Law, Citizenship, and the Construction of (Some) Immigrant "Others"

Kitty Calavita

Rhacel Salazar Parreñas. *Servants of Globalization: Women, Migration, and Domestic Work*. Palo Alto, Calif.: Stanford University Press, 2001. Pp. 309. $55.00 cloth; $21.95 paper.

Bonnie Honig. *Democracy and the Foreigner.* Princeton, N.J.: Princeton University Press, 2001. Pp. 204. $39.95 cloth; $19.95 paper.

Peter Schuck. *Citizens, Strangers, and In-Betweens*. Boulder, Colo.: Westview Press, 1998. Pp. 475. $29.00.

Candice Lewis Bredbenner. *A Nationality of Her Own: Women, Marriage, and the Law of Citizenship*. Berkeley and Los Angeles: University of California Press, 1998. Pp. 294. $55.00.

Evelyn Nakano Glenn. *Unequal Freedom: How Race and Gender Shaped American Citizenship and Labor*. Cambridge: Harvard University Press, 2002. Pp. 306. $45.00 cloth; $18.95 paper.

Zygmunt Bauman. *Community: Seeking Safety in an Insecure World*. Cambridge, England: Polity Press, 2001. Pp. 159. $22.95.

Teresa Caldeira. *City of Walls: Crime, Segregation, and Citizenship in São Paulo*. Berkeley and Los Angeles: University of California Press, 2000. Pp. 487. $60 cloth; $24.95 paper.

Sociologist Georg Simmel (1950) has famously described the immigrant as a stranger, physically present but not a member of the community. Following in this tradition, an extensive scholarship underscores the distinctions between citizen-members on one hand and immigrant-outsiders on the other (Walzer 1983; Brubaker 1992; Honig 2001). While Simmel's depiction of the

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stranger implied that our fear of the other is somehow embedded in our collective subconscious, this subsequent literature traces the legal, political, and philosophical bases of the stranger's otherness and its myriad consequences. Much recent literature on citizenship, immigration, and community, however, implies a destabilization of this citizen/outsider dichotomy. By unpacking the concept of legal citizenship and problematizing the notion of national community, collectively this literature—despite its sometimes pronounced internal differences—undermines the sharp distinction between immigrants and citizens, and unsettles the very notion of community.

In this essay, I review some of the recent scholarship in this vast field of law, citizenship, and belonging, including works that emphasize clear distinctions between citizens and outsiders and those that posit the breakdown or instability of these distinctions. This latter group covers a wide theoretical and ideological spectrum, from those who argue that noncitizens have secured increasing legal rights (Schuck 1998; Hollifield 1992; Soysal 1994), to critical race theorists (Haney Lopez 1996; Román 2000–2001), to others who emphasize the long-standing exclusion of some citizens from true membership (Volpp 2001; Bredbenner 1998; Glenn 2002), to still others who underscore the weakening ties of community more generally (Bauman 2001; Caldeira 2000).

In the process of reviewing this diverse literature, I try to make sense of contradictory themes that emerge. Some tension in the literature can be attributed to varying conceptions of citizenship, with some authors focusing on formal citizenship status (including its attainment and loss) (Bredbenner 1998), while others emphasize the *meaning* of that status—for example, contrasting nominal and substantive citizenship (Glenn 2002; Beiner 1995; Haney Lopez 1996), or tracing the significance of formal citizenship historically (Marshall 1950; Schuck 1998). This tension and the slippery parameters of the concept of citizenship have been addressed extensively and very effectively elsewhere (Baubock 1994; Bosniak 2000, 2003). Here, I intend to interrogate instead the tension between the broad citizen/stranger dichotomy so well established in the literature, and the destabilization of that dichotomy implicit in much recent scholarship, including works that do not explicitly focus on citizenship or immigration law (Bauman 2001; Caldeira 2000).

The first part of the essay sets up this tension in the course of reviewing a number of recent books broadly related to these themes. In the second part, I briefly draw on my recent research on immigration and immigration law in Italy in order to shed light on this tension. Based on my read of the literature and my Italian research, I suggest that many apparent contradictions in this scholarship reflect contradictions in the social reality itself, such as the ways in which immigration law and economics work together to establish immigrant otherness, even as economic realities ensure that many who are formal citizens are similarly cast as strangers in a process that both is fortified by law and undermines legal distinctions.

I. LAW, CITIZENSHIP, AND BELONGING: DICHOTOMIES OF INCLUSION

Citizenship and the Legal Boundaries of Inclusion

T. H. Marshall's (1950) classic essay on citizenship and social class in England traced the evolution of the meaning of social membership. In Marshall's model, the three dimensions of citizenship—civil, political, and social—developed sequentially in the eighteenth, nineteenth, and twentieth centuries. Contemporary citizenship in Western capitalist societies was described by Marshall in this 1950 essay as comprising the full set of rights that had evolved over the previous three centuries. While his emphasis was not on the role of law in giving birth to these rights—his focus was on their structural connection to capitalism—it was through law that these fledgling rights were formalized and became entrenched.

Since Marshall's seminal work, much of the scholarship on law and citizenship has drawn a distinction between this kind of full legal membership in a national community, and the status of nonmembers. For example, Rogers Brubaker writes, "Although citizenship is internally inclusive, it is externally exclusive. There is a conceptually clear, legally consequential, and ideologically charged distinction between citizens and foreigners" (1992, 21). Michael Walzer (1983) articulates a sharp legal and normative distinction between citizens who belong to the national community and noncitizens who do not. Further, he defends this exclusivity: "We might think of countries as national clubs or families" made up of citizen-members who choose whom to admit and who bind that choice in law (1983, 42).

Joseph Carens takes the opposite normative stance from Walzer and makes "the case for open borders," but he nonetheless reaffirms the existence of this citizen/outsider dichotomy (1995, 229). Challenging the legitimacy of exclusionary citizenship in democratic societies, Carens contends, "Citizenship in Western liberal democracies is the modern equivalent of feudal privilege" (1995, 230). The extensive empirical scholarship that depicts immigrants as a distinctly marginal population affirms this exclusionary aspect of citizenship as well (and, implicitly, the contrasting inclusive quality of membership). Castles and Kosack's (1973) study of immigrant workers in western Europe, Piore's (1979) depiction of immigrant "birds of passage" in America's segmented economy, Cornelius's (1989) research on Mexican workers in southern California, Waldinger and Lichter's documentation of "How the Other Half Works" (2003), and Johnson's (2004) analysis of the treatment of aliens under U.S. immigration laws all reveal immigrants to be an especially vulnerable and exploited population.

Also established is the notion that *illegal* immigrants are the prototype of such marginality, confined as they are to the worst jobs and excluded from social membership not only by virtue of their status as immigrants but by their

illegality. As Marianne Constable notes, "The 'unlawfulness' or 'illegality' of the illegal alien is such that the alien individual seems not quite an autonomous legal subject, being neither legally-recognized citizen nor legally-recognized stranger." As such, she says, "They come to resemble under law . . . the regulatable resources of the territory more than its self-determining subjects" (1993, 260). As Ngai (2004) puts it in the title of her recent book, illegal immigrants are in many ways "Impossible Subjects."

Rhacel Salazar Parreñas's *Servants of Globalization: Women, Migration, and Domestic Work* gives voice to this "Other Half" (Waldinger and Lichter 2003). At one level, this is a book about Filipina domestic workers in Los Angeles and Rome in the context of global restructuring. Salazar Parreñas argues that Filipinas face similar sets of "dislocations" in Italy and the United States, despite the legal, political, and cultural differences of the two contexts, as they provide the gendered, low-wage labor on which global capitalism thrives. The author notes that these dislocations are precipitated historically by policies of U.S. colonialism and the diasporas they triggered, as well as contemporary policies of restricted belonging in receiving countries. Perhaps the book's greatest contribution, however, is in the rich interview data it presents, as the Filipinas speak poignantly of their personal experiences of displacement and partial belonging.

Very different in style and intent, political theorist Bonnie Honig's *Democracy and the Foreigner* is a compelling addition to the literature on exclusion and belonging. While implicitly subscribing to the citizen/foreigner binary, Honig's broader purpose is to link the two by demonstrating how the foreignness of outsiders has been used historically to define and symbolically shape the nation. Fear of the foreigner, she says, helps establish the self-identity of those who are, by contrast, "insiders"—echoing a theme elaborated throughout much of the literature on the political and psychosocial uses of otherness (Behdad 1997; Young 1996; Bourdieu 1991; Zolberg 1997).

More important for Honig, and paradoxically, foreigners are often used to "reinvigorate" democracy, as myths about foreign founders are central to the stories many nations tell about themselves. Citing Moses' appearance to the Israelites as an Egyptian prince, the biblical book of Ruth, Oedipus Rex, the Eleatic Stranger in *The Statesman,* the Wizard of Oz, and Plato's Republic, Honig points out, "Again and again, the cure for corruption, withdrawal, and alienation is . . . aliens" (p. 4).

The importance of foreigners for "reinvigorating" democracy is particularly compelling in the American context, as "the myth of an immigrant America" (p. 73) undergirds its self-image as exceptional. "Again and again," Honig says, "the American democratic theory literature turns to foreignness to found the regime or return it to itself . . . American exceptionalists, from Tocqueville to Hartz to Walzer, treat immigrants as the agents of founding and renewal for a regime in which membership is supposed to be uniquely consent based, individualist, rational, and voluntarist rather than inherited

and organic" (pp. 73–74). It is for this reason that "[N]aturalizing immigrants" are the nation's "idealized citizens"(p. 4), in comparison to which those merely born into citizenship are at a moral disadvantage. In brief, it is "often their foreignness itself . . . that makes outsiders necessary even if also dangerous to the regime that receives them. Indeed, sometimes foreignness operates as an agent of (re)founding" (p. 3).

While Honig's thesis is intriguing, my purpose here is not to engage the argument at length but rather to establish that this timely and creative work of political theory once again affirms the essential distinction between citizens and foreigners. "Switch[ing] the question" from "How should we solve the problem of foreignness?" to "What problems does foreignness solve for us?" (p. 4), Honig nevertheless retains the notion of foreigner-as-other that underpins both questions.

Deconstructing Dichotomies of Membership and Exclusion

The dichotomy between the immigrant-stranger-outsider and the citizen-member-insider has become the academic equivalent of conventional wisdom. But a host of apparently conflicting ideas runs through some of the recent literature on citizenship. It is often argued, for example, that the line between citizens and aliens has become less distinct as the latter have gained increasing legal rights. Addressing the issue of formal citizenship in the United States and the legal rights that distinguish citizens from noncitizens, Peter Schuck's *Citizens, Strangers, and In-Betweens*, a series of essays originally written between 1984 and 1997, traces the evolution of the meaning of citizenship in U.S. immigration and naturalization law. Schuck's central argument is that U.S. citizenship has been "devalued" as immigrants have secured increasing rights as the concept of universalistic human rights independent of citizenship has expanded. In one of the anchoring essays in this far-ranging volume, "The Devaluation of American Citizenship," Schuck argues, the "distinctive meaning of American citizenship . . . has been transformed in recent decades by a public philosophy that is steadily expanding the equality and due process principles in the pursuit of liberal values. These changes have reduced almost to the vanishing point the marginal value of citizenship as compared to resident alien status" (pp. 163–64). It is for this reason, he posits, that naturalization rates have declined, as little is to be gained from the acquisition of formal citizenship.

Similar arguments were put forward in the early 1990s in the European context, as Hollifield (1992), Soysal (1994), and others contended that the principle of universal human rights in democratic societies has meant that immigrants have come to enjoy virtually all the privileges associated with formal citizenship (usually, but not always, with the exception of voting rights). Throughout this current of literature, the emphasis is on the membership rights

and obligations bestowed on noncitizens in contemporary liberal democracies and the ways in which this expansive notion of belonging challenges the citizen/immigrant dichotomy implicit in so much of the citizenship and immigration scholarship.[1]

Citizens, Strangers, and In-Betweens provides a useful synopsis of the course of U.S. immigration law and the roles of the courts and politics in its transformation. However, Schuck's analysis of the "devaluation" of citizenship through increasing rights for noncitizens is, if not overstated, at least dated. One wonders if he would have been quite so generous in his description of American "liberal values" with their "stead[y] expan[sion] of equality and due process" had these essays been written in the late 1990s, after welfare reforms severely restricted federally funded public assistance to immigrants. With the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) cutting off all federal assistance to most legal immigrants and all unauthorized immigrants, it would be difficult to argue that a "steady expansion" of social rights was underway. And, with immigration enforcement functions now located in the U.S. Department of Homeland Security, post-9/11 practices such as the "expedited removal" without a judicial hearing of those suspected of being in the United States without documents (Hennessey 2004, A14) are bringing to an abrupt halt any "expansion of due process" that may have characterized the past several decades.

Schuck is on safer ground when he argues that rather than comprising a dichotomy, degrees of membership distinguish citizens, legal residents, and illegal immigrants—or as Robin Cohen (1991) calls them, "citizens, denizens, and helots." This concept of a membership continuum is at least implicitly shared by virtually all who write on immigration law and belonging, although at times it is somewhat awkwardly accompanied by the enduring idea of a "conceptually clear, legally consequential, and ideologically charged distinction between citizens and foreigners" (Brubaker 1992, 21).

Further destabilizing this presumed dichotomy, many scholars point out that at least some aspects of citizenship increasingly cross the boundaries of nation-states, as indicated by such concepts as "transnational citizenship," "global citizenship," and "postnational citizenship" (Baubock 1994; Falk 1993; Bosniak 2000, 449). The formation of the European Union and the emergence of "citizens of Europe" is perhaps the clearest example of such transnational membership. While the allocation of many formal citizenship rights to all Europeans in the European Union clearly extends the conventional state-centered concept of citizenship, this transnational form is still relatively rare. More common are the various types of extraterritorial political activities in which "people lay claim to a political space that may or may

1. For further discussion of the tension between the concept of rights lodged in citizenship and the concept of rights inherent in personhood, see Aleinikoff (1990, 2002) and Bosniak (1994, 2002).

not conform to the spaces allowed by the existing system of government" (Magnusson 1996, 9–10). Arguing more broadly that we need conceptual precision in our discussions of citizenship, but that we need not define citizenship as intrinsically national in nature, Bosniak urges us to acknowledge the "increasingly transterritorial quality of political and social life" and to commit "to a vision of citizenship that is multiple and overlapping (2000, 450)."[2]

Other scholars have problematized the citizen-insider/immigrant-outsider dichotomy by pointing to the limitations of de facto citizenship and its deviation from the ideal. Formal citizenship in Western democratic societies is presumed to confer a universal set of rights and duties. But, citizenship on the books and citizenship in action are not coterminous. As Brubaker says, "Formal citizenship is neither a sufficient nor a necessary condition for substantive membership. . . . That it is not a sufficient condition is clear: one can possess formal state membership yet be excluded (in law or in fact) from certain civil, political, or social rights" (1992, 36; see also Holston and Appadurai, 1999, 4).

Ian Haney Lopez (1996), Ediberto Román (2000–2001), Leti Volpp (2001), Roger Wilkins (2001), and many others have demonstrated that the history of western democracies can be seen in part as a succession of racial restrictions on citizenship and an ongoing struggle for both formal and substantive inclusion. Renato Rosaldo calls this the struggle for "cultural citizenship," or "the right to be different (in terms of race, ethnicity, or native language) . . . without compromising one's right to belong, in the sense of participating in the nation-state's democratic processes" (1994, 57). Critical race theorist Ian Haney Lopez (1996) documents the role law has played historically in the United States in constructing white identity through its identification of "nonwhite" persons and their exclusion from citizenship, and he links this legal construction of nonwhiteness to continuing barriers to full membership.

Unlike these discussions by critical race theorists, who focus on both formal and de facto exclusions, Candice Lewis Bredbenner's *A Nationality of Her Own: Women, Marriage, and the Law of Citizenship* remains at the level of formal, legal restrictions on citizenship and focuses on gender as a pivotal category historically for such restrictions. In this important and meticulously researched book, Bredbenner traces women's "dependent citizenship" in the United States from the Naturalization Act of 1855. As she explains, section 2 of the 1855 law automatically conferred citizenship on foreign women who married U.S. citizens (unless the woman in question was "racially ineligible for naturalization" [*Kelly v. Owen* 1868, quoted in Bredbenner, p. 22]). While

2. Holston and Appadurai (1999, 3) also argue that national territory no longer defines citizenship, but propose that "place remains fundamental to the problem of membership in society," and that cities are the central venues in which citizenship is shaped and instantiated.

the law protected these women from deportation and gave them inheritance rights, it deprived them of their native citizenship without their consent and affirmed the "single-identity theory of marriage" on which coverture policies were based. The full implications of this law and the ideology underlying it became clear in 1907 when the Expatriation Act—steeped in xenophobia and patriotic hyperbole—*revoked* the citizenship of American women who married foreigners, thereby shoring up the notion of the derivative nature of women's citizenship. For suffragists who had exploited the anti-immigrant hysteria of the period by arguing that if naturalized immigrant men could vote, they certainly should be able to, the Expatriation Act was a stark warning of the costs of that strategy.

Among the many contributions of Bredbenner's book are the connections she draws between and among naturalization laws, immigration, and women's rights. The Expatriation Act is one illustration, as suffragists paid the price for playing on, and arguably fueling, anti-immigrant sentiments in their effort to win the vote. Another came in 1922 when the Cable Act reversed the policy of automatically granting immigrant women citizenship when they married an American. This revisiting of the wisdom of giving immigrant women automatic citizenship followed on the heels of the Nineteenth Amendment. As Bredbenner explains, "Derivative citizenship could no longer function exclusively as the agent of marital solidarity and patriarchal power if it also served as married women's pathway to achieving an autonomous political voice" (p. 43). Bredbenner's analysis of the crosscutting of gender and race highlights not only their myriad intersections and parallels, but the shared destinies of those who find themselves on the wrong side of these despotic dichotomies.

While gender and race are often at the forefront of the struggle for inclusion and take a central place in this diverse literature, Ronald Beiner notes, "To these formidable challenges may be added what is probably the greatest challenge of all to contemporary citizenship, namely, persistent mass unemployment, which offers the surest prospect of excluding tens of millions of people even within the richest nations on earth from a sense of full membership in civic community" (1995, 3).

Evelyn Nakano Glenn's *Unequal Freedom: How Race and Gender Shaped American Citizenship and Labor* takes up the challenge of exploring the busy intersection of not just gender and race, but class as well, as they are woven into and through laws of belonging in the United States. At one level, Glenn traces the "jagged" expansion of formal citizenship rights in the United States to include the poor, women, and people of color. Noting that "formal citizenship is that embodied in law and policy, while substantive citizenship is the actual ability to exercise rights of citizenship," she argues that historically both types have been constituted by and help constitute race and gender. Consistent with Haney Lopez's analysis of the interplay of citizenship law and racial formation and Bredbenner's history of the links between

gender, race/ethnicity, and naturalization law, Glenn broadens the lens to explore the gendered quality of race, the racialization of gender—by which she means that gender and race are "positioned and . . . given meaning in relation to each other" (p. 13)—and their mutual embeddedness with definitions of citizenship.

Unequal Freedom offers a materialist analysis of the role that labor demands play in constructing race, gender, and citizenship. "Of all wealthy countries in the world," Glenn says, "the United States is the only one to have substantially relied, for its economic development, on the labor of peoples from all three nonwhite areas of the globe: Africa, Latin America, and Asia. Thus a central feature of the U.S. economy has been its reliance on racialized and gendered systems of control, including coercion" (p. 5). Glenn sometimes has a few too many theses competing for the starring role, and some of her logical connections are not as tight as they might be. But the book makes an important contribution to our understanding of the racialization of gender, the gendered quality of race, and the ways economics and citizenship policies (formal and de facto) are implicated in their construction.

The literature claiming that rights for immigrants have expanded, the scholarship documenting the erosion of the territorial bases for some citizenship rights, and the critical race theory and feminist exposés of the limitations on substantive citizenship come from dramatically different theoretical and ideological positions and use various conceptualizations of "citizenship." Still, they all disrupt the conventional dichotomy between citizen-members and immigrant-outsiders. In a moment I will try to make sense of the tensions inherent in these themes. First, however, let us turn to the literature that raises the question of whether viable national communities exist for members to be included *in*.

Reimagining Community

While the concept of community is difficult to define, most would agree with Walzer that at a minimum, a community consists of people, usually within a given space, "with some special commitment to one another and some special sense of their common life" (1983, 63). Using this definition, the national community is a politically and territorially bounded group of people with a sense of solidarity and a shared identity. According to Benedict Anderson, the nation is largely an "imagined community," "because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion" (1983, 15).

Zygmunt Bauman, in *Community: Seeking Safety in an Insecure World*, argues that the kind of community described by Walzer, if it ever really existed, is no more. He traces the decline of community in Western capitalist

societies to economic restructuring, particularly the end of the Fordist social contract between workers and their bosses, welfare state policies that are revoked and recast as "regrettable errors of judgement" (p. 62), and the "secession of the successful" (p. 50). As Bauman (p. 51) tells it, corporate executives with no permanent address are increasingly uprooted from any spatial community, as these extraterritorial cosmopolitans "no longer need the services of the community" and within it stand to bear only the brunt of others' needs. With little commitment to any particular location or territory, in the words of an AT&T executive quoted by Bauman, they "consider themselves the sort of citizens of the world who happen to carry an American passport" (p. 55).

Bauman is far too sophisticated an observer to offer a simple "paradise lost" theme (p. 3), and the front end of this concise yet powerful book is devoted to deconstructing the "feel good," amorphous concept of community as "a 'warm' place, a cosy and comfortable place" (p. 1). For, as Bauman warns, true community—any "really existing community" (p. 4) as contrasted to the soft and fuzzy romanticized kind—is also a constricting place where individuality is suppressed and loyalty and conformity required. This philosophical discussion of the tension between the security of community on one hand and freedom on the other sets the stage for Bauman's analysis of the original destruction of self-sustaining communities by the advent of capitalism. As he puts it, "emancipation" from the constricting communities of the precapitalist era by no means meant freedom for all: "The modern—capitalist—arrangement of human cohabitation was Janus-faced; one face was emancipatory, the other coercive, each being turned towards a different section of society. . . . To put it bluntly: the emancipation of some called for the suppression of others. . . . The 'masses' were wrested out of the stiff old routine . . . to be squeezed into a stiff new routine (of the task-ruled factory floor), where their suppression could better serve the cause of the suppressors' emancipation" (pp. 26–27).

The "rerooting [of] the uprooted" (pp. 21–38) is exemplified by the Fordist factory, the social contract forged by management and workers, and the rise of the welfare state. Bauman uses the metaphor of the panopticon to describe this Fordist period of capitalism:

> The era of great transformation was, to put it in a nutshell, an era of *engagement*. The ruled were dependent on the rulers, but the rulers no less depended on the ruled. For better or for worse, the two sides were tied to each other and neither could easily opt out of the wedlock . . . . When in a flash of inspiration Henry Ford made his historic decision to double his workers' wages, what he was after was a double bind which would tie them to *his* factories more strongly and more securely than the mere need for livelihood. . . . [Eventually] the inconvenience and the high and rising cost of panoptical power (and, more generally, of domination-through-engagement) became apparent. (p. 33; emphasis in original)

The Fordist model, in other words, with its concessions to workers in the form of higher wages, job security, and eventually, the rise of the welfare state, bound worker to employer (and vice versa) and created a kind of panoptical community. But, as Bauman explains, the late-twentieth-century collapse of this Fordist model and the retrenchment of the welfare state, has meant that the "roots" have once again been "uprooted." In his chapter called "Times of Disengagement, or the Great Transformation Mark Two" (pp. 39–49), Bauman traces this dismantling of the Fordist contract and the full realization of Marx and Engels's dictum that capitalism "melt[s] all solids" (p. 30), liquefying community, and in the process turning the successful into itinerant "citizens of the world" (p. 55).

Increased rates of migration out of the Third World that are both a spin-off of globalization in this neoliberal world order and one of its defining characteristics have also complicated the connection of people to national community. Noting the "turbulence of migration" in the contemporary world, Papastergiadis (2000, 20) warns that, unlike the freedom experienced by Bauman's cosmopolitans, these immigrants' "itinerancy" produces "ghettoization and illegality." Indeed, the counterpart of the withdrawal of privileged elites is the spatial and social ghettoization not only of these immigrants, but of all the poor, as the ties of solidarity that once defined the welfare state unravel. As Richard Falk puts it:

> Passivity, despair, and alienation result, with the privileged 20% feeling more and more detached from the misfortunes of their fellow citizens . . . . Bonds of solidarity among the citizenry, never too strong in the face of antagonistic interests and against the grain of individualism, have been fraying badly as of late. (2000, 10)

Teresa Caldeira's *City of Walls: Crime, Segregation, and Citizenship in São Paulo* is a meticulously researched and richly theorized contribution to the literature on law, processes of exclusion, and the disintegration of community. Arguing that the fear of crime and the criminalization of the poor have facilitated "a new pattern of urban segregation," Caldeira (p. 1) traces the transformation in São Paulo to Brazil's "democratic consolidation" and the threat to elites that democracy portends. The "techniques of exclusion" that she describes in São Paulo and elsewhere are predicated on the fear of crime and the "discourses of fear" that fuel it, but they are themselves the product of broader political-economic changes. As both crime and police violence have increased with democratization, elites have withdrawn into fortified enclaves for work and play, effectively privatizing "public" space. As Caldeira explains, "Both symbolically and materially, these strategies operate by marking differences, imposing partitions and distances, building walls, multiplying rules of avoidance and exclusion, and restricting movement" (p. 2).

The City of Walls encompasses the "simultaneous expansion and disrespect for citizenship rights" (p. 339), as formal democratization is dialectically partnered with increasing violence, symbolic criminalization, segregation—and ultimately, the "delegitima[tion] [of] citizenship" (p. 3). According to Caldeira, it is no accident that just as the advent of political democracy in Brazil opens the possibility of a national community of citizen-members, it also opens powerful discourses of fear and the "implosions" of community they generate (p. 297). Caldeira's point was tragically underscored in late August 2004, when 11 homeless people were attacked in organized assaults in and around Saõ Paulo, leaving at least 7 dead. Philosopher and professor at the School of Architecture and Urban Planning at the University of Saõ Paulo, Maria Cecília Loschiavo dos Santos (*Familia Cristã Online* 2004), told an interviewer that the attacks represented a brutal attempt to keep the homeless out of public space. She asked, "Why can't a public space be used by a citizen? . . . How public is that space if he can't use it?"

These literatures alternately tell us that immigrants are marginalized and excluded from membership in the national community of citizen-insiders; that this dichotomy is problematic—on one hand because immigrants are increasingly granted formal rights and on the other because many citizens are de facto excluded; and that, in any case, communities (imagined or otherwise) may be obsolete. Without pretending to reconcile completely this mélange of ideas that are at once so persuasive and so contradictory, part 2 of this essay offers some hints as to how we might make sense both of the instability of the citizen/immigrant dichotomy and its durability in the literature. Drawing on my recent research on the new immigration to southern Europe, I will suggest that this immigrant/citizen binary may be both *constructed and deconstructed* by law and by economics, and by the racialization that is the offspring of their union. In *Servants of Globalization*, Rhacel Salazar Parreñas directs her analytical gaze primarily at Filipina immigrants' subjective experiences of marginality and displacement in Italy (and the United States). But as we will see, and as Salazar Parreñas alludes to, it is a marginality that is socially and legally constructed. In the following section, I trace the dynamics of this social and legal construction of immigrant marginality in Italy and the implications that this process of marginalization has not only for immigrants but also for the indigenous poor.

II. IMMIGRATION LAW AND THE ECONOMICS OF ALTERITÉ IN ITALY

My research on immigration policy in Italy—including interviews with government officials and immigrant representatives, government documents, media reports, and a wide range of secondary sources—suggests that the legal construction of marginality is particularly pronounced in this new site of

immigration (Calavita 2005). In this context, the contradictions associated with the influx and the laws purporting to control it yield potentially useful insights for our understanding of the dialectics of law, exclusion, and citizenship in this global era, and thus for untangling some of the tensions apparent in the literature discussed above.

Italy has been transformed from an emigration country to a country of large-scale immigration only in the past two decades. As the economic gap between Italy and its northern European neighbors began to narrow in the mid-1970s, employment opportunities attracted immigrants from Africa, Asia, and Latin America, much as in the 1950s and 1960s Italians had migrated north to better jobs. By 2003, approximately two million foreigners legally resided in Italy, with the vast majority coming from outside the European Union (EU), and one-third of these coming from Africa. Another one million are estimated to be undocumented (*Migration News* 2004; Gruppo Abele 2001, 571). Women make up just under half the foreign population, with their numbers increasing over time, giving rise to the concept of the "feminization of migration flows" (Anthias and Lazaridis 2000, 7).

Most non-EU immigrants work in domestic service, tourism, construction, and agriculture, but they are increasingly employed in manufacturing too, especially in the small and medium-sized factories of the northeast (Pugliese 2000; Ambrosini 2001). Regardless of sector, they are consistently found in the lowest paid, most precarious, and least secure jobs. It is estimated that 30% of non-EU immigrants in Italy work in the vast underground economy, and 62% find their first jobs there (Eurispes 2001, 359; *Gazetta del Mezzogiorno* 2002, 5).

Immigration laws make it difficult to obtain permanent legal status (Zincone 2000). One of the few ways to enter legally is through annual quotas established in sectors of the economy where labor shortages appear to exist—primarily agriculture, construction, and domestic service. Legalization programs are periodically launched for those who enter illegally, stay past the period of their initial employment on these quotas, or do a stint in the underground economy. But these programs offer only temporary legal status, and renewals are contingent on being employed in the formal economy—an almost impossible obstacle for most non-EU immigrants. With citizenship largely based on *jus sanguinis*—determined by bloodlines and inheritance, in contrast to the territorially-based *jus soli*—children born in Italy to undocumented immigrants are themselves undocumented. Permanent resident status and eventually citizenship are available for immigrants who can patch together years of uninterrupted legal residency, but achieving this is almost impossible.

Anchored by temporary and contingent permit systems, Italian immigration law thus builds in illegality. And, this "institutionalized irregularity" (Santos 1993, 111) is the legal corollary of the labor function of immigrants. Illegal immigrants "work scared and hard" (Marshall 1978, 169); moreover,

the precariousness of *legal status* that is doled out in small increments—and thus including inevitable stints of illegality—mirrors their contingent and begrudging welcome as the uninvited guests whose job it is to clean up.

These (guest)workers are racialized through several interrelated processes, the broad outlines of which are similar to those of other times and places, including those that applied to Italian immigrants in America in the past century and in northern Europe just four decades ago, and to other immigrant groups in the United States, as discussed by Glenn (2002). The racialization is sometimes overt, as when the news media link African immigrant women to prostitution and sensationalize about the "slave trade" (Sansa 2002, 3). Or, when an official from the anti-immigrant Northern League recommends separate train compartments for immigrants because, he says, second-class compartments have been reduced to "a situation of civil degradation due to the presence of many 'extracomunitari'" (quoted in Selva 2003, 27). Often, though, the racialization is more subtle, hovering just beneath the surface of the collective stereotypes and poverty that lead to prison for so many and that symbolically criminalize so many others (Melossi 2000, 2003).

In this "racism without race" (Balibar 1991), presumed cultural and religious differences have become the proxy for biologically grounded racial categories. But these cultural and religious differences are given meaning in large part as economic otherness is woven through them. Race in this context is not just socially constructed; it is more precisely economically and materially constructed. The social meaning ascribed to both somatic difference and cultural otherness is grounded in material conditions, constituting what we might call "the economics of alterité." That is, immigrants are racialized, and their cultures highlighted as problematically distinct, to the extent that they are economically other. Thus, for example, southern Italian workers in northern Europe in the 1950s and 1960s were deemed racially and culturally other until Italy joined the club of First-World nations, and southern Italians no longer provided what was essentially Third-World labor to the rest of Europe. In his fictionalized memoir of immigration to France, Tahar Ben Jelloun (1997) makes the point that "ethnic and cultural difference" by themselves do not elicit racism, but rather their connection with poverty does. He writes, with characteristic irony:

> Poverty has never been well-received. . . . At most, difference is accepted under condition that the person be rich, under condition that he has the means to disguise it and pass unobserved. Be different, but be rich! Whoever has no other riches than their ethnic and cultural difference is consigned to humiliation and every form of racism. (1997, xiv–xv; my translation)

Law plays an important supporting role in this economics of alterité in Italy, as the quota system channels immigrants from the Third World to what

might loosely be referred to as "non-EU jobs," or more precisely, jobs offered under conditions that EU members generally shun. Conversely, those who do not enter through these channels are by definition illegal and subject to even greater degrees of economic marginality, relegated as they are to the underground economy. Economic marginality is thus institutionalized through law. But immigrants' position in the economy, having been secured by law, inevitably *reproduces* the visible markers of poverty in Italy, as in the United States (Glenn 2002). And these stigmata of poverty are integral to immigrants' ongoing racialization, much as the economic function and poverty of African-Americans and Third-World immigrants in the United States over the past several centuries cannot be disassociated from *their* racialization (Glenn 2002; Haney Lopez 1996, 2003). As Glenn (2002) reminds us, gender and race are mutually constituted, but so are race and labor function.

With the poverty of Italian immigrants thus reinforced by their confinement to "Third-World jobs," and their racialization the consequence of the stigmata of their poverty, they are often excluded from access to the national health care system (to which at least legal immigrants have a formal right). Moreover, they experience illegal discrimination in the housing market, which is in any case largely unaffordable to them. As the director of the commission mandated to study the integration of immigrants in Italy has concluded, there are serious "dark patches" (Zincone 2000, 956; 2001), including high infant mortality rates, high rates of preventable infectious diseases, and difficulties in accessing housing—such that only 30% of Italy's immigrants live in "normal" housing, with the rest relegated to homelessness or substandard dwellings (ISMU-Cariplo 1999; Zincone 2000, 957; 2001).

Many theorists have pointed out that immigration plays a "mirror function," in that it "clarifies that which is latent . . . in the functioning of the social order, it unmasks that which is masked to reveal what many prefer to ignore and leave in a state of 'innocence' or social ignorance" (Sayad 1996, 10). Following this logic, immigrants' poverty is not just "unaesthetic"; it forces *us* collectively to look in the mirror, and the image we see there is "not reassuring" (Jelloun 1997, xiv).

If this materialist analysis of exclusion and difference is accurate, the particularity of immigrants' otherness is problematized. For, if economic marginality is a core component of immigrants' exclusion, then it stands to reason that other impoverished groups in highly stratified market societies are similarly denied full membership. In fact, while immigrants in Italy make up most of those using homeless shelters and soup kitchens, they are joined by significant contingents of the locally dispossessed. And the vast underground and informal economy that continues to expand in Italy as in other advanced capitalist nations, thrives not only on immigrant labor but on the cheap labor of millions of its citizens as well.

Nor are those employed in the formal sector immune to such economic insecurity and the social marginality it produces. As free-market ideology and

neoliberalism are globalized and the post-Fordist economic model espousing just-in-time production, downsized production units, and temporary and low-wage employment (Lipietz 1985) makes inroads in even western European countries with strong contingents of organized labor and opposition parties, a number of reverberations are felt. Ambrosini (1996) documents the effects of post-Fordism in Italy (what Bauman in the U.S. context calls "the great transformation" and "the great disengagement" [p. 39]) beginning in the 1980s, when the gap between categories of workers began to widen. He argues that Italy now has a class of indigenous workers (mostly made up of the young, women, and southern Italians) who, when they are not unemployed, are consigned to poorly paid, contingent and precarious work. This "post-industrial proletariat," this "anxious class" (Ambrosini 1996, 10), is too preoccupied with its own survival to develop bonds of solidarity with others. Further complicating the issue of labor solidarity, these "outsiders" often work side by side with privileged "insiders" (Ambrosini 1996, 10)—for example, older workers whose job security, benefits, and pay scales (left over from the Fordist era) bear little resemblance to their own. Remarking on the similarities between this postindustrial proletariat and immigrant workers, Ambrosini concludes ruefully, "Immigrants are the prototypical figure of the current contradictions" (p. 17).

III. DISCUSSION: REVISITING DICHOTOMIES OF BELONGING

The literature reviewed in part 1 of this essay is marked by a tension between works that affirm the conventional citizen-member/immigrant-stranger dichotomy and those that implicitly or explicitly destabilize it. This disparity can be partially explained by different conceptualizations of citizenship. For example, the scholarship affirming the "conceptually clear [and] legally consequential" (Brubaker 1992, 21) distinctions between citizens and noncitizens is generally based on a conceptualization of citizenship as a formal status conferring a set of legal rights; in contrast, much of the literature that undermines the citizen/stranger binary invokes a broader conceptualization of *substantive* citizenship—that is, "citizenship-in-action"—and finds that the boundaries around it are not as "conceptually clear [and] legally consequential" as the nominal definition of citizenship would suggest, particularly as applied to women and people of color (Glenn 2002; Haney Lopez 1996; Volpp 2001).

But this brief look at immigration law and marginalization in Italy suggests that it is not as simple as that. First, in this context there is no sharp distinction between the law in the books and the law in action. Indeed, while citizenship law in Italy does draw clear boundaries between citizens and immigrants, the idiosyncrasies of immigration law—particularly its emphasis

on quotas for non-EU jobs and the temporary and contingent nature of legal residence—exacerbate immigrant marginality and undermine even those rights (for example, to rudimentary health care and access to housing) that immigration law formally grants them. The specifics of Italian immigration law thus contribute to the racialization of Third World immigrants as they shore up economic marginality and otherness in a process that, once set in motion, is recharged and amplified. Similarly, as Bredbenner, Glenn, Haney Lopez (1996) and others (Volpp 2001; Aleinikoff 1990) have shown, it was in part the formal restrictions of citizenship law in the United States in the nineteenth century that set the stage for the gendered and racialized de facto barriers to full membership in the twentieth.

Second, however, if the interplay of law and economics shores up the citizen/immigrant distinction in contemporary Italy, economic realities *undermine* that binary as well. Remember that not all foreigners are "strangers," and not all citizens are true members. While Bauman's cosmopolitans may pass unnoticed in the public spaces of most of the world's metropoles and have access to all the goods and services that comprise the accoutrements of neoliberal belonging, the poor of these same metropoles are confined to segregated neighborhoods where crime and police violence effectively "delegitimate [their] citizenship" (Caldeira 2000, p. 3). In other words, law is central to the construction of immigrants' economic marginality and difference at the same time that the logic of the economics of alterité means that they share this exclusion with many who have formal citizenship.

In this scenario, *citizen* may be a less accurate term than *consumer* to define those who belong. After all, as the new enclosure movements privatize public space and erect "cities of walls" (Caldeira 2000), shopping malls are the new (private) public space, and consumption the driving force of social interaction. Ironically, it is because of the nature of immigrants' participation in the marketplace—selling their discounted labor—that they cannot be full members of this community of consumption. So, it is not their legal distinction as noncitizens, nor the fact that they come from outside, that marks these immigrants. Instead, it is their lack of standing as unencumbered consumers in the global marketplace that defines their status—and that of many citizens—as perpetual strangers. Paralleling the way the principle of free trade and the reality of free-trade agreements in this period of globalization challenge the sovereignty of the nation-state and its right to make law, buying power—and the racial constructions implicated with it—may have replaced citizenship as the new currency of belonging.

Some of the literature touched on in this essay addresses the ways immigrants in contrast to citizens are excluded by law from full membership, an exclusion exacerbated by their often illegal status; some instead focuses on the de facto restrictions on membership for those with formal citizenship; still others emphasize the privilege of elites who travel the globe and reside virtually anywhere unimpeded by their nonmember legal status. What we have

seen in this brief foray into Italian immigration law in the context of globalization is that the common denominator in this messy reality may be found in the alchemy of law, economics, and racialization, which on one hand establishes (Third World) immigrant difference and, on the other ensures that immigrants are but "the prototypical figure" (Ambrosini 1996, 17) of marginality in this neoliberal era.

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