

**Assessing the impact of neoliberalism on citizenship:  
The stratification of social rights by immigration status in Toronto, Ontario**

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## **Abstract**

The devolution of social rights once allocated federally to subnational levels has produced inconsistent and often contradictory effects on the construction and exercise of social rights in Canada. In this paper we assess the impact of neoliberalism on citizenship, particularly interrogating how neoliberal principles have shaped social rights' distribution premised upon immigration status in Canada. Using an interpretive discourse analysis, we examine a number of social rights' domains and how such rights are constructed for different groups (i.e. citizens, permanent residents and immigrants with precarious status) within each domain. We argue that neoliberalism has created a continuum of deservedness, one which favours some groups in their claims to social rights, while inhibiting access for others. Our analysis is framed by constructions of homo economicus, used to define the good, desirable citizen in juxtaposition with precarious immigration status as criminal and threatening to national security. Envisioning other possibilities for understanding rights and responsibilities outside of nation-state frameworks, we suggest transnational cosmopolitan citizenship offers potential to contest the inequitable processes of neoliberalism.

Keywords: immigrants with precarious status, citizenship, cosmopolitan citizenship, social rights, Canada

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## **Introduction**

The processes of neoliberalism have had extraordinary effects at both nation-state and transnational levels. Understanding how the principles of neoliberalism bear upon extant conceptualizations of citizenship is fundamental if such processes are to be challenged in favour of more equitable outcomes for marginalized groups. Canada has further differentiated disparate assemblages of rights for citizens and permanent resident vis-à-vis immigrants with precarious status. However even within the benchmark of 'citizen' lies stratified typologies to mark ideal from less ideal categories. Through an examination of policy documents at the federal, provincial and municipal levels, this paper reveals the stratification of social rights by immigration status in a number of social rights domains. To challenge conventional citizenship frameworks which reinforce such classifications, and their corresponding share of social rights, we point to transnational and cosmopolitan understandings of citizenship. Positioning the city as a potential locus for shaping social rights and responsibilities, the differentiation of citizenship categories is diminished, allowing for more promising social rights' constructions.

### *Definition of Terms*

A variety of labels have been adopted to refer to residents who lack legal standing in a country. In the US, terms such as undocumented, alien, non-citizens or clandestine migrants are common. Canada, also frequently employs such terms, adding to the list non-status, foreign, illegal and precarious status. Goldring, Berinstein and Bernhard (2007) suggest the term 'precarious immigration status' ('precarious status') more accurately captures the fluidity of immigration status; individuals may weave in and out of legally recognized standing, at one

moment documented an authorized resident, at another moment deemed illegal (sic), prompting one's deportability from Canada. As immigration status shifts so too does the relationship one has to social rights' claims.

## **Literature Review**

### *Neoliberal Restructuring and Retrenchment & the Nature of Social Rights in Canada*

The retrenchment of the welfare state has operated within the context of systematic devolution of social rights from national to subnational levels. Prior to 1995, the federal and provincial governments shared the cost of social programs/services. The administration of health and social programs was radically altered however with the introduction of the Canada Health and Social Transfer, a block grant which allocated funds for the provinces to administer for health and social programs/services, at the same time substantially reducing the funding necessary to support them (Doherty, Friendly & Oloman, 1998). This arrangement notwithstanding, the federal government continues to maintain oversight for a number of different domains which assemble, or impinge upon, social rights allocation, e.g. immigration and income assistance programs (employment insurance, pension plans, etc.). Accordingly, constructions of legality in immigration law articulated at the federal level have significant bearing upon their application at subnational levels (Bhuyan & Smith-Carrier, in review), resulting in disparate interpretations of how 'eligibility criteria' are understood, and ultimately how social rights are conferred.

The application of social rights in Canada has been widely overstated, weak even at the pinnacle of the 'golden age' of the welfare state.<sup>1</sup> This overgeneralization is even more

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<sup>1</sup> Siltanen (2002) notes that the 'golden age' of the welfare state transpired in two waves, one in the 1940s and the other in the 1960s.

incongruent in the current age of neoliberalism when the redistributive function of the state has dwindled substantially. Market citizenship has made its ascent, eclipsing rights' claims derived within social citizenship previously achieved via Keynesian policies and a state committed to full employment and 'universal' (sic) social programs. Indeed efforts to ensconce greater social rights in Canada have been thwarted at every turn<sup>2</sup> (Siltanen 2002). Jettisoning programs with 'universal' entitlements (if ever programs could ever have been considered universal in scope), welfare provisions have increasingly been demarcated within narrow 'eligibility' requirements towards socially and spatially targeted policies adopted to identify a "problem group of non-normative citizens" (Cowen, 2005, p. 337). The necessity to streamline programs in the era of devolution required a ranking system that would distinguish the worthy from those unworthy to receive benefits.

Market citizenship has characterized the neoliberal state (Jenson & Phillips, 2001); a state espousing clear gendered (Schild, 2000) and racial assumptions (Dobrowsky, 2008). Increasingly, the reinvented welfare state envisaged by Hewitt (1996) has achieved ascendancy; a state designed to:

...(P)romote participation in social institutions and particularly, *the labour market*...to build the capacity of individuals – their *capacity to learn, to earn, and to take responsibility, and to contribute* to relationships with others, within families and the wider community (p. 260, emphasis added).

The logic of economic reason permeates all areas of social life within the era of governmentality (Foucault, 1979, 1980; Ong, 2003). Shaping law and policy, the principal focus on duties and obligations to constitute the good citizen have advanced the autonomous, responsible choice-

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<sup>2</sup> For example, the renowned Marsh Report of 1943, *Report on Social Security for Canada*, was not adopted in parliament nor were later attempts to enshrine social rights within *The Charter of Rights and Freedoms* or the *Charlottetown Accord* (Siltanen, 2002).

making citizen, who supports the state best by becoming “entrepreneurs of the self” (Ong, 2003, p. 9). The idealized citizen is the flexible homo economicus, elevated on the basis of self-sufficiency and entrepreneurial fortitude. The moulding of subjects, into greater approximations of the idealized citizen, incites a variety of knowledge (truths generated in a ‘regime of truth’, Foucault [1980]) used to shape the conduct of subjects, maximizing certain capacities whilst minimizing particular risks, whilst at all times instilling appropriate norms of self reliance and autonomy to individuals—obliging unproductive subjects to become good, contributing citizens (Ong, 2003). The continuum of deservedness, enmeshed in gender and racial ascriptions, of the neoliberal state persistently (re)defines the line between those with status from those without.

Market citizenship thus regulates and pathologizes the individual in need (interpreting ‘needs’ to be burdens on society) while promoting the notion that one must build up one’s own human capital, albeit not recognizing the systemic disparities which contribute to the production of need. Consistently, racial bipolarism and gender differentiation situate certain subjects on the undeserving end of the continuum; judged by their relative material and moral unworthiness in ascribing to the ideal (Ong, 2003).

#### *Securitization, Criminality & Governmentality*

On the ‘Other’ side of the venerated homo economicus is the constructed threat exposed to surveillance and securitization. The link between precarious immigration status and criminality is now well documented in the literature (see Dhamoon & Abu-Laban, 2009; Dolbrowsky, 2008; Gilbert, 2007; Nyers, 2009).

Criminals often know how to work the country’s immigration system to their advantage, and Canada is often criticized for allowing it to happen... There are a number of scams operated by people seeking to gain entry to Canada (Anon., 2006, p. 20).

Politicians and the media have fed into a policy frame which stigmatizes those with precarious status in the parlance of illegality, unlawfulness, threats to national security, those perceived to be going through the back door (Anon., 2006), and queue jumpers, although for those without financial status or specific skills sets, there is no queue (Koehl, 2007, p. 59) or unguarded route to citizenship. The emergent emphasis on securitization (Crépeau, 2006) in response to fears of leaky borders (Gilbert, 2007) overlooking surreptitious passage of ‘illegal’ migrants in Fortress North America (Shantz, 2005), present key expressions of the modes of surveillance and regulation within the era of governmentality (Foucault, 1979, 1980).

De Genova (2002) highlights the exchange between Agamben (1995) and Foucault (1990) on understandings of sovereign power, biopower and bare life. Foucault (1990) maintains that the deductive violent nature of the pre-modern sovereign power has evolved into biopower; operationalized as a productive nature focusing on optimizing and multiplying life, and mediated primarily by regulation and control (governmentality).<sup>3</sup> The exercise of biopower is demonstrated via normalizing social, psychological and biological technologies (Ojakangas, 2005) designed to produce ‘bare life’ (Agamben, 1995). At the nexus of the obscured intersection of biopower and sovereign power lies the bare life of the homo sacer—one for whom positive and natural law does not apply—one devoid of citizen and human rights (de Genova, 2002).

Manifestly demonstrative of bare life is the illegalized migrant, subject to legal vulnerability and exclusion, and confronted by and expressed through myriad constraints and

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<sup>3</sup> In juxtaposition, Agamben (1995) contends that the schism, whether historically derived or concomitantly constituted, between sovereign power from biopower is unnecessary as these powers are not an intrinsic opposing binary but recurrently intersect.

seizures by the sovereign power of the state. The barest condition, the very precondition for human self-determination—freedom of movement—is stripped from homo sacer. The subjection of the alien to deportation by the state implies an existence of the barest life, of statelessness, of humanity devoid of juridical personhood. The right to freedom movement, to choose where one's (biologized) body resides, is one erasure of human self-determination (de Genova, 2002).

Deportation reminds us that the radical chains forged of a freedom without rights or protections may serve no simply to confine and fetter us in place, but also to drag us mercifully to the ends of the earth, and back again (de Genova, 2002, pp. 36-37).

Humanity is also fundamentally ascribed by social praxis—"what makes the life of the human species truly human, after all" (p. 10), by social and purposeful activity, and power, demonstrated through human possibility and productive capability. Indeed, the state maintains its key role in appropriating the sovereign power of living labour for itself, bequeathed to capital. Foreigners, dubbed enemies of the state, remain subjects of xenophobia due to their undesirable (outsider) status, albeit essential to capital for the performance of undesirable labour (de Genova, 2002). Biopower upholds the regime of governmentality; employing multiple techniques in the exercise of power to constitute the 'social'—a ranked classification system demarcating sexual deviants, criminals and troublesome workers, typecast in juxtaposition to those envisaged to be 'normal' and valued, citizens of society.

The state employs moral regulation and social control to mould individuals and evaluate their behaviour. The moulding of subjects, Chan (2005) argues, is consistent with constructions which create binaries of good/bad immigrants and subjects capable of reform vis-à-vis ones perceived to be intrinsically evil. Hence, governmentality characterizes both the management of individuals in the state (and specifically immigrants) and also extends to self-regulation, the regulation of one's own subjectivity, manufacturing 'technologies of the self' (Foucault, 1988) to

align with the rationality of the state, such that the rationality of the biopower grows to be commonsensical, interwoven in everyday thought and practice. This rationality is premised on notions of the responsibility and self-sufficiency of subjects; accountable for a multiplicity of social risks while at the same time maintaining their responsibility to provision for themselves and their families (Donath, 2000; Neysmith & Reitsma-Street, 2005; Neysmith et al., 2004; Power, 2004). As such, binaries are created to mark ideal from less than ideal categories. 'Citizen' is the goalpost to which other resident categories are compared (i.e. permanent resident and immigrant with precarious status), albeit even within this category, good citizens are marked from bad citizens via the lens of market citizenship, or how well one sustains their responsibility to maintain their self-sufficiency (Kittay, 1998; Fineman, 2005; Good-Gingrich, 2008).

#### *Social Rights within Citizenship Frameworks*

T.H. Marshall's seminal articulation of social rights in post-WWII Great Britain (1950, 1981; Marshall & Bottomore, 1992) has largely framed scholarship on citizenship in liberal democracies, positing that social rights be contributed to the fulfillment of political and civil rights of the citizenry. Marshall raised a number of facets of social rights but was chiefly interested in "the right to a modicum of economic welfare and security" (Marshall & Bottomore, 1992, p. 8). Although recognizing that the system of capitalism may at times compete with the conceptualization of citizenship championed by Marshall, social equality in itself was not considered to be the end goal. The extension of social services was not so much a means of combating income disparities, but rather a means to ensure "a general enrichment of the concrete substance of civilised life" (Marshall & Bottomore, 1992, p. 33). As such, Marshall supposed that the attenuation of social inequalities would inevitably come about as a result of conferring

individuals their essential rights rather than purposefully attempting to combat poverty and marginalization in society.

Explicitly, Marshall asserted that citizenship is

...(A) *status* bestowed on those who are full members of a community. All who possess the *status* are equal with respect to the rights and duties with which the status is endowed (Marshall & Bottomore 1992, p. 18, emphasis added).

Accordingly, only those with *status*, those permitted inclusion in the community, were to be beneficiaries of the rights of citizenship. The failure to consider those outside the community—not to mention the absolute erasure of aspects of gender and race (Gazso, 2009)—leave those who lack *status* in the throws of a citizenship quagmire, replete with murky conceptual and practical applications of rights and responsibilities. Consequently this conception considerably falls short; wholly ignoring non-citizens focusing instead on the rights of ‘privileged’ citizens. Munger (2003) therefore asserts that “citizenship is a benefit derived from fulfillment of a social contract and not from legal status as a citizen” (p. 674). This contractual approach debunks the myths that all residents, or even citizens, have equal access to social entitlements. Social rights, to Munger (2003), are available to select citizens who can effectively demonstrate their worthiness along ideological lines (i.e. self-reliant worker, heteronormative family formation, etc.).

Bosniak (2006) cogently discusses how undocumented or irregular migrants are oft neglected in contemporary theories of citizenship. This population represents a veritable explosion of people who reside as non-citizens within a particular nation-state but are systematically excluded from the benefits ascribed to the citizenry. Taking into account the contemporary globalized migratory environment, some scholars have focused their claims on transnational notions of citizenship, asserting that the nation state is no longer the territorial

jurisdiction within which social rights are constructed. Indeed the rising influence of supra-national institutions have, as Ong (2006) asserts, “challenged the notion of citizenship tied to the terrain and imagination of a nation-state” (p. 499). Ong (1999) highlights how citizenship defined by the nation-state has weakened, focusing instead on market-oriented transnational mobility. A theme taken up by Sassen (2003), who notes how neoliberal citizenship has emphasized denationalized notions of belonging. The literature reflects a variety of arguments, some take a post-national view (e.g. Soysal, 1994), while others forward transnational, cosmopolitan conceptualizations of citizenship (Baubock, 1994; Ong, 1999; Staeheli, 2003). Such arguments reflect the belief that the nation-state is no longer capable of regulating citizenship in a meaningful way (Staeheli, 2003).

Within a liberal-democratic citizenship framework, individual political actors agree to a 'social contract' with the state; consenting to be ruled by the state in exchange for certain privileges and protections (Rousseau, 1987; Locke, 1988; Kant, 1991; Rawls, 1971; 1993; as cited in Purcell, 2003). Purcell (2003) discusses the Westphalian approach to citizenship in which one's primary political community is the nation-state; enmeshed within the international system of nation-states, each sovereign within its defined territory. Although citizens might be members of other political communities, these are situated in a subordinate position to membership in the nation-state, where citizens' first political loyalty lies. However Purcell (2003) notes how such conventional notions of citizenship are being recast to take into account a new framework which observes citizenship to be: 1) rescaled – the hegemony of the national-scale political community is being weakened by the formation of communities at other scales; 2) reterritorialized - the link between the nation-state's territorial sovereignty and citizens' political loyalties are being challenged; and 3) reoriented - away from the nation as the predominant

political community. Baubock (2003) suggests that rather than contrasting nation-state citizenship from transnational frameworks, theorists must direct their focus to how transnationalism bears upon nation-state politics to better comprehend “how migration changes the institutions of the polity and its conception of membership” (p. 701).

Citizenship must first be understood as a process, a “dynamic, active and continually negotiated complexity of relationships” (Stasiulis & Bakan, 1997, p. 117) that is not merely reflected in the relationship between residents and the nation-state, but also reflected in the interplay of a multitude of systems including the market, neighbourhoods, communities and households (Staeheli & Clarke, 2003; Stasiulis, 2002). As such, Canada more accurately represents a multiplicity of citizenships within its territorial boundaries; citizenships with multiple and uncertain potential trajectories, leaving room for diverse and competing paradigms. Even within the category of citizen there is a continuum of privilege in the construction of rights, Henderson (2002) raises this point in relation to First Nations’ fit within erstwhile Canadian citizenship frameworks. Underlying the *de jure* status of citizenship attributed to an individual by virtue of legal recognition by the nation-state, Staeheli (2003) maintains there exists a more complex and expressive sense of citizenship defined by standing within a political community (see Sandel, 1996).

## **Methodology**

The epistemological vantage point of the interpretivist observes the social world as subjective, full of multiple interpretations, and at all times shaped by the subject engaged in the analysis. For this study, the authors endeavour to illuminate the embedded meanings with policy artefacts (focussing on the values, feelings or beliefs they express) (Yanow, 2000), in order to

identify the ways in which ideological practices take effect in language (Georgakopoulos & Goutsos, 1997).

Discourse analysis may be described as a qualitative approach or method, albeit not a specific formula or technique; yielding both process and product. Stemming from Derrida's (1982) focus on deconstruction and Foucault's (1979) notions of normalization and regulation, discourse analysis aims to make explicit meanings within hegemonic constructions of truth. The researcher's gaze is shifted to what 'truths' (in regimes of truth, Foucault [1979]) are (re)produced, and what alternative discourses, among multiple and competing discourses, become precluded or marginalized as a result (Hesse-Biber & Leavy, 2008). The vocabularies of language may be considered historically constituted constructions of the world that reflect the interests of the speech community; specifically, the interests of the dominant group within the community.

Within an interpretive discourse analysis, the researcher is continually aware of the meaning of words and sentence organization, and the 'thematic roles' (who is doing what to whom, where, why and by what means) linking assigned roles with representations of the social world and claims of causation, responsibility, and agency (Chilton & Schäffner, 1997). Hall (2001) discusses Foucault's study of discourse as a system of representation. Rather than regarding language as merely passages of connected speech or text, Foucault's interest lay in the "rules and practices that produced meaningful statements and regulated discourse in different historical periods" (p. 72). Discourse, then, is knowledge production achieved through language—a means for conversing about a particular topic at a particular time in history. Within this framework, language cannot be separated from practice; why a particular subject matter is important and how ideas are put into practice (for the purposes of regulation, for example) within

society. For that reason, no object or subject matter has meaning outside of discourse—whether objects are real is not the question; rather the emphasis is placed on where meaningfulness is derived. Objects are constituted as ‘true’ (within a regime of truth) once knowledge (inseparable from power) is applied in the material world (Hall, 2001). Social identities are not fixed, but negotiated and every changing depending on context. Hence, the social construction of rights is predicated in ever changing contextual circumstances which reinterpret one’s identity.

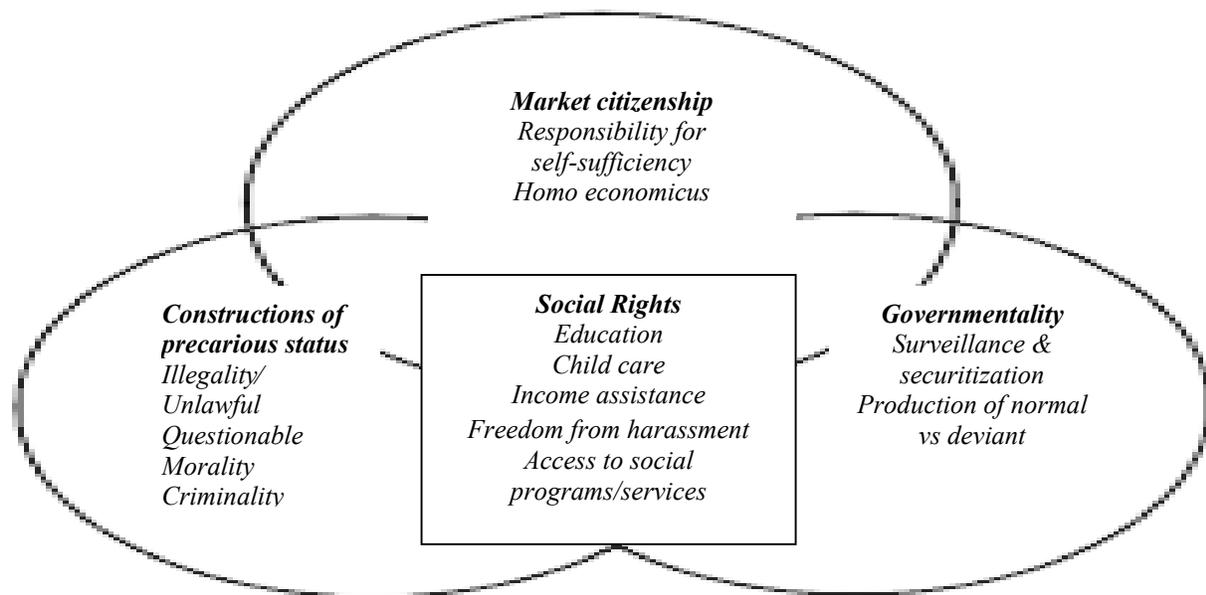
In this study we take a multimodal approach to highlight particularly (highly loaded) negative lexical choices in written text (see for example Caldas-Coulthard, 2003). Using frequency counts, dictionaries to define or illustrate particular words, thematic evaluation and recontextualization, we examine the biases and/or manipulation of specific claims (van Leeuwen, 1993) pertaining to the rights and responsibilities for those occupying different citizenship categories.

### *Research Questions*

The purpose of this study is to illuminate the discourses surrounding the expression of social rights for immigrants with precarious status *via-à-vis* citizens and permanent residents in Toronto, Ontario. The research questions will explore: (1) How are social rights articulated in the context of neoliberalism within the Canadian post-welfare state? (2) What constructions are associated with immigrants with precarious immigration status and to citizens, and how do these constructions impact their access to social rights? (3) Are social rights extended to specific groups differently, i.e. how are social rights constructed for citizens, permanent residents and immigrants with precarious status?

This paper grew out of a larger study to explore constructions of migratory status (Bhuyan & Smith-Carrier, in review) and discourses of citizenship and illegality that are produced in service

delivery to immigrants with precarious legal status (Bhuyan, in review; Bhuyan & Smith-Carrier, in press). In this paper, we analyze public policy documents at the federal, provincial and municipal levels to illuminate the discourses surrounding the expression of social rights for immigrants with precarious status in juxtaposition to those for citizens and permanent residents. A number of different domains are investigated including aspects of education, income assistance, child care, freedom from harassment and access to social programs/services. The following diagram provides a visual depiction of the social rights domains and analytic frames examined in the study.



## Analysis

### *Constructions of precarious immigration status*

Before examining the articulation of social rights within the context of neoliberalism, it is important to anchor the discussion by identifying how precarious immigration status is constructed in policy documents. The following analytic themes surfaced in the data:

illegality/unlawfulness, questionable morality and criminality—all frames which fittingly align within the broader themes of securitization and governmentality.

The definition of an immigrant with precarious status is identified as a ‘foreign national’ in the Immigration and Refugee Protection Act (IPRA). “A ‘foreign national’ means a person who is not a Canadian citizen or a permanent resident and includes a stateless person” (Department of Justice, 2009, p. 2.). The word foreign is defined as:

Situated outside a place or country; born in, belonging to, or characteristic of some place or country other than the one under consideration; of, relating to, or proceeding from some other person or material thing than the one under consideration; **alien in character: not connected or pertinent**; related to or dealing with other nations; not being within the jurisdiction of a political unit (as a state) (Merriam-Webster Dictionary, 2009, emphasis added).

This definition identifies that being foreign is to be ‘not connected or pertinent’. A definition which appears to resonate with processes of Otherization tangibly experienced by many immigrants (Bannerji, 2000). The process is exacerbated by not belonging to any state, being disconnected or excluded from the benefits of citizenry. Interestingly, being foreign means to be ‘alien in character’—as if one’s character can be assumed by virtue of being ‘alien’, defined as “differing in nature or character typically to the point of incompatibility” (Merriam-Webster Dictionary, 2009). The constructions adopted to identify those ‘differing in nature or character’ are oft associated with defective and risky characterizations.

#### *Precarious Status as illegal, immoral and criminal*

The word choice in Ontario’s Education Act for those with precarious status is one ‘**unlawfully** in Canada’:

A person who is otherwise entitled to be admitted to a school and who is less than eighteen years of age shall not be refused admission because the person or the person’s parent or guardian is **unlawfully** in Canada (Education Act [Ontario] s.49.1, Government of Ontario, 1990, emphasis added).

While extending the social right of education to all students at the pre-school, primary and secondary levels, the Act is unequivocal that those without legal immigration status are considered ‘unlawful’. The term **unlawful** is defined as: “not lawful; illegal; not morally right or conventional” (Merriam-Webster Dictionary, 2009). Hence, references to immigrants with precarious status as ‘illegal’ or ‘not morally right’ resonate with the explicit ‘unlawful’ construction of some foreign nationals in Ontario education law.

The construction of the foreign national as an immoral subject also emerges in the IPRA:

(A) person who makes an application **must answer truthfully all questions put to them** for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires

A permanent resident or a foreign national is inadmissible for **misrepresentation** (a) for directly or indirectly misrepresenting or **withholding material facts** relating to a relevant matter that induces or could induce an error in the administration of this Act... (Department of Justice, 2009, emphasis added).

The quotes above imply that foreign nationals ought not to be trusted to provide veritable accounts; calling into question their ethics and morality. That being said, the Government fails to acknowledge the reasons why an individual might be compelled to withhold information; reasons which might prompt their detainment and/or deportation, indeed their very survival. As such, the state’s role in creating the vulnerabilities experienced by an immigrant with precarious status is not questioned, albeit the morality of the immigrant is.

Governments commonly characterize those without legal status as criminals and threats to security; themes which dominate much of the literature on this population (see for example Crépeau, 2006; Dolbrowsky, 2008; Gilbert, 2007; Nyers, 2009). The IPRA is replete with vocabulary resonating with constructions of foreign nationals as criminal or prone to criminal

activity. In fact, the word criminal (crime, crimes and criminality) appears 73 times in the Act.

According to the IPRA:

- A permanent resident or a foreign national is *inadmissible on security grounds* for
- (a) Engaging in an act of espionage or an *act of subversion* against a democratic government, institution or process as they are understood in Canada;
  - (b) Engaging in or *instigating the subversion by force* of any government;
  - (c) Engaging in *terrorism*
  - (d) Being a *danger to the security of Canada*
  - (e) Engaging in acts of violence that would or might *endanger the lives or safety* of persons in Canada
  - (f) Being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), or (c).

Subsection (1) of IRPA does allow for the Minister to waive decisions of inadmissibility in cases where a permanent resident or a foreign national “satisfies the Minister that *their presence in Canada would not be detrimental to the national interest* (Department of Justice, 2009, pp. 20-23, emphasis added). How does one satisfy the Minister ‘that their presence in Canada would not be detrimental to the national interest’ when the Act has already judged that this population by virtue of the status ‘foreign’ (recall the definition: ‘alien in character’ referring to one “differing in nature or character typically to the point of incompatibility” [Merriam-Webster Dictionary, 2009]) is criminal?

The perceived threat of foreign nationals and permanent residents has sanctioned increased wide-ranging identity verification and surveillance mechanisms designed to capture biologized bodies deemed to be a threat to national security. CIC (2009e) writes,

Biometrics is the measurement of unique physical characteristics such as people’s *fingerprints and faces* for the purpose of *verifying their identity*.

In the 2008 budget, the Government of Canada announced that:

“...*border security* remains a *priority* for Canadians. *Criminals* are increasingly more sophisticated and well funded, including those who engage in *document fraud to illegally move people or goods across borders*. Further to biometric field trials in Canada

that were successfully completed in 2007, the Government will introduce the use of biometric data, such as fingerprints and live photographs, in its visa-issuing process to accurately verify identity and travel documents of foreign nationals who enter Canada. This initiative will enhance the integrity and efficiency of the border by *preventing criminals from entering* Canada, and facilitating the processing of *legitimate applicants*... (CIC, 2009e).

A mechanism of biopower's governmentality, biometrics has emerged rendering a narrow classification system intended to expose those in/out of favour with the state. Identifying one's racial identity is consequently a priority, intensified in regimes consumed with thwarting the designs of extremist groups and terrorist cells—constructing residents presenting certain identities as criminal by association (Birt, 2008). Moreover, by directing the spotlight to criminality and securitization, access to social rights for immigrants is vigorously restricted (Crépeau et al., 2007).

#### *Divisions of (Un)Worthiness in Accessing Education*

Education in Canada falls under the legislative purview of the provinces and territories. As in other policy documents, however, legislation produced by the various levels of governance oft have disparate, conflicting approaches to immigrants with precarious status. At the federal level, the IPRA specifies that the social right of education is extended only to children of foreign nationals who are authorized to work or study in Canada:

Every minor child in Canada, other than a child of a temporary resident not authorized to work or study, is authorized to study at the pre-school, primary or secondary level (Department of Justice, 2009).

In contradistinction, the Ontario Education Act mandates that all children be educated (from kindergarten to grade 12), irrespective of citizenship status. Even so, while the province is unequivocal that all children have the right to education, a study by Sidhu (2008) suggests that there are inconsistencies regarding the enforcement of this legal requirement. Out of seventeen

respondents in Sidhu's (2008) study, four had been denied enrolment in the Toronto District School Board (TDSB) due to their immigration status, and almost all (15 of 17 respondents) stated that their immigration status was raised in the enrolment process (i.e. requests for proof of status). While more than half of the respondents were unaware that their children had a right to education, many expressed that they were fearful of enrolling their children in school for fear of being deported; not astonishing given the numerous cases of deportation after one's status is exposed (Koehl, 2007).

Furthermore, even though the Toronto Catholic District School Board and the TDSB have officially adopted the 'don't ask don't tell' policy, Sidhu (2008) finds that schools are not given clear guidelines outlining how this policy is to be implemented. While enrolment forms no longer specifically ask for immigration status, school boards continue to require applicants to indicate their date of entry in Canada (with supporting documentation) in order to receive funding for English as a Second Language programs and to ascertain whether international fees are applicable. Similarly, Decter's (2007) study on the impacts of homelessness on children's school success finds that all schools maintain procedures allowing parents to opt out of fees for trips and activities; these procedures however require the disclosure of the family's immigration status. The demand for documentation which reveals immigration status nullifies the 'don't ask don't tell' policy (Koehl, 2007) placing families in serious jeopardy in their endeavour to access the right to education.

The classification of immigrants with precarious status as immoral (i.e. via the label '*unlawfully* in Canada') may serve as an invitation for education officials to evaluate (i.e. demand verification and documentation) and judge the legitimacy of their right to education. In contrast to the *unlawful* standing assigned to this population, when education officials breach

their responsibility to ensure that all children (including those with precarious status) have access to public education, they are in effect performing an unlawful act, violating Section 49.1 of the Ontario Education Act. As Koehl (2007) observes,

Ironically, some of the (same) officials justify their own disobedience of the law on the basis that they disapprove of the conduct of parents who may be disobeying federal laws (p. 58).

However, rarely are such acts, which are in fact illegal, considered immoral or subject to penal or administrative penalty.

Consequently, the social right to education is available to citizens, permanent residents *and* children of immigrants with precarious status in Ontario, albeit with dangers. By law, all residents must place their children in school at the pre-school, middle and secondary grades (Government of Ontario, 1990). In attempting to abide by this law, however, the very processes necessary to ensure their child/ren's education expose the momentous vulnerabilities confronting this population.

#### *Equal Treatment, Protection from Harm and Access to Social Programs/Services*

This section reveals the rift in governmental approaches for immigrants with precarious status in contradistinction to citizens: freedom from harassment, access to law enforcement and access to social programs/services.

According to the Canadian Human Rights Act (1976-77, c.33, s. 1),

...**All individuals should** have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their **duties and obligations** as members of society (Department of Justice, 2009, emphasis added).

In defending equal opportunity for individuals, the federal law dilutes the potency of this protection—whilst individuals **should** have equal opportunity, in effect, they may not. The

wording “should have an opportunity equal with other individuals to *make for themselves* the lives that they are able and wish to have”, lifts the onus off the state to ensure equal opportunity and places it instead on the individual. As such, equality of opportunity is dependent on individuals’ observing their *duties and obligations as members of society*—indicating that the protection of human rights in Canada relies entirely on individuals meeting their responsibilities, and not at all buttressed by rights ascribed to members of society.

Unlike the Canadian Human Rights Code, the Human Rights Code of Ontario includes *citizenship* as grounds for equal treatment without discrimination.

*Every person* has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, *citizenship*, creed, sex, sexual orientation, age, marital status, family status, and disability (Ontario Human Rights Commission, 1990, emphasis added).

Stores, restaurants, bars, *services and programs* provided by *municipal and provincial governments including social assistance and benefits* and public transit (Ontario Human Rights Commission, 1990, emphasis added).

If the above statements are indeed true, ought not social assistance, and municipal and provincial programs and services be extended to those with precarious status, if *every person* has a right to equal treatment with respect to these without discrimination on the basis of citizenship?

Regrettably, a caveat in Ontario’s policy [Section 16(1)] delineates that:

A right under Part I to non-discrimination because of citizenship is not infringed where Canadian citizenship is a requirement, qualification or consideration imposed or authorized by law (Ontario Human Rights Commission, 1990).

The exception clause presented diminishes individuals’ protection from discrimination on the basis of citizenship.

You cannot be discriminated against because of your citizenship *except* where Canadian citizenship is a legal requirement to get a job or obtain certain services (Ontario Human Rights Commission, 2009, p. 32, emphasis added).

The claim to equal treatment without discrimination is curtailed, valid only if not in conflict with governmental requirements implicating one's citizenship as an impediment to garnering benefits and services. Indeed Canada's approach to human rights for immigrants with precarious status has not gone unnoticed by international institutions. The following excerpt taken from a report to the United Nations' Committee on Economic, Social and Cultural Rights expressly demonstrates how Canadian policy differentiates rights by immigration status.

Within Canadian law and policy, however, many rights are tied not to people's status as humans, but to their status within the country, such as citizen or permanent resident. As a result there are numerous areas where non-citizens in Canada find their fundamental human rights denied, despite Canada being a party to the International Covenant on Economic, Social and Cultural Rights (CESCR) as well as to other human rights instruments (Canadian Council for Refugees, 2006).

Protection from law enforcement is also assumed to apply to all residents of the City of Toronto, as stated in policy:

...Prohibits discrimination and harassment and protects the right to be free of hate activity, based on age, ancestry, **citizenship**, creed (religion), colour, disability, ethnic origin, family status, gender identity, level of literacy, marital status, place of origin, membership in a union or staff association, political affiliation, race, receipt of public assistance, record of offences, sex, sexual orientation or any other personal characteristics by or within the organization (City of Toronto 2009, emphasis added).

While all municipally sponsored organizations affirm their written consent to this declaration prohibiting discrimination and harassment on the basis of citizenship, it is uncertain if and how this policy is disseminated to all employees within organizations or whether the policy is enforced in such a way that does not create increased vulnerability for immigrants with precarious status.

In an article in the *Toronto Star* (Friesen, 2006) discussing the implementation of the 'don't ask don't tell' policy adopted by the Toronto Police Board with the key exception that requests for documentation regarding immigration status may be made for 'bona fide reasons',

Mayor David Miller indicated that the City of Toronto's programs and services will also adopt this policy (except in the case of social assistance whereby immigration status is subject to municipal-provincial information sharing). For immigrants with precarious status endeavouring to access social programs and services in Toronto, Mayor Miller stated, "Where it's not necessary, the city doesn't ask (for immigration status)" (Friesen, 2006, Sect. A3). Thus city officials appear to be granted more latitude in providing immigrants with precarious status access to city run programs and services than their provincial and/or federal counterparts. Upon further examination however one might challenge the margins of this latitude.

In addition to the *Access to Services for Toronto Residents: Information and Identification Requirements* guide offered by the City of Toronto (2009), a poster indicating what programs and services individuals with precarious status may access has also been produced. The poster announces, "The City of Toronto provides services to residents regardless of immigration status" and

Municipality employees must protect the confidentiality of the information belonging to residents who are seeking City services that they are entitled to receive. *A person's immigration status is confidential information* (emphasis in original). When you apply for or use City services, Toronto employees will not ask about immigration status **unless** it is required by law. Your status will not be reported to anyone, **except** when required by law (City of Toronto, 2009, emphasis added).

The City of Toronto indicates that immigration status is confidential information and municipal employees must protect the confidentiality of residents, whilst inserting the words 'unless' and 'except', thereby diluting this statement. How is the confidentiality of residents ensured when there are exceptions imposed? Are municipal employees provided with training to raise their awareness of this policy and how the determination of the exception clauses, "unless it is required by law" or "except when required by law" may be understood? Is this understanding

consistent across organizations? Guidelines indicating when municipal employees are required by law to disclose immigration status are not readily available. Moreover, the authoritarian wording ‘except when required by law’ may invoke fear that those who do acquire information must divulge it to the authorities in the presumption that legal repercussions may be brought to bear on them if they fail to disclose this information.

The City of Toronto’s *Declaration of a Non-Discrimination Policy* (2009) specifies that all organizations and individuals must abide by the statement:

On behalf of and with the authority of the organization named below, I hereby declare that this organization adopts and upholds the City of Toronto’s policy statement which prohibits discrimination and harassment and protects the right to be free of hate activity, based on age, ancestry, **citizenship**, creed (religion), colour, disability, ethnic origin, family status, gender identity, level of literacy, marital status, place of origin, membership in a union or staff association, political affiliation, race, receipt of public assistance, record of offences, sex, sexual orientation or any other personal characteristics by or within the organization (City of Toronto, 2009, emphasis added).

While all municipally sponsored organizations affirm their written consent to this declaration prohibiting discrimination and harassment on the basis of citizenship, it is uncertain if and how this policy is disseminated to all employees within organizations or whether the policy is enforced in such a way that does not create increased vulnerability for immigrants with precarious status. How the social right to programs and services actually become negotiated within social service organizations is further developed by Bhuyan (in review). What is noteworthy here is that while specific social rights (i.e. access to social programs and services) appear to be available to immigrants with precarious status at the municipal level, access to such rights is obstructed by administrative complexities exposing the vulnerabilities encountered by this population. Even the social rights that are presented to this population are accessed at great risk.

### *Inadmissible Due to Failed Market Citizenship: Income Assistance & Child Care*

Social rights associated with income assistance programs and child care have narrow eligibility requirements which readily disqualify immigrants with precarious status. The following section documents the exclusion of this population from these social rights on the grounds of inadmissibility—a failure to demonstrate independence and autonomy, key ideals of neoliberal market citizenship.

Much attention in the IRPA is given to ‘inadmissible’ subjects (with the terms ‘inadmissible’ or ‘inadmissibility’ occurring 65 times in the Act). Individuals are considered inadmissible if they are deemed to potentially place any demand on the system, or by accessing the social rights, programs and services of citizen or permanent residents. Immigration therefore is a one-sided relationship established on what Canada will gain economically from newcomers, not what they may have to provide for them. The IPRA states,

A foreign national is inadmissible for ***financial reasons if they are or will be unable or unwilling to support themselves or any other person who is dependent on them***, and have not satisfied an officer that adequate ***arrangements for care and support, other than those that involve social assistance***, have been made (Department of Justice Canada, 2009a, p. 23, emphasis added).

The proviso that foreign nationals are inadmissible if they do not satisfy an officer that they will provide ‘adequate arrangements for care and support, other than those that involve social assistance programs resolutely conveys that foreign nationals must not place undue burden on society. Consequently immigrants with precarious status are not privy to the social right to income security programs circumscribed for permanent residents and citizens.

However, the Government of Ontario does not manifestly publicize that social assistance are restricted programs, available only to citizens and permanent residents. The website for the Ministry of Community and Social Services (MCSS) indicates that

To be eligible to receive help from Ontario Works, you must: live in Ontario, need money right away to help pay for food and housing costs, and be willing to take part in activities that will help you find a job (MCSS, 2009).

You will need to bring certain documents to the meeting. When you make your appointment, Ontario Works staff will tell you what documents you need to bring. Here are some examples: proof of your ***Social Insurance Number, Health Card, proof of identity, such as your birth certificate...*** and ***proof of immigration status, if required...*** (MCSS, 2009, emphasis added).

Similarly, for the Ontario Disability Support Program (ODSP):

You may qualify for Income Support if you: are 18 years of age or older, live in Ontario, are in financial need, and have a substantial physical or mental disability that: is expected to last a year or more, and makes it hard for you to care for yourself, take part in community life or work (MCSS, 2009).

You may be asked to give or show your worker certain documents about you and your family. Here are some examples: ***birth certificates, immigration papers, Social Insurance Numbers (SIN), Ontario health card numbers (OHIP)***, documents about your housing costs, documents about your income, documents about your assets (MCSS, 2009, emphasis added).

Verification certifying identity claims is central in the determination of eligibility for social assistance programs. Explicitly expressed, government officials share information regarding the status of immigrants attempting to access social services. A publication by the City of Toronto outlining identification requirements, under the heading “If YES (do staff report clients who do not have legal immigration status [YES/NO]), to whom do staff report this information and under what circumstances”, the City confirms that:

The Ontario Ministry of Community and Social Services has an information-sharing Memorandum of Understanding (MOU) with Citizenship and Immigration Canada (CIC) as provided for in section 71 of the *Ontario Works Act*. As an Ontario Works delivery agent, Toronto Social Services is bound by the terms and conditions of the agreement. The information shared with Citizenship and Immigration Canada may be used to administer and enforce the *Immigration and Refugee Protection Act (IPRA)* and *Regulations* or to carry out a lawful investigation under the authority of the IPRA (City of Toronto, 2007).

Whilst the demand to produce documents verifying one's identity for such programs is largely out of the question for immigrants with precarious status, if an individual were to inquire about their eligibility in the program (given the omission of this information on the webpage), MCSS administrators may be able procure information regarding the immigration status of the individual which they could potentially share with immigration officials, placing the individual/family in danger of detainment and/or deportation.

#### *Old Age Security/Guaranteed Income Supplement*

It is significant that even legal residents encounter particular restrictions in obtaining pension supplements based length of residency requirements; perhaps distinguishing a minimum length of time that one must economically contribute to Canada before receiving full social entitlements. Administered by the Government of Canada, the Old Age Security (OAS) pension is available only to two specified groups or categories of residents: people living in Canada, aged 65 or older, living in Canada and a Canadian citizen or legal resident; and people living outside Canada, aged 65 or older, who have left the country but were a Canadian citizen or legal resident when they left, and who have lived in Canada for at least 20 years after age 18 and are living in a country where there is a social security agreement with Canada (Government of Canada, 2009). Accordingly, the OAS and its complementary program for low-income residents, the Guaranteed Income Supplement (GIS) are reserved for citizens of Canada and permanent residents who have lived in Canada for fixed lengths of time determined by whether the immigrant's country of origin has a signed social security agreement with the Canadian government.

Member of Parliament Ruby Dhalla's Bill C-428 (2009) attempt to widen the scope of entitlement for OAS (and GIS) in regards to length of residence requirements, from ten years to three years of Canadian residency for immigrants from **all** countries, was swathed in

controversy. At present, immigrants from China, India or countries in Africa, the Caribbean and South America must reside in Canada for ten years whereas immigrants originating from countries with signed social security agreements must reside in Canada only three years. Unsurprisingly many of the social security agreements have been signed with countries ascribing to neoliberal ideals and rationality (i.e. Italy, Greece, Germany, Denmark, Netherlands, Japan, etc.).

### *Restricted Access to Child Care*

Child care arrangements are offered at the various levels of governance forming a patchwork of assistance rather than a comprehensive strategy. The federal approach to child care is distributed via the tax system under two programs: the Canada Child Tax Benefit ([CCTB] including the National Child Benefit Supplement and the Child Disability Benefit) and the Universal Child Care Benefit (UCCB). A joint initiative of the federal, provincial and territorial governments, the National Child Benefit Supplement of the CCTB aims to:

- help prevent and reduce the depth of child poverty;
- promote attachment to the workforce by ensuring that families will always be better off as a result of working; and
- reduce overlap and duplication of government programs and services (Government of Canada, 2009).

The financial assistance set aside to “help prevent and reduce the depth of child poverty” amounts to “\$111.66 per month for each child under 18 years of age and an additional \$7.75 per month for your third and each additional child” (Government of Canada, 2009), with reductions if the adjusted family net income is more than \$40,726. Given that the cost of living in urban centres have soared in recent years, the amount of little over \$100/month to help cover the cost of child care is profoundly inadequate, contributing to child poverty (in the absence of sufficient provisions) rather than alleviating it. The *raison d’être* of the benefit may be better observed in

the Government's second point, "to promote attachment to the workforce", with the latter half of the statement "that families will always be better off as a result of working" unlikely. However, even this meager provision (assistance for child care) is reserved for citizens, permanent residents and protected persons, indicated by the Government's requirements:

You must live with the child, and the child must be under 18 years of age.

You must be the person **primarily responsible** for the care and upbringing of the child...

You must be a resident of Canada for tax purposes...

You **or** your spouse or common-law partner must be: a Canadian citizen; as defined in the *Immigration and Refugee Protection Act*, a "permanent resident"; as defined in the *Immigration and Refugee Protection Act*, a "protected person"; or as defined in the *Immigration and Refugee Protection Act*, a "temporary resident" who has lived in Canada throughout the previous 18 months, and who has a valid permit in the 19th month (other than one that states "does not confer status" or "does not confer temporary resident status") (Government of Canada, 2009, emphasis in original).

Given that **all** eligibility conditions must be met, immigrants with precarious status are exempt from receipt of this benefit on the basis of the fourth point, delineating status requirements.

Eligibility for the UCCB is also premised on the eligibility requirements of the CCTB, meaning that those with precarious status are also excluded from this "universal" (sic) benefit, as stated:

A taxable benefit paid monthly to help **eligible** families provide childcare for their children under six years of age, providing \$100 monthly payment [up to \$1,200 annually] for each qualified child" (Government of Canada, 2009, emphasis added)

The financial allotments for child care through the federal CCTB and UCCB provisions operate in tandem with municipal systems providing assistance in the form of subsidies for low income families. According to the City of Toronto, subsidies for child care are available to residents of Toronto, dependent on a number of conditions [i.e. you must live in Toronto; be a parent/guardian of a child under age 10; be employed, in school or in approved training program; looking to place child in a licensed program in Toronto that has a fee subsidy contract; and be in financial need determined through an income test using: Family Income from the CCTB

Statement, or if in receipt of the UCCB (ii) Net Income (line 236) on the Income Tax Notice Assessment/Notice of Reassessment (City of Toronto, 2009)]. The last condition weakens the possibility of access for families with precarious status as the financial need calculation is based on an income test using the CCTB (for which they are ineligible) or net income based on an income tax notice assessment/notice of reassessment. Some immigrants with precarious status may not file for income tax (Murray, 2003) in order to stay ‘under the radar’ of immigration officials, thereby undermining their ability to qualify for childcare subsidy. Consequently, the mélange of child care provisions offered to citizens, permanent residents and protected persons presented are not readily available to families unable to present documents verifying their eligibility for assistance, leaving this population and their children in particular, more vulnerable to extreme poverty than the privileged citizen/resident.

The heralded citizen enjoys the epitome of advantage for social rights’ provision, while permanent residents take a secondary position—if they migrate from countries from which Canada approves, i.e. in the case of social security agreements with Canada for Old Age Security coverage, while immigrants with precarious status are wholly denied the benefits of social rights or encounter scrutiny if they attempt to access program/services intended for ‘more deserving’ citizenship categories.

## **Discussion & Conclusion**

Associated with citizenship is a wide continuum of rights and obligations, albeit the responsibilities of citizenship have gained precedence over and above rights (Lister, 2003; Orloff, 1993, 1996; Sainsbury, 1996) in the contemporary post-welfare state. While considered one of the mainstays of classical liberalism, the contention of Marshall (1950, 1981; Marshall & Bottomore, 1992) that social rights be added to the array of rights (political and civil) extended

to citizens within the state is increasingly at odds with extant neoliberal realities. Indeed, what these rights are and how they are negotiated is uncertain. Muddying the conceptual waters further, the question of who a citizen is, and how one realizes greater approximations of full citizenship, is problematic. The allocation of social rights is uneven, marked by contradictions in policy and disparately applied by discretionary powers, albeit at all times influenced by one's identity, i.e. immigration status. Perhaps viewing social rights outside of conventional frameworks which give precedence to nation-states in the construction of social rights might work in the favour of those habitually excluded from the benefits of citizenship.

Varsanyi (2006) assesses the contradictions of nation-state citizenship, advancing a new conceptualization of transnational urban citizenship which she dubs 'post-postnational scholarship'. Nation-state citizenship and state context are still central to the livelihoods of migrants for Varsanyi, but the city, erstwhile considered subservient to the nation-state, must be considered a legitimate locus for citizenship in a globalized, migratory world. Sassen (1996) muses on the idea of global city networks and 'transnational immigrants' and 'transnational corporate' citizens taking shape in a 'new transnational geography', while Isin (1997) in a similar vein emphasizes the emergence of the 'new professional class-as-transnational citizen'.

Hutchings and Dannreuther (1999) assert that cosmopolitan citizenship transcends the territorial borders of the nation-state and is detached from a specific geographic location; Varsanyi (2006) however notes one important exception—centring on the interplay of cities and citizenship. Such an understanding of cosmopolitan citizenship is rooted in the city, not territorially fixed, oft drawing its legitimacy from the international human rights legal regime and moral imperatives. Varsanyi argues for a citizenship in which full membership is not dependent upon legal consent to enter and remain in a community (as is the case with citizenship

in liberal democratic welfare states) but upon one's residence in a space, causing the differential statuses assigned to insider/outsider to wane. She points to concrete examples of how this model is already taking shape in the US (i.e. in Chicago, undocumented residents have been able to vote in local school board elections since 1988).

Likewise, in thinking about how transnational migration impacts upon national identity and membership within communities, Purcell (2003) maintains that the level of city offers potential in shedding light on how national and transnational processes come together in what he terms 'citadinship'. Citadinship would be the site in which rights are established; conferred through meeting specific responsibilities, i.e. making contributions to the city in one's everyday life. By virtue of membership within the urban community, rights and responsibilities are extended, allowing the categories of citizen, permanent resident and immigrant with precarious status to fade into the background. Residents, irrespective of immigration status, are deemed to be valuable contributors to the life and vibrancy of the city, and deserving of the rights and responsibilities attached to the livelihood of urban space.

Many scholars and activists have endeavoured to find grounds to challenge extant citizenship frameworks which wholly negate or significantly undervalue the contributions of non-citizens (Bosniak, 2006). This paper attempts to expose the uneven division of social rights' assemblages by immigration status, highlighting how new frameworks for understanding citizenship might be better applied to resist unjust and inequitable neoliberal processes.

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