has generally been used to refer to being incorporated as political subjects in the national community, migration and political theory studies (including Brubaker 1992, Bader 1995) have revealed its opposite face, that is, the exclusive nature of citizenship. That literature has brought to light the fact that universal inclusion on an equal basis of all citizens is intrinsically linked to the exclusion (or subordinate inclusion) of those who are classed as non-members, non-citizens or foreigners. What can we say from that perspective about the current position of citizenship in Europe, looked at from the outside, from the perspective of those who are not citizens or not (yet) full citizens? What does it mean not to be classed as a full member? To borrow the words of Hannah Arendt (1951): Who has the right to have (certain) rights? How long do the restrictions and conditions apply and what makes a person able to finally become a citizen?

Undocumented immigrants

Undocumented immigrants have often been compared to the figure of the homo sacer of Giorgio Agamben (1998), that is as having "naked lives" and "dehumanised bodies" who because of their "depoliticised" status can be murdered with total impunity because they have no legal rights and are outside the normal bounds of the State. The refugee camps on the Greek islands are the most obvious example of these "space of exception" where none of the Geneva Convention, European Directives or Greek law seem to apply. Exception becomes the rule when border forces shoot to kill against people trying to cross the border, whether in 2014 on Tarajal beach in Ceuta or more recently on the banks of the River Evros

that marks the border between Turkey and Greece; or when the state deports without any legal process or safeguards, in Morocco to the middle of the Sahara or in Greece, acting through balaclava-clad forces and putting whole families on boats in the middle of the night to soon abandon them adrift in inflatable boats with no motor.

Even so, despite the growing securitisation and brutality of borders, there are some 2-4 million undocumented immigrants living in Europe. They can be arrested and deported at any moment, they are not allowed to work, live in overcrowded conditions and generally have limited access to healthcare. At the same time, at least on paper, they have a series of rights (employment, education for children, access to basic social services) recognised in constitutions and national laws. In practice, they also informally have other rights, as the result of the inclusive practices of some local governments, state employees (particularly in the areas of health and education) and social entities. Isin (2008) has also noted how citizenship rather than being granted is exercised (in what he terms “acts of citizenship”), for example, when migrants themselves decide to demonstrate, organise or take part in the life of the community that surrounds them. Given these formal and informal rights, we cannot draw a complete equivalence between the life of undocumented immigrants and the figure of the homo sacer. We are rather dealing with a type of “subordinate inclusion”, an outside on the inside that whilst it does make them cheap, flexible labour, subcitizens with severely restricted rights, leading permanently risky lives, also does not completely exclude them and in practice allows them significant spaces of resistance.

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Let’s also not forget that the life of an undocumented immigrant is marked by the promise or hope of “papers”. In that sense, their subordination is not only characterised by restrictions on their fundamental rights but also by a series of rules of good behaviour (living in one place, holding down a job, participating in civic and cultural life) against which they will one day be judged with a view to becoming properly documented. Around this ever-present promise of an “El Dorado of papers”, even when those papers never materialise as in the United States, a whole “moral economy of illegality” grows up that controls the behaviour of undocumented immigrants (Chauvin and Garcés-Mascareñas 2012, 2014). In the Spanish context, for example, they have to not have a criminal record, have a steady job, speak the language and, if possible, participate in the wider life of the community. But not everything distils to a question of good behaviour. They need evidence of that good behaviour as well. This is where the moral economy of illegality interacts with what in the 1990s was called the “fetishism of papers” (Suárez Navaz 1997). Without documents that provide evidence of “good behaviour” (hence the drama when they are

burnt or lost), the hope of finally being recognised as a legitimate member and consequently having the right to have rights, vanishes for ever.

Immigrants with temporary residence

The right to have rights is not always permanent. A significant proportion of foreign residents in Europe have temporary permission to remain that will expire at the end of a number of months or years. In this case, we are dealing with temporary recognition and renewal once again depends on meeting standards of behaviour and being able to prove that those standards have been met. The most extreme form of temporariness is taking on seasonal workers in their home country, often to harvest crops. In this case, those workers' rights are restricted and the working and living conditions they are given often breach the few rights that they do have. The case of temporary workers from Morocco taken on to work in the red fruit fields of Huelva is an example. In practice, what most drastically restricts their right to have the few rights they do have is the link with coming back (for future seasons) to the same employer. When there is a good relationship, that's not a problem. When there are breaches of fundamental rights (even including cases of sexual harassment), for a worker to make a complaint might mean losing the possibility coming back in the future.

The other immigrants who have temporary rights to remain are asylum seekers. Their chance of staying in Europe permanently depends on the outcome of their application for asylum. Meanwhile, their rights, although enshrined in the Geneva Convention and in European asylum directives, have been ever more restricted. For example, many European countries have tended to concentrate asylum seekers in reception centres outside the big cities, without work permits or programmes of language or social/employment training and with maintenance support limited to specific items or outlets. The logic behind these measures is for them not to feel completely welcome, in the hope of avoiding the pull effect that is so feared by politicians of every colour. It is also the fruit of a policy of non-integration that aims to make it easier to send them home if their asylum application is refused. The outcome of an application once again depends on meeting certain standards of behaviour – that in this case involve being able to demonstrate that they would be at risk in their home country.

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Finally, foreigners with temporary residence permits, whether to study or work, have some citizenship rights (other than those relating to immigration control, such as protection

against expulsion, the right to return and the right to family reunification) and many of the social rights enjoyed by permanent residents and, even, citizens. The difference is that the right to have those rights can come to an end one day. That depends in the first place on the length of residence. To live in a country for a specified period brings rights or, better said, an indefinite right to have rights. That is how the guestworkers who arrived in central and northern Europe starting in the 1950s, even though they were thought to be mere "birds of passage" or purely short-term labour, were eventually given permanent residence. Over the last few years, however, it has not been enough to build up years of residence. Increasingly, temporary residents have been asked to demonstrate "integration" – both socioeconomic (in the form of a contract of employment or minimum income) – and cultural. In that way, integration has come to be a prerequisite for access to rights, or in any case, for access to the indefinite right to have rights. Up to the early 2000s, interestingly, the relationship was the exact opposite: rights were seen (and were granted) as a prerequisite for integration.

Immigrants with permanent residence

Long before harmonisation of European immigration policies, Hammar (1990) pointed to the presence of foreigners with permanent residence in Europe who in most cases had a settled status (that could not be revoked) and access to most rights (civil, social and, in some cases, even political) on the same basis as citizens. That led him to conclude that a new class of citizenship was emerging, that of denizens, half way between foreigners and nationals. It was not only a descriptive category. Hammar argued from a normative standpoint that *denizenship* was an alternative to citizenship for first generation immigrants. In fact, it was Hammar's account of the emergence of *denizenship* that led Soysal (1994) to speak of postnational citizenship, anchored in the international human rights framework. That argument was also subsequently used by Sassen (1996) and others

Despite being a global debate, the category of denizenship is rather a European peculiarity. In historically immigrant countries – such as the United States, Australia, New Zealand or Canada – permanent residence can be obtained at the time of arrival and immigrants are expected to acquire citizenship in the medium term. Denizenship is therefore initial and short-term. In contrast, it is the Europe of the mid-twentieth century where permanent residence dissociated from nationality. How else do we explain that at the end of the 20th century, a child or net of Turkish immigrants was still not German, having been born, raised and lived in the country all his or her life? Seen from this perspective, rather than representing an extension of rights beyond national citizenship, the category of denizenship can be read in reverse: a way of keeping "outsiders" living with us but not including them in the symbolic and cultural community that the nation represents. Beyond the question of membership, the limitation of access to nationality has immediate implications in terms of political rights, which are the most precious and therefore the last to be granted. At an individual level, as Alba Cuevas points out in this issue, these limitations on political rights mean that millions of people in Europe –permanent residents who work, pay contributions, raise their children and live normally among us– cannot exercise public service and their right to vote. At the political level, it means having decimated democracies where only a

part of the population has the right to represent and be represented politically.

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In the early 2000s, the academic literature on access to nationality revealed a general shift towards more inclusive legislation. For example, in 1999 Germany radically changed its policy to facilitate the naturalisation of second and third generations. That led to discussion of a degree of convergence on principles more focused on jus solis than jus sanguinis and, of a more conceptual nature, towards the “de-ethnicisation” of nationality. In parallel, however, the Netherlands, Germany first, and Austria and Denmark later introduced integration programmes and citizenship tests as requirements for nationality. In the background was a feeling that “integration policies had failed” and an accusation – sometimes expressly stated – of “cultural incompatibility” and “clash of civilisations” against the Muslim community. That explains why, in addition to mastery of the language and knowledge of the country, part of those citizenship tests included questions about values. For example, not having a positive view on same-sex couples or being anti-abortion might entail, in the case of the Netherlands, not being deserving of finally being accepted as a full citizen. Paradoxically, here we can see a process of re-ethnicisation of nationality, in terms now not of blood and origin, but rather of values. Steadily, these measures have made integration a key part of immigration control, and even also – although it may seem oxymoronic – at the moment of entry to a country.

Civic stratification

Far from the postnational citizenship prophesied by Soysal, today’s landscape of the boundaries of citizenship in Europe is a complex map of civic stratification, with differentiated gradations of access to social, civil and political rights. In brief, there are gradations in terms of time and degree of the “right to have rights”. In this supposedly inclusive Europe, we have immigrants and refugees abandoned in “containment” camps outside the continent or returned at the border without any legal safeguards; undocumented immigrants surviving on the margins of society, with the hope of one day becoming documented; asylum seekers with short-term residence permits hoping to be able to prove that their vulnerability in their country of origin and so being finally accepted as full members; short-term residents who after living in the country for a period and with evidence of economic and social integration would be eligible for permanent residence; and permanent residents, with almost all civil and social rights but few political rights. Access to nationality is the final step, on one hand less costly than it was a few decades ago but on the other hand ever more conditional on cultural belonging to the imagined community that

is the nation.

And the question that remains to be answered is why? It could be argued that borders have always existed between insiders and outsiders and that – as we said at the beginning – citizenship necessarily draws a line between those who are part of a community and those who are not. What has varied historically are the conditions to be met to go from one side of the line to the other. Before, in countries following the principle of jus sanguinis, the leap was not possible: either you had nationality by descent or you did not have it all. In countries where belonging was linked to place (of birth or of residence), access was a matter of presence. Currently, there is a degree of convergence on models that do allow access. At the same time, in most countries, access is gradual, lengthy and depends not only on being there but also on being capable of being, and being able to show that you deserve it. In that sense citizenship (with its different degrees of belonging and rights) feels almost like a prize. A prize that is worth winning. But what starts out affecting outsiders usually ends up applying to insiders. In recent years that "moral economy" of legality, what makes a foreigner worthy of keeping or acquiring certain rights, has increasingly affected actual citizens. Basically, because for them too rights are becoming progressively conditional on their behaviour as "good", "sound", "responsible", "independent" citizens, disciplined workers and voters.

> The distinction between one and another, this civic stratification that marks the borders of citizenship in Europe, is counterproductive. COVID-19 pandemic has reminded us of this: the lack of access to public health care or the limitation of access to housing for those categorised as "others", have ended up representing a public health problem for "all"

Although post-national citizenship is far from being a reality, it is a relevant normative concept when it comes to claiming rights beyond those recognised by each state for its own national citizens. First, because to speak of post-national citizenship (I repeat, not as a category of analysis but as a precept) is to put rights back at the centre. In other words, it means making Hannah Arendt's "right to have rights" a natural and inherent element of every human being. Second, and consequently, it changes the logic of rights as a reward deserved throughout an arduous obstacle course, often also hardship. Just as citizenship rights are acquired by birth, there are fundamental rights that should be assigned from the outset. This seems obvious, but nowadays it is not so obvious. The outstanding question is how to question the binary logic (inside/outside, national/foreign) inherent in the very concept of national citizenship without diluting the responsibility of states towards their citizens. In short, it is a question of equating upwards and not downwards. Because in the end, the basic question is to understand that the distinction between one and another, this civic stratification that marks the boundaries of citizenship in Europe, is not only counterproductive for some but for all. Contrary to the far right's postulates, *our* security

depends on *their* rights. COVID-19 pandemic has reminded us of this, for example, when the lack of access to public health care, or the limitation of labour rights or access to housing for those categorised as “others”, have ended up representing a public health problem for “all”.

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Blanca Garcés

Blanca Garcés és investigadora sènior de l'àrea de migracions i coordinadora d'investigació del CIDOB (Barcelona Centre for International Affairs). Doctora cum laude en Ciències Socials per la Universitat d'Amsterdam i llicenciada en Història i Antropologia per la Universitat de Barcelona, va rebre el premi a la millor tesi doctoral en sociologia defensada als Països Baixos el 2009 i 2010. Ha treballat sobre les polítiques d'immigració a Malàisia i Espanya, el *policymaking* de les polítiques d'integració des d'una perspectiva multinivell, els discursos polítics al voltant de la immigració i les migracions irregulars des d'una perspectiva comparada. Entre el 2010 i el 2016 va ser investigadora postdoctoral Juan de la Cierva i professora convidada a la Universitat Pompeu Fabra. És professora associada al Departament de Ciència Política de la Universitat de Barcelona i integrant de la xarxa europea IMISCOE. Actualment, treballa sobre les polítiques i els discursos sobre refugiats des d'una perspectiva europea comparada. Juntament amb Rinus Penninx, acaba de publicar un llibre sobre el concepte i les polítiques d'integració a Europa (Springer, 2016).