

Transnationalism and the multiplication of rights claims. The challenge of defining the 'other'

Philip Oxhorn*

Introduction

People have more claims to rights than ever before. Whether through appeals at the global level to the Universal Declaration of Human Rights and the international treaties that have multiplied in the postwar era, regional treaties like those linked to the Organization of American States, or as a consequence of democratic transitions with their promise of expanding rights of citizenship, people whose rights have been abused have a variety of potential mechanisms for pursuing some form of recourse. Yet this multiplication of avenues for recourse has not been matched by a concomitant strengthening of institutions actually responsible for ensuring respect for rights in practice. The ability of people whose rights have been violated to find effective redress may have even declined, given the weakening of those institutions and the lack of political will to enforce rights. This is a paradox of globalization: the expanded existence of *de jure* rights in the face of stagnant, if not declining, *de facto* rights for large numbers of people.

The moral, political and, most importantly, human costs of this paradox are only like to grow as traditional boundaries separating “us” from “the other” grow due to the intertwining of a variety of dynamics associated with globalization.¹ This is because the increasing social tensions regarding the distribution of resources and the sharing of the costs associated with the dislocations associated with these dynamics are more likely to affect in negative ways those groups whose rights claims are historically the most tenuous. In particular, migrants and indigenous people are especially vulnerable. This article is intended to outline a novel approach for understanding the causes of this paradox and potential solutions by examining how these two groups are able to participate in the social construction of citizenship. After discussing the ways that citizenship has been increasingly “unbounded” and its implications for rights enforcement, I then provide a theoretical framework for understanding dynamic processes relating to the social construction of citizenship that suggests how civil society can play an important role in mitigating the negative consequences of citizenship’s unbounding by improving the quality of democratic governance more generally. In third section I briefly outline a potential research program focusing on the contrasting

*McGill University. E-mail: philip.oxhorn@mcgill.ca

¹Although it is beyond the scope of this article, climate change will also have a number negative impacts relating to an increasing number of extreme weather conditions and climate change’s likely impact on access to drinking water, to name but two expected effects.

experiences of four countries: Canada, Chile, Mexico and South Africa.

1 The Unbounding of Citizenship in a Globalizing World

The paradox of expanding de jure rights in the face of stagnant, if not declining, de facto rights for large numbers of people stems from the increasingly apparent shortcomings in dominant models of citizenship. The most basic conceptualization of citizenship is one that recognizes the rights and responsibilities of a predefined group of people who enjoy a certain level of equality. They are exclusive to people with a legitimate claim to belonging to that group. Because citizenship rights are not universal, they represent a fundamental demarcation of “us” from the “other.” This is essential for effective rights enforcement because it not only assigns rights to specific groups of people, but it also assigns the responsibility for enforcing such rights. Conversely, the rights claims for people not included within a given group—the “other”—and responsibility for enforcing them remain quite ambiguous at best.

The larger group that citizens belong to today is the nation-state, which is responsible for ensuring the respect for citizenship rights. The exclusivity of citizenship rights has been enshrined in the concept of state sovereignty as each nation-state is free to establish its own conception of what it means to be a citizen. The frontiers of these polities represent a hermetic seal separating the definition and practice of citizenship rights from intrusions by non-citizens. Particularly in the post-WWII period, international law also emphasizes that such frontiers are sacrosanct in that other nation-states cannot legitimately intervene in other nation-state’s domestic affairs, at least not without appropriate sanction by the institutions of transnational governance.²

This geographic definition of polities is not new. It was as true for the city-states of ancient Greece and Renaissance Europe as it is for today’s nation-states, even though the actual content of citizenship rights has changed dramatically. In fact, many of the historical injustices that today’s evolving ideals of citizenship seek to address were a direct consequence of the conflicts this division between “us” and the “other” created, as well as the violence associated with creating a homogeneous sense of “us” whose citizens merited equality within their respective polities (Nandy 1992; Tilly 1975). One outcome of this homogenization is the dominance of a liberal model of citizenship in which rights and responsibilities pertain exclusively to individuals. This is antithetical to the collective rights and responsibilities in the alternative citizenship models that it displaced (Parekh 1992), and it has contributed the marginalization of indigenous groups throughout the world. The close association between citizenship and democracy further reinforces the link between citizenship and delineated territories, or boundaries. This is because of a perceived need to ensure high levels of cultural homogeneity within the citizenry to facilitate democratic decision-making (Taylor 1998), as well as the fact that democratic processes require that those eligible to participate be defined

²The principle of non-intervention is particularly important for Latin America, given its colonial experience and the threat of intervention by world powers, especially the United States, for much of its post-independence history. Latin America also demonstrates how dominant countries such as the US can readily manipulate international sanction for external interventions. The apparent ease of this manipulation both undermines the legitimacy of the relevant international organization (in this case the Organization of American States) and further increases the imperative for non-intervention, if only for self-protection from undue external intervention.

beforehand (Dahl and Tufte 1973) and the easiest way to do this is through national citizenship.³

Recognized citizens at least have the expectation of being treated equally by political authorities and other citizens in the realization of their rights. The rights of non-citizens are ambiguous. Non-citizens clearly cannot claim rights reserved for citizens, this does not mean they have no rights (Arendt [1951] 1968; Benhabib 2004; Somers 2008). The problem is twofold: determining what those rights are and enforcing them. This problem was recognized by Kant ([1795] 1957) in his discussion of the rather nebulous concept of foreigners' right to "hospitality" (Benhabib 2004). The concept of human rights is intended to address this problem, yet the meaning of human rights in practice is highly contested and their actual enforcement even more so. At the same time, significant groups within many societies may formally enjoy the status of "citizen," but the meaning of that is contested because historical legacies of colonialism, slavery and racism limit their citizenship. This is particularly true for indigenous people.

As noted above, this dichotomy between "citizens" and "non-citizens" as a mechanism for defining people's rights and obligations assumed a new predominance with the establishment of the UN system based on respect for non-intervention and national sovereignty. This reflected the strength of growing anti-colonialism, particularly in Latin America, but it ultimately sowed the seeds for potentially more serious challenges to effectively enforcing rights. Not only did this reinforce the territorial boundaries of citizenship rights, it ultimately insulated increasingly violent authoritarian regimes in the 1960s and 1970s from international from meaningful international sanction.

At the same time that the UN was consolidating in unprecedented ways the centrality of national sovereignty as the locus for the dominant rights regime, it also sought to institutionalize respect for basic human rights. As an ideal fundamentally transcending the principles underlying the separation of "us" from the "other" in the definition of rights and, at least implicitly, implying an obligation on the part of the international community to enforce certain rights regardless of nationality and issues of sovereignty, a new contradiction was introduced into global understandings of rights and their effective enforcement. In principle, sovereignty and the concomitant right to create national citizenship regimes were now qualified; while obvious differences between "us" and the "other" remained, all people by virtue of their shared humanity now were recognized as have fundamental, inalienable rights that potentially rivaled the most inclusive citizenship regimes in their scope and depth, even though there was no clear enforcer of these rights.

Since then, the tensions between any meaningful understanding the rights of "us" and "the other" have been exacerbated by the interconnections of globalization. For example, crises associated with failed states (e.g., Rwanda's genocide and the aftermath of Haiti's earthquake) have increased pressures for attenuating the imperative of sovereignty and non-intervention to enforce the most basic of rights, but no clear consensus has emerged regarding any alternative for structuring the international

³As, Dahl and Tufte (1973) observed, there is no democratic solution to setting boundaries. This is because each possible boundary necessarily implies different criteria for determining a relevant majority. For example, supporters of Quebec sovereignty argue the majority of Quebecers should decide, while supporters of Canadian federalism have argued the rest of Canada should also have a voice, something viewed as an undemocratic external intervention by Quebec nationalists.

system of rights enforcement. In some ways the International Court of Justice was created to serve such a role, even though it also is based on principles of non-intervention in ways that seriously limit both its reach and effectiveness.⁴

More generally, accepting responsibility for the international enforcement of human rights has been difficult to achieve, especially given the costs such enforcement would involve in terms of economic resources and the inevitable loss of life on the part of countries assuming responsibility for any intervention.⁵ Sadly, intervention often seems linked more to the geographical and/or cultural proximity to the “other” who is being victimized, as well as the relative costs involved, further accentuating inequalities in respect for rights and undermining any sense of universality behind human rights. Even if the principles of state sovereignty and non-intervention are increasingly obsolete in their current form, they still serve to shelter abusive regimes at the same time that they provide opportunities for countries to avoid any responsibility for actually enforcing them.⁶

Domestically, the panoply of rights claims in the context of growing economic interdependence has often led to the perception that states are less capable, if not less willing, to enforce many basic rights, whether defined as human rights or citizenship rights. Instead, as globalization forces groups to face one another in unprecedented ways, denying basic rights to the “other” can become a scapegoat for a variety of political problems, as demonstrated by the rise of anti-immigrant political movements in Western Europe and the United States, or what Samuel Huntington (1996) labeled a “clash of civilizations.” While Huntington’s fears are exaggerated, they carry the danger of becoming a self-fulfilling prophecy. This is because they can fuel people’s fears of the “other,” encouraging them, and particularly their political leaders, to avoid responsibility for problems by targeting groups whose claims to citizenship can be challenged or who as “citizens” have been socially, politically and economically marginalized as a result of prejudice and other obstacles to their inclusion into the societies in which they live (Somers 2008; Benhabib 2004).

In sum, globalization challenges citizenship models in at least three ways. First, national borders are increasingly permeable. This is a consequence of unprecedented levels of migration that are enabled by closer economic ties, but are often fed by the coerced relocation of large populations in developing countries (World Bank 2011). It is also due to the growing influence of transnational non-governmental actors and the spread of alternative ideas through unprecedented advances in information technology (Arditi 2008, 75). Second, the presumed homogeneity of polities is under assault in many places around the world (Taylor 1998). This undermines traditional notions of equality among citizens by exposing fundamental inequalities and demanding various new rights that reflect social heterogeneity rather than reinforce the perception of social

⁴The ICJ’s jurisdiction is limited to those countries that accept it. But even where it does have jurisdiction, the Court’s ultimate impact is questionable in terms of increasing respect for human rights more generally.

⁵This was most tragically clear in the case of the Rwandan genocide. But it also was a factor in the delayed intervention in Bosnia. As in the case of Bosnia, such intervention has tended to be limited to the most extreme cases of abuse by providing one side in ongoing struggles with material assistance and (manned and unmanned) aerial bombardment with potentially high levels of civilian casualties. Still, such intervention is by no means guaranteed, as the ongoing struggle in Syria demonstrates.

⁶I have deliberately sidestepped the issue of the true “universality” of the rights enshrined in the Declaration. Debates about the definition of such rights, particularly their alleged Western bias, and their applicability in particular cultures only further exacerbate the problems discussed here.

homogeneity. Finally, the concomitant rise of a human rights discourse, even if its practical impact remains anything but universal, erodes the exclusivity of rights claims tied to citizenship. This contradiction between the rights that all people presumably enjoy and those that are deliberately restricted to specified groups contributes to the emergence of an institutional vacuum regarding the enforcement of all rights. What is often forgotten is that how the rights of non-citizens are respected has repercussions for the enforcement of the rights of citizens. Increasingly, the rights of people with no claims or contested claims to citizenship have become a focal point for venting citizens' growing frustration with the lack of application of their own exclusive rights as citizens.

Globalization's challenge to dominant citizenship models is intrinsically linked to the market-oriented economic reforms that were enacted throughout the world in the latter part of the 20th century (Burdick et al. 2009; Tulchin and Ruthenberg 2006; Yashar 2005; Ballard et al. 2006; Seekings and Natrass 2006; Somers 2008). Their shortcomings in developing countries in terms of equity and economic security offer an obvious target for focusing citizen frustrations and galvanizing opposition movements. Yet challenges to liberal citizenship cannot be reduced to a simple rejection of markets or recent reforms. This is one aspect of the hybrid nature of "post-liberal" politics (Arditi 2008).

Such challenges are also a consequence of a new form of state-society relations: *neopluralism* (Oxhorn 2011). While Neopluralism, like globalization, is closely associated with neoliberal or market-oriented economic policies, it is not reducible to any specific set of economic policies or correlated with any particular level of economic liberalization. The latter form part of the temporal context within which neopluralism emerges. It is "pluralist" because through democratic elections, neopluralism reaffirms the normative belief that the best balance of interests and values within a given polity is produced by some form (however limited) of free competition among individuals in the rational pursuit of their self-interest. Yet the marked authoritarianism of neopluralism distinguishes it from the more traditional pluralist model. While it is important that the people who govern are elected, once elected, they have few checks on their power. Elected leaders frequently bypass and deliberately undermine representative democratic institutions, and in this sense neopluralism has become the structural foundation for what O'Donnell (1994) characterizes as delegative democracy. Dominant economic interests, as well as unelected power holders such as the military, exercise control over key state decisions. This fundamental lack of accountability and responsiveness undermines the effectiveness of citizenship rights more generally. At the same time, the economic and social insecurity that neopluralism exacerbates finds all-too-easy scapegoats in the alleged threats posed by migrants impinging on precarious the economic opportunities available to citizens and by indigenous peoples' growing challenges to the status quo.

Ultimately, the result of these dynamics has been a continuation of rights abuses toward vulnerable groups. The traditional enforcer of rights—the nation state—has increasingly been unable to fulfill this role in the face of weak institutions, the undermining of national sovereignty and increasing challenges to the exclusivity of citizenship rights. This vacuum at the national level has not been filled at the global or regional level. There is still a lack of any credible international obligation to enforce

rights when they are violated. Conflicting geostrategic interests, contested definitions of rights and obligations, and the reticence of countries to pay the costs of enforcing rights abroad mean that even in the most horrific cases of rights violations, the international response is at best mixed.

The situation is only complicated by the fact that globalization also has generated new dynamics that can mitigate its negative impacts on how societies are structured. While economic insecurity provides a fertile ground for protest, globalization provides new resources and normative ideals for challenging not only economic shortcomings of market reforms, but also the nature of citizenship more generally. A good example of this is globalization's impact on the resurgence of local identities and other forms of identity-based politics, expanding terrains of contestation in important ways. This is one reason why, for example, indigenous identities have taken on such an unprecedented political influence. Reinforced by transnational solidarity networks, including human rights organizations, these movements suggest a new-found assertiveness for local and sub-national regional identities that have historically been either repressed or marginalized in practice—a paradox that not only reflects a revalorization of the local in an increasingly interdependent world, but a newfound empowerment of marginalized groups (Alvarez et al. 1998; Burdick et al. 2009).⁷ This underscores another paradox: globalization can potentially provide redress for historical injustices that precede it, dating back to the emergence of the modern state system. The challenge is to determine how.

Ultimately, it is imperative to emphasize that, despite the fact that globalization challenges the geographical boundaries of citizenship in important ways, all conceivable models of citizenship will inevitably retain the fundamental distinction between citizens and non-citizens until there is something that resembles a global governance system capable of providing the notion of “citizens of the world” with substantive meaning.⁸ In other words, globalization weakens the long-established boundaries of citizenship, but without eliminating the need for boundaries or identifying an alternative. Citizenship today therefore is an uneasy mix of old and new practices that have yet to congeal into a clear conceptualization of what citizenship ideally might encompass or how this boundary problem can be resolved (Oxhorn forthcoming). Struggles around fundamental issues of citizenship are driving politics throughout the world. In this way, citizenship is a social construction whose evolution reflects which actors participate (including those weakened or strengthened by globalization) (Oxhorn 2011).

⁷It is important not to romanticize about the impact of this indigenous mobilization to date. While important advances have been made in terms of the recognition of indigenous rights and the pluri-national character of a number of countries, with Bolivia being the most important example, indigenous people largely remain the poorest group in the hemisphere. This dramatically curtails their ability to make rights guaranteed by law, including rights that are exclusive to indigenous communities, effective rights in practice.

⁸In many ways, the experience of the European Union is emblematic of the problems globalization poses for citizenship. Debates over EU membership (particularly for non-Western countries), the rights of citizenship associated with EU membership and their relationship to national citizenship rights (not to mention sub-national citizenship rights for a growing number of autonomous regions within EU member states) underscore the complex ways in which boundary issues are central to any discussions of post-liberal citizenship for the foreseeable future. The recent creation of the Union of South American Nations promises to make such debates even more relevant for defining citizenship in Latin America.

2 Civil Society, the Social Construction of Citizenship and the Challenge of Defining the “Other”

If globalization has contributed to the unbounding of citizenship, the challenge is reimagine boundaries in ways that will allow societies to “bond together in difference. . . . The crucial idea is that people can bond not in spite of their differences but because of them. They can sense that the differences between them enrich each party, that their lives are narrower and less full alone than they are in association with one another” (Taylor 1998, 153). Despite the challenges of globalization for citizenship and the defense of human rights, this reimagining is most likely to succeed as a result of the active role played by civil society in its relationship with national states, a process I call state-society synergy (Oxhorn 2011). State-civil society synergy has two principal dimensions. The first is a prescriptive dimension. At this level, civil society plays an essential role in insisting on respect for existing rights, working to ensure that politicians and state officials remain accountable for their actions (Smulovitz and Peruzotti 2000). Equally important is a second, proscriptive dimension. This captures how civil society actors help set public agendas, including by demanding new laws and new rights.

The concept of state-society synergy is central to the theoretical framework for understanding how citizenship rights emerge that I developed in earlier research: the social *construction of citizenship* (Oxhorn 2011). Its starting point is a critique of the classic work by T.H. Marshall (1950) on the evolution of citizenship rights in capitalist societies. For Marshall, a teleological, if not functional, dynamic started in Britain in the 18th century when civil rights were granted to all adult males in order to allow for the further expansion of capitalism. Universal (male) suffrage was granted in the 19th century to further mitigate growing levels of inequality associated with industrialization. The process culminated in the granting of social rights of citizenship associated with modern welfare states.

While Marshall was descriptively correct, he was wrong to assume the reason for this was intrinsic to capitalism. The pressures for expanding citizenship rights that emerge (or fail to emerge) from within civil society, and how those pressures are dealt with by the state are central to a causal theory of citizenship. This is why very different patterns of citizenship emerged elsewhere.

The pattern Marshall described epitomizes what I refer to as *citizenship as agency*. It is a consequence of the active role that multiple actors, particularly those representing disadvantaged groups, must play in the social construction of citizenship for democratic governance to realize its full potential for incorporation. It is synonymous with strong civil societies in Western Europe, where social welfare states are one of its principal achievements. In contrast to this experience, in which citizenship includes strong civil, political and social rights (as well as other rights not contemplated in Marshall’s time, such as gender rights), two other patterns of citizenship have prevailed in Latin America. The first, *citizenship as cooptation*, reflects the unequal, segmented nature of citizenship. Social rights are selectively granted to groups to ensure political stability. It was associated with both authoritarian and democratic regimes, suggesting that both civil and political rights were precarious at best. This is particularly true since repression

was the explicit recourse when cooptation failed to ensure political stability.

More recently, a new pattern of citizenship has emerged: *citizenship as consumption*. This model is characterized by the provision of universal political rights in the absence of universal civil rights and declining social rights. Citizens are best understood as consumers, spending their votes and limited economic resources to access what normally would be considered minimal rights of democratic citizenship. It is a pattern of state-society relations that exacerbates historical problems of inequality and weak civil societies rather than ameliorating them. It also has the potential for increasing conflicts with both immigrants and indigenous groups who are seen as threats to the exercise of citizenship rights because they compete with citizens for scarce economic opportunities. Yet the provision of meaningful political rights opens up greater potential for change than citizenship as cooptation because progressive governments can be elected, paving the way for citizenship as agency.

While any discussion of citizenship patterns is not directly applicable to the rights of non-citizens, this approach offers important insights for addressing the challenges in defining and making any rights effective in practice. The dynamic associated with citizenship as agency suggests that civil society organizations representing non-citizens or citizens whose status is contested could influence the evolution of rights within a country. This is what in effect happened during authoritarian regimes, when people were denied their political and civil rights yet still mobilized against those regimes. Marshall erroneously envisioned citizenship as evolving into a monolithic whole. Although the separation of rights that can be variously bundled together has had negative consequences in Latin America, the social construction dynamic suggests that selective rights can be included in ways that enhance democratic governance. Citizenship rights (and rights more generally) tend to evolve in an uneven, often piecemeal way that suggests that through such an evolution societies might discover how to “bond together in difference,” as Taylor suggests. From this perspective we can learn a lot about the quality of democratic governance by focusing on how people with no claim to citizenship or whose claims are contested are treated. Ultimately, agency is the key to understanding how all rights evolve or stagnate. Rights are contested in practice as a consequence of their uneven coverage, competing interpretations and their impact on important aspects of society (e.g., gender relations, indigenous cultures and the environment). The rights people actually enjoy reflect which groups participate in their social construction and how.

State-society synergy is particularly relevant for transnational actors in the absence of effective mechanisms for transnational rights enforcement. The weakness of international governance means that nation-states remain the principal body responsible for enforcing rights. There are few, if any dependable alternatives. Transnational actors must therefore work with domestic civil society allies, often with the support of international institutions, to pressure national governments to enforce more inclusionary rights regimes (Keck and Sikkink 1998; Oxhorn 2007). Whether through international sanctions or national social mobilization, the goal is to force changes at the national level that are more conducive to respect for basic rights.

It is important to emphasize that this perspective transcends a narrow liberal conceptualization of citizenship rights in ways that are potentially quite amenable to

filling the current void in citizenship and their relationship to the rights of the “other.” This is because it uniquely captures an essential collectivist dimension to citizenship often ignored in liberal theoretical frameworks (Oxhorn 2003). Even if individuals exercise rights, rights are frequently granted to specified groups as a whole, whether they be workers, women or the rights defined by age (i.e., children’s rights and the rights of the elderly), to name but the most obvious. Moreover, even individual rights are generally the outcome of successful collective struggle—a fact that also reminds us that actually existing societies are far from the conflict-free utopia often assumed in liberal theory (e.g. Rawls 1971). Such an approach is particularly relevant for indigenous peoples and the more general problem of mediating differences in today’s globalizing worlds. It recognizes rather than assumes away conflict, viewing civil society as an essential factor in mitigating the danger that such conflict can generate if left to spiral out of control. Indeed, this is the greatest threat that created by globalization’s impact on the dominant model of citizenship.

More generally, civil society⁹ presents an ideal space for reimagining boundaries so that citizens and non-citizens alike can “bond together in difference.” Yet it is not monolithic, and civil society mobilization has also been associated with illegitimate challenges to state authority and democratic stability (Berman 1997; Foley and Edwards 1996). This is particularly true regarding reactions to non-citizens or those whose status as citizen is contested, as the rise of neo-fascism in Western Europe and anti-immigrant movements in the U.S. attest. The social construction of citizenship reflects how this conflict is mediated within civil society as well as between civil society and the state. How these processes unfold is an empirical question, and our goal should be to better understand their dynamics to help ensure more positive outcomes.

3 The Challenge of Moving from Theory to Practice: A Proposal for Comparative Research

At least since Kant ([1795] 1957), much academic discussion has focused on the rights on non-citizens from an abstract moral (if not moralistic) perspective. This is obviously important, but such discussion needs to be moved to the realm of practice given the urgency involved for those whose rights are most threatened. While there have been some notable efforts to do so (e.g., Benhabib 2004; Keck and Sikkink 1998; Somers 2008), comparative and policy-relevant research still lags the growing need to find more effective ways to enforce the rights of the disadvantaged.

A good starting point would be to focus on the comparative experiences of two groups which are particularly affected by the unbounding of citizenship in a globalizing world: migrants (legal and illegal) and indigenous people. The socio-political tensions created by the unprecedented growth in immigration are perhaps the most obvious consequence of globalization. Particularly in economic hard times, immigration represents a physical juxtaposition between “us” and “the other” that feeds some of the most negative social trends in today’s world. The World Bank (2010) estimates there were 215.8 million migrants globally in 2010. About 8% of migrants were refugees and asylum seekers, or

⁹I define civil society as “the social fabric formed by a multiplicity of self-constituted territorially- and functionally-based units which peacefully coexist and collectively resist subordination to the state, at the same time that they demand inclusion into national political structures” (Oxhorn 1995, 251-2).

16.3 million people (World Bank 2011). Demetrios G. Papademetriou (2005) estimated that about 15 to 20% of migrants (30 to 40 million people) were unauthorized. Their vulnerability and de facto statelessness means statistics on international levels of violence toward migrants likely underreport the problem. For the 56 member states of the Organization for Security and Cooperation, racist and xenophobic violence were generally on the rise (Human Rights First 2008). This was true even in countries with strong institutions for the defense of basic human rights. In the 2007 European Crime and Safety Survey, an average of 9.9% of respondents with an immigrant background in the original fifteen member states indicated that they or a member of their immediate family were the victim of a hate crime (European Union Agency for Fundamental Rights 2007, 118).

An analysis of the rights of indigenous people provides a unique lens for understanding the rights of all people. For centuries, the plight of indigenous peoples has epitomized the experiences of the “other” living in our midst. An often tragic colonial experience, combined with its legacy of racism, has meant that indigenous people represent claims of national sovereignty that challenge those of the nation-states within which they reside (Oxhorn 2012). Unlike the former colonies that became independent, the extent to which indigenous populations enjoy any level of national sovereignty is often contested, feeding vicious cycles of poverty and violence, although there have been important recent advances (Van Cott 2000; Yashar 2005). The generalized nature of this problem has led to its formal recognition in a variety of international forums, such as the International Labor Organization’s Convention 169. The most important example of this international recognition, as well as its ambiguous impact on the rights of indigenous peoples in the countries where they reside, came in 2007 when the UN General Assembly adopted the United Nations *Declaration on the Rights of Indigenous Peoples*. The fact that this nonbinding declaration took over 20 years to negotiate underscores both the importance of the Declaration’s adoption, as well as the extreme complexity of the challenges facing over 370 million indigenous people around the globe.

The selection of cases requires focusing on countries that have similar yet distinct experiences with both groups in order to understand what allows for effective policies of rights recognition and enforcement, at the same time that they provide equally important insights into the still quite substantial obstacles such policies must overcome. One particularly promising clustering of cases would include three countries that only recently experienced transitions to democracy—Chile (democratic transition in 1990), South Africa (1994), and Mexico (2000)—along with one established democracy—Canada. All four have reasonably strong political parties, although the number of parties varies in each case. The three new democracies are middle-income countries, in contrast to Canada, but all four have adopted remarkable similar market-based economic policies. While all four have reasonably strong states in terms of their capacity to design and implement effective public policies, they vary in their ability to achieve rule of law. This is central to the defense of rights and it is questioned in the three cases of recent democratization. It is particularly problematic in South Africa, and coming under increasing strain in Mexico due to drug-related violence.

Canada has a long history of respect for the democratic rule of law, yet the implications of this for migrants are ambiguous. For example, the rights of non-citizens

are clearly defined with regard to legal immigration, although recent policy changes have diminished those rights at the same time that requirements for entrance were increased. Conversely, Canada also highlights the extra-legal ways in which migrants are discriminated against. This is particularly true in the province of Quebec, where the control professional organizations over skilled employment opportunities frequently prevents legal migrants from gaining meaningful employment commensurate with their training. At the same time, Quebecois nationalism defines citizenship in ways that often marginalize immigrants, particularly non-Catholic ones.¹⁰

All four also are magnets for economic migrants, but have varying capacities to absorb them. Canada and Chile clearly have the most capacity. South Africa has the least because its higher rates of unemployment and poverty, with Mexico is somewhere in the middle.

Given their geographical location, South Africa receives the largest number of refugees and Chile the least. While levels of violence against foreign migrants in South Africa are currently low, it can explode. This happened in May 2008 when at least 62 people were killed and a hundred thousand people displaced by a wave of violence against foreigners and internal migrants (Polzer 2010). Canada's long tradition of granting political asylum means it also attracts a relatively large number of refugees, recent changes in policy will likely diminish this.

Mexico is again somewhere in the middle, given its proximity to Central America. Many Central Americans, mostly Guatemalans and Salvadorans, migrate to Mexico during the harvest, 10 19 making it difficult to gauge the real figure, but according to the 2010 census Mexico's foreign-born population doubled from 2000 to 2010 (Instituto Nacional de Estadística y Geografía 2010). It estimated that 725,684 migrants lived in Mexico in 2010. Many Central Americans also go through Mexico to migrate to the U.S. Illegal migrants are detained for long periods of time, sometimes for up to a year. In 2010, the National Migration Institute detained and jailed 69,903 illegal migrants; minors and adults are held in the same facilities. Yet some say migrants who end up in government custody are lucky (Cote-Muñoz 2011). Drug cartels have kidnapped, beaten, and raped migrants en route to the U.S. and demanded large ransoms from their families. If unable to pay on time, the migrants are often killed. Young male migrants have been forced to serve in drug cartels and are murdered if they refuse. Women have been sold to prostitution networks. The Mexican National Commission for Human Rights estimated 210 cases of mass migrant kidnappings between April and September 2010, with over 11,000 victims. In May 2011, 513 migrants were discovered in subhuman conditions inside a truck. Two officers from Tapachula were later accused of forcing Central American women into prostitution, fueling concern over the conduct of corrupt authorities.

Despite increasingly high levels of migration, violence against migrants in Chile has been relatively low. This is not the case with respect to its indigenous population, with violence increasing in recent years to the extent that it has attracted growing international attention, especially from the UN (The Santiago Times, various issues,

¹⁰This was particularly explicit in the 2012 provincial elections. The nationalist platform rejected the value of bilingualism at the same time that it promised to ban all religious symbols from the public service, with the exception of the Catholic cross because the cross was considered part of the province's historical culture.

<http://www.santiagotimes.cl/>). In contrast, South Africa has largely avoided such violence—at least since its democratic transition. Mexico is again an intermediate case, with significant levels of violence prior to the 2000 democratic transition (Gilbreth and Otero 2001).

The citizenship status of Canada's Aboriginal population is even more ambiguous than it is for migrants (Oxhorn 2012). As is now embarrassingly well known, unacceptably large segments of Canada's Aboriginal population live in conditions of extreme poverty. Virtually all human development indicators, from life expectancy and other health related issues to educational levels and employment opportunities for Aboriginal people in Canada are significantly lower than for the general population. This reflects historical processes of conquest, colonization and subordination to European populations that in fundamental ways are analogous to experiences of indigenous people in much of Latin America, despite billions of dollars that the federal government has invested in various social policies for indigenous people for many years. At the same time, Aboriginal communities enjoy varying levels of self-governance and legal rights that condition their relations with the provincial and federal governments. These can be a source of contestation, particularly regarding rights granted through the formal treaties first nations peoples are a party to. This reality of multiple nations within in a single nation state has been further complicated by divisions within Canada's Aboriginal population. It is also complicated by an often stark cultural clash between Aboriginal and non-Aboriginal cultures that has only been exacerbated by a long history of overt racism within Canada.

More positively, Canada's strong democratic institutions, particularly in terms of the judiciary and the rule of law, mean that Aboriginal communities often can take advantage of a variety of institutional mechanisms to contest their status within Canada and seek recourse for the violation of their rights that are rarely available to disadvantaged groups in Latin America. In particular, they have gained increasing capacity to utilize to their benefit the legal system and to negotiate with provincial and federal governments agreements that reflect their self-defined interests. This underscores the importance of raising the capacity of disadvantaged groups to organize themselves and develop a clear sense of their own interests and priorities as an essential prior step before any meaningful negotiations can take place between aboriginal groups (or any groups for that matter, disadvantaged or not) and other actors, including the state. Among other things, this has resulted in relatively large transfers of resources from federal and provincial governments into Aboriginal communities. Yet the decades-long gap between resources spent and achieved outcomes raises serious questions of good governance at the provincial and federal levels vis-à-vis aboriginal communities.

In conducting empirical research on the topic, five sets of issues stand out. First, at the level of civil society and the state, who are the principle actors that are most actively involved in issues relating to the rights of migrants and indigenous people? Second, how do different actors understand the rights of migrants and indigenous people, both in general and with regard to the political situation in their own country? Third, what are the different roles played by these actors in the policymaking and state-level processes that define and contribute to the enforcement of the rights of these two groups? Fourth, what factors determine the potential for these actors to play an active role in conflict

resolution and/or prevention? Finally, what are the policies that can most effectively contribute to the successful accommodation of migrants and indigenous peoples within the societies in which they reside?

The paradox of expanding *de jure* rights in the face of stagnant, if not declining, *de facto* rights for large numbers of people is a problem that is only likely to grow in intensity as processes of globalization and the consequences of neopluralism become more pronounced. Resource scarcity and the high prices it causes, not to mention the likely effects of climate change, will only add to their intensity. Effective solutions need to be found for filling this gap in order to address the violence it is likely to generate. Focusing research on migrants and indigenous people is particularly promising, given not only their vulnerability, but also because how these groups are treated is symptomatic of socio-political processes that affect both citizens and non-citizens alike. Indeed, just as the negative consequences of this gap are guaranteed to diminish respect for the rights of citizens, policies that effectively fill the gap by increasing the rights of non-citizens will undoubtedly improve both the quality of the rights enjoyed by citizens as well as the level of inclusionary democratic governance. In other words, how we chose to define the “other” has important consequences for “us” and the societies we live in.

4 References

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