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# Is Incorporation of Unauthorized Immigrants Possible? Inclusion and Contingency for Nonstatus Migrants and Legal Immigrants

## Abstract

[Excerpt] What does inclusion for nonstatus migrants look like? How do we recognize and measure inclusion for this population? How might we model inclusion for nonstatus migrants? This essay addresses these questions, drawing primarily on empirical examples from the United States and Spain. Although Spain has become a country of immigration relatively recently, both countries have received large numbers of unauthorized immigrants, especially in the early part of the 2000s. These two countries also illustrate different means of inclusion for unauthorized migrants. During most of the 2000s opportunities for the “regularization” of unauthorized migrants have arguably been greater in Spain than in the United States. Yet in Spain the process has also been highly contingent, with a greater likelihood that regularized immigrants will fall out of status (Calavita 2005). The model of inclusion I develop here aims to capture such varied circumstances across national contexts.

## Keywords

immigration, unauthorized immigrants, incorporation, United States, Spain

## Disciplines

International and Comparative Labor Relations | Social Policy | Social Welfare

## Comments

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# Is Incorporation of Unauthorized Immigrants Possible?

## *Inclusion and Contingency for Nonstatus Migrants and Legal Immigrants*

Maria Lorena Cook

In 2010 there were approximately 11.2 million unauthorized immigrants in the United States. Of these, nearly 8 million adults were in the labor force (Passel and Cohn 2011). About 9.5 million people in the United States lived in mixed-status households that include unauthorized immigrants and US citizens (Preston 2011a). In Europe there were an estimated 2 million to 4 million “irregular” migrants in 2008 (Morehouse and Blomfield 2011). Worldwide, the number of unauthorized migrants has grown in recent years (IOM 2010).<sup>1</sup>

Clearly, nonstatus migrants are important by virtue of their sheer numbers.<sup>2</sup> Even where this population is proportionately small, unauthorized immigrants capture the attention of policy makers and the public. Immigration and border policies are crafted with these migrants in mind, and public debates in advanced liberal democracies have increasingly come to center on keeping such migrants out, eliminating incentives for migration, and creating harsh conditions for those without legal status.

Can we then talk about “incorporation” for nonstatus migrants, much less about their political incorporation? “Incorporation” has been traditionally employed in the immigration literature to mean integration in the host society, either as legal immigrants or naturalized citizens.<sup>3</sup> Incorporation suggests the

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<sup>1</sup> Precise data on the size of the unauthorized migrant population are unavailable, but estimates run from 10 to 15 percent of the total world migrant population of 214 million international migrants (IOM 2010, 29) to 15 to 20 percent of the total, about 30 to 40 million migrants (Papademetriou 2005a). In the United States the 1990s saw an average annual net increase of 350.0 unauthorized migrants, while between 2000 and 2006 the annual net increase was 515.0 (Jasso et al. 2008).

<sup>2</sup> For variation, I use the term *nonstatus* interchangeably with *unauthorized* to refer to those without legal immigration status, regardless of how they arrived at that point (via authorized or unauthorized entry) or of the temporariness or permanence of their condition. I also use *migrant* and *immigrant* interchangeably throughout. See Nyers (2010) and De Genova (2002) for extended discussion of the terms used to describe immigrants without legal status and of the political choices these terms imply.

<sup>3</sup> Nonetheless, some scholars have begun to look at how nonstatus immigrants experience “bureaucratic incorporation” through schools, courts, social welfare agencies, medical services, and law

existence of stable and sustainable processes for immigrant involvement or engagement. Yet because of their deportability, nonstatus migrants are unlikely to experience the enduring state that incorporation implies (De Genova 2002).<sup>4</sup> Incorporation also suggests a top-down, officially directed process of recognition, where “someone” is doing the incorporating. However, such processes are likely to be limited given immigrants lack of lawful status. Moreover, top-down processes of incorporation overlook the ways in which other social actors such as unions, churches, soccer leagues, and migrants *themselves* constitute forms of belonging that can become political or have political consequences.

For these reasons, I will refer here to immigrant “inclusion.” I use inclusion to identify the multiple yet limited ways in which unauthorized migrants are recognized in law and practice. Unauthorized migrants’ *presence* rather than status is the basis for this inclusion. As Bosniak (2000,975) notes, “... at the same time that aliens are outsiders to national citizenship, they are also residents and participants in the national society. As workers, taxpayers, consumers, neighbors, they are persons who constitute part of the life of the ... political community.” Inclusion in this sense is migrant centered; it takes migrants where they live and work and maps their interactions with institutions, policies, and practices. It asks how and where migrants belong and how they can potentially use this belonging to achieve other ends. For instance, inclusion in other arenas— work, school, community—can provide individuals, families, and groups with resources that may then be leveraged into other, possibly more stable, forms of inclusion. In many countries nonstatus immigrants may pursue paths to legalization, which can lead in turn to more conventional forms of political incorporation, including those afforded by citizenship (Papademetriou 2005b). If we want to understand how nonstatus migrants experience “political incorporation,” or even how they shape the experience for others, such as legal immigrant and citizen family members, then our focus needs to consider these and other modes of inclusion.

Scholars who explore the lives of unauthorized immigrants also tend to emphasize their inherent vulnerability, using such terms as *clandestinity*,

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enforcement, among other institutions (Marrow 2009).

<sup>4</sup> Even here we cannot assume that naturalized citizens have achieved inclusion in every dimension we might identify as important to citizenship. Consider the cases of immigrants who have succeeded by conventional measures (e.g., career, wealth) yet have never learned to communicate in English (Semple 2011).

*invisibility, liminality, and deportability* to describe their conditions (Coutin 2005; Menjivar 2006; De Genova 2002). Nonstatus immigrants are uniquely vulnerable because they are subject to arrest and deportation at any moment, leading to their physical exclusion from the nation (Nyers 2010; De Genova 2002). The centrality of *exclusion* to immigrant lives makes the concepts of inclusion/exclusion especially appropriate ones to use. Any discussion of nonstatus immigrant inclusion would need to account for the contingency of this inclusion.

At the same time, it is important to acknowledge the contingency of status for legal immigrants (Ngai 2003). Many legal immigrants have been unauthorized at some point.<sup>5</sup> Legal immigrants may also fall out of legal status because of immigration laws and bureaucratic requirements (Jasso et al. 2008; Menjivar 2006).<sup>6</sup> This case is clearest where immigrants enter a country legally, under either a temporary worker program or a student or tourist visa, and then overstay or otherwise violate the terms of their authorized stay (e.g., by working). Yet in the United States even legal permanent residents may be subject to deportation for relatively minor offenses, due to 1996 legislation that broadened the grounds for deportation.<sup>7</sup> In Spain, too, the laws make legal status possible, yet they also make it temporary and contingent, thus ensuring the “economic vulnerability of hundreds of thousands of immigrants, both illegal and legal” (Calavita 2005, 100). The large number of mixed-status households in the United States also suggests that the exclusions and inclusions that unauthorized members of the household experience are likely to have an impact on the rest of the group, whether they are legal immigrants or citizens (Sudrez-Orozco et al. 2011).

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<sup>5</sup> The 1986 Immigration Reform and Control Act (IRCA) legalized approximately 2.7 million previously unauthorized migrants (out of a total 3 million applicants) who met IRCA’s residency and employment requirements. IRCA legal permanent residents (LPRs) represented 40 percent of all immigrants in 1989-1991; by 2001 one third of IRCA LPRs had naturalized as citizens (Rytina 2002). Thirty-two percent of new immigrant adults who became LPRs in fiscal year 1996 through non-IRCA avenues (e.g., spouse, relative, or employer sponsorship) had previous illegal experience (Jasso et al. 2008, 840).

<sup>6</sup> In the United States, citizens of some countries have qualified for TPS or Temporary Protected Status, which allows immigrants to work and reside in the United States without access to social services for defined periods of time. TPS immigrants are sometimes able to renew permits, but nonrenewal or denial means that immigrants fall back into nonlegality. Menjivar (2006) calls this state “liminal legality,” a form of permanent temporariness that falls between documented and undocumented status.

<sup>7</sup> In 1996 the Antiterrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) expanded the definition of aggravated felony for immigration purposes. Before 1996 legal immigrants with criminal convictions could request waivers based on past behavior and connections to the community, but the 1996 laws eliminated this option, made detention and deportation mandatory, and applied the policy retroactively to pre-1996 convictions.

In these ways, the sharp distinctions that are drawn between legal and illegal immigrants for policy and discursive purposes are often belied in practice. This suggests that contingency needs to be built into any model of immigrant incorporation, regardless of whether or not immigrants have legal status. This contingency and vulnerability of immigrant populations also argues for separate treatment of immigrants in studies of political incorporation rather than for their automatic inclusion in studies of racial and ethnic politics, which address native-born ethnic and racial minorities.

What does inclusion for nonstatus migrants look like? How do we recognize and measure inclusion for this population? How might we model inclusion for nonstatus migrants? This essay addresses these questions, drawing primarily on empirical examples from the United States and Spain. Although Spain has become a country of immigration relatively recently, both countries have received large numbers of unauthorized immigrants, especially in the early part of the 2000s.<sup>8</sup> These two countries also illustrate different means of inclusion for unauthorized migrants. During most of the 2000s opportunities for the “regularization” of unauthorized migrants have arguably been greater in Spain than in the United States.<sup>9</sup> Yet in Spain the process has also been highly contingent, with a greater likelihood that regularized immigrants will fall out of status (Calavita 2005). The model of inclusion I develop here aims to capture such varied circumstances across national contexts.

### **Inclusion of Nonstatus Migrants: Recognition, Security, and Contingency**

This model identifies laws, policies, practices, and institutions that provide avenues for inclusion in the case of nonstatus migrants. It also highlights the contingency of inclusion for both nonstatus and legal immigrants. By inclusion I mean an individual or group’s engagement with processes or organizations that *recognize* the individual or group either by conferring membership or by

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<sup>8</sup> Immigration to Spain has dropped sharply since the economic recession that began in 2007. The United States has seen a similar drop in apprehensions of unauthorized border crossers during the same period and a decline in the overall unauthorized population (Passel and Cohn 2011; Passel, Cohn, and Gonzalez-Barrera 2012).

<sup>9</sup> Several countries have used legalization programs to address large stocks of unauthorized immigrants. Spain has had six special regularization programs since 1985. The last one, in 2005, legalized 750,000 immigrants (Arango and Jachimowicz 2005).

providing resources such as entitlements or protections. Although access to some resources maybe officially authorized (e.g., public education), authorization or legal status is not required for social membership or for the acquisition of “informal rights” (Carens 2009; Sassen 1999).

Inclusion provides a sense of security stability and predictability understood primarily as an ability to plan for the future. In this model I present the possibility that nonstatus migrants may experience *degrees* of inclusion or *relative* states of security. The model allows for viewing inclusion along a continuum. In this way nonstatus migrants toward the middle of the continuum may enjoy a level of inclusion similar to (or even greater than) those of legal-status migrants near that same midpoint.<sup>10</sup> For instance, one could argue that an unauthorized immigrant in the United States with his or her own home, a good job, and an extended family network and who is a long-time resident of a community finds himself or herself more included than a legal immigrant on a temporary work visa who is unable to switch employers and is subjected to abuse and isolation.<sup>11</sup>

Thus, under certain circumstances nonstatus migrants may experience a strong degree of inclusion, whereas legal immigrants’ security and stability is far more contingent and unstable than typically assumed. Legal immigrant status may be contingent upon laws, enforcement, temporality (whether legal status is temporary or “permanent”), and naturalization requirements. Depending on these contingencies, legal immigrants may move toward acquiring citizenship, remain mired in the immigration bureaucracy, or lose status and face exclusion via deportation and prohibition against reentry. In other words, legal immigrant status is always conditional, and hence inherently insecure. While citizenship provides the most security, in the sense that US citizens are presumably not deportable, in fact citizenship security is not absolute. Not only have US citizens been subjected to unlawful detention and deportation (Stevens 2011; Preston 2011c), but also the existence of mixed-status households means that citizens can suffer extreme insecurity because of the immigration status of family members.<sup>12</sup>

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<sup>10</sup> It is also possible, however, that more inclusion increases *insecurity* by raising the stakes in the event of deportation. It can also contribute to a heightened sense of injustice as migrants’ contributions go unrecognized. I thank Noelle Brigden for these observations.

<sup>11</sup> See, for example, Donato, Stainback, and Bankston (2005) regarding differences in the reception and economic and social incorporation of two groups of Mexican immigrant workers, one formally contracted through temporary worker visas and the other undocumented.

<sup>12</sup> An estimated 5.5 million children in the United States have at least one undocumented parent;

Inclusion matters, and more inclusion matters more, not just for immigrants but also for the host society. Several examples point to the value that society places on inclusion of nonstatus migrants. Evidence of work, community service, tax contributions, and “good behavior” while one is unauthorized can make an immigrant eligible for legalization programs. In the United States, the Development, Relief, and Education for Alien Minors Act (DREAM Act) would provide a pathway to legalization for young immigrants who have completed high school, obeyed the law, and committed to a further period of higher education, community service, or military service (Batalova and McHugh 2010).<sup>13</sup> Both liberal political philosopher Joseph Carens (2009) and Republican Party presidential hopeful Newt Gingrich would regard the length of time an immigrant has spent in the country as a proxy for his or her contributions, commitment, and identification with the nation.<sup>14</sup> In other words, this construction of “deservingness,” part of any program that grants legal status to immigrants, assumes that immigrants have already been “proving themselves” by acting in effect as citizens—leading “normal” productive lives within the limitations of their immigration status. The more included they are as nonstatus immigrants, the greater their desirability as members of the polity.

The potential for inclusion of nonstatus immigrants is recognized perhaps most clearly by immigration restrictionists, who in recent years have (often successfully) lobbied for laws that penalize employers for hiring nonstatus workers, punish landlords who rent to the unauthorized, demand stricter identification requirements for voters, forbid drivers’ licenses for nonstatus migrants, and require the registration of immigrants who attend K-12 public schools. This last provision, part of the punitive Alabama state immigration law of 2011, was linked to a wider campaign to force the Supreme Court to overturn *Plyler v. Doe*, the 1982 decision that protects childrens access to education regardless of immigration status (Robertson 2011).<sup>15</sup> These examples indicate

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4.5 million of these children are US citizens (Suarez-Orozco et al. 2011).

<sup>13</sup> In 2012 the Obama administration initiated the Deferred Action for Childhood Arrivals program, which would allow eligible young unauthorized immigrants the opportunity to apply for a two-year administrative relief from deportation and a work permit. Yet, unlike the DREAM Act, the program would not provide a path to legal permanent resident status or US citizenship.

<sup>14</sup> During the Republican presidential candidate debates in November 2011, Gingrich said, “If you’ve been here 25 years and you got three kids and two grandkids, you’ve been paying taxes and obeying the law, you belong to a local church, I don’t think we’re going to separate you from your family, uproot you forcefully and kick you out” (Navarrette 2011).

<sup>15</sup> In August 2012, the US Court of Appeals for the 11th Circuit struck down the school registration



the existence of a broader effort to expand immigrant insecurity to such a point that immigrants will exclude themselves, or “self-deport” (Fahrenthold 2012). Finally, the campaign to end birthright citizenship arguably represents the most extreme reaction to one of the nations most inclusive provisions—the 14th Amendment of the US Constitution, granting citizenship to all persons born in the United States (Preston 2011b).

The expansion of border and interior immigration enforcement by the federal government, as well as the increase in restrictive state and local initiatives, means that enforcement increasingly intervenes in everyday life spaces, both public and private, whether one lacks or possesses legal status (Varsanyi 2010). Enforcement of immigration restrictions increases the insecurity of immigrants. Legal restrictions can prevent nonstatus immigrants from renting a house, seeking medical help, or receiving social services. In the US workplace, immigration enforcement has taken the form of worksite raids, the use of E-Verify to check status, and Social Security Administration no-match letters.<sup>16</sup> Laws that prevent nonstatus immigrants from obtaining drivers’ licenses or allow police officers to check immigration status increase immigrants’ vulnerability to arrest, detention, and deportation.<sup>17</sup> Everyday activities like going to work, shopping, riding the bus, or driving a car can place someone on a path to expulsion (De Genova 2002). Under its National Fugitive Operations Program, US Immigration and Customs Enforcement (ICE) began in 2003 to round up “criminal” and “fugitive aliens.”<sup>18</sup> Many “nonfugitive” immigrants were also apprehended—at home, in parking lots, at train and bus stations, and at traffic stops (Mendelson, Strom, and Wishnie 2009).<sup>19</sup>

Any encounter with the immigration bureaucracy likewise carries some

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provision, as well as other provisions of the Alabama law (Robertson and Preston 2012).

<sup>16</sup>E-Verify is a federal government Internet-based system that allows employers to check the employment eligibility of their workers by comparing information from the employee’s 1-9 Form with data from the US Department of Homeland Security and the Social Security Administration (SSA). SSA no-match letters are sent to employers when the names or Social Security numbers on an employer’s W-2 Form do not match the SSA’s records (Griffith 2011; Knapp 2011; NILC 2011).

<sup>17</sup>ICE deported a record 396,906 aliens in fiscal year 2011 (Dinan2011). Deportations more than quadrupled between 1996 and 2007 and have increased annually since 2007 (Coutin 2010, 356-357; Hsu and Aizenman 2010).

<sup>18</sup>These were individuals whose actions ranged from homicide and armed robbery to failure to obey a deportation order. The National Fugitive Operations Budget increased 23 -fold between fiscal year 2003 and 2008, from \$9 million to \$218 million (Mendelson, Strom, and Wishnie 2009, 1).

<sup>19</sup>In fiscal year 2011, 83.4 percent of those in deportation proceedings were charged only with immigration violations and were not associated with past criminal activity (TRAC 2011).

level of risk in that failure to meet requirements may lead to deportation.<sup>20</sup> An immigrant's efforts to adjust his or her status can meet with rejection, subjecting him or her to arrest. Green card interviews can go bad, asylum cases can be denied, or a sponsorship process can be interrupted. Encounters with the criminal justice system are more likely to lead to deportation. Arrests, misdemeanors, crimes of "moral turpitude," or instances of "bad moral character" can prevent a nonstatus immigrant from eventually regularizing his or her status and can place legal immigrants on a path to deportation. Legal permanent residents may find themselves yanked out of lives they once thought were established and secure, with little regard for their length of residence in the country, their familial responsibilities and connections, or their contributions to society. In the United States, federal programs such as Secure Communities and 287(g), or state laws that require police officers to check immigration status, enhance the chances that immigrants will encounter this risk.<sup>21</sup>

The inclusion experienced by nonstatus migrants and many legal immigrants is always subject to dissolution, especially as the immigration policing and enforcement environment turns more restrictive and pervasive. This potential for exclusion that nonstatus migrants and some legal immigrants face forces us to qualify a conventional understanding of inclusion as the polar opposite of exclusion. Inclusion in this context must always be relative and partial.

## Explanation of the Model

The model considers various possible avenues of inclusion that nonstatus migrants (and legal immigrants) will likely encounter at some point during their

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<sup>20</sup> For example, in 2007 Mr. Hiu Lui Ng, a computer engineer with a job in the Empire State Building, a house in Queens, a US-citizen wife, and two US-born sons, went to immigration headquarters for his final interview for a green card. Mr. Ng was arrested on the basis of an old deportation order issued when a notice ordering him to appear in immigration court was sent to the wrong address, causing him to miss his court date. He was sent to immigration detention and moved around to different jails and detention centers until his death from a cancer that went undiagnosed despite his complaints of pain. Mr. Ng had been brought to the United States as a minor and had spent more than half his life in the United States (Bernstein 2008).

<sup>21</sup> Under Section 287(g) of the Immigration and Nationality Act, state and local law enforcement received delegated authority from ICE for immigration enforcement within their jurisdictions. Under Secure Communities, ICE checks fingerprint data from individuals booked into jails against its immigration database. The US Supreme Court also upheld the provision in Arizona's immigration law (SB1070) that required police to check the immigration status of those people it detained and suspected to be in the country illegally (Barnes 2012).

time in the host country. I focus on three main “institutional domains”: work, welfare,<sup>22</sup> and politics (see later). Migrant access to labor markets or welfare-state structures may precede and further aid the achievement of *political* inclusion, as when rights claims are based on economic contributions or residency. But the intent here is to highlight the disarticulated nature of inclusion, so that even immigrants who are politically included (e.g., local voting rights) may face exclusion in other arenas, whereas migrants whose work and welfare rights are recognized may lack political inclusion. In other words, political inclusion is *not* the endpoint in a linear progression among forms of inclusion.

The framework developed here assumes that there are difficulties inherent in drawing sharp distinctions between immigrants with and without legal status, making consideration of the unauthorized in discussions of immigrant inclusion all the more important. It also acknowledges the availability of legal and extralegal forms of inclusion for those without legal status and recognizes the extent to which disincorporation and exclusion define experiences for both legal immigrants and nonstatus migrants.

This model allows us to construct an additive index of security/inclusion across several dimensions that maybe but are not necessarily linked together, and which could be flexibly applied to both nonstatus and legal immigrants. It would also allow us to measure changes in inclusion over time and across legal and institutional structures at national and subnational levels. For instance, we could evaluate the extent to which avenues for inclusion are more numerous in Arizona, California, Alabama, or upstate New York. We could, in effect, assess the “inclusiveness” of laws, policies, and institutions at local, regional, and national levels. We could also discern how restrictive laws and policies that foreclose avenues for inclusion increase migrants’ insecurity and exclusion.

The model also highlights the contingency of inclusion processes by pointing out where and how enforcement of immigration law might produce insecurity and exclusion. Finally, it builds in some sense of the *process* by which inclusion occurs to show that higher levels of inclusion can also be the result of associational activity and actions undertaken by migrants and their allies.

The left side of Figure 2.1 represents those institutional domains where

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<sup>22</sup> I use “welfare” in a broad sense to refer to such services as public education, housing, health and social services, and legal aid and immigrant integration programs. I expand on this later.

nonstatus migrants may acquire resources, including social membership and social capital. These form the basis for various states of inclusion and may provide pathways toward acquisition of greater inclusion or security. The center of the figure represents the domain of immigration laws that can enable or foreclose access to legal status arising from previous states of inclusion in the institutional domains on the left. The right side of the figure depicts temporary or conditional legal statuses that nonstatus migrants may acquire or that legal immigrants possess by virtue of their authorized entry. The far right side of that column is citizenship, which represents one end of the continuum of inclusion, stability, and security.

On the bottom of the figure, immigration enforcement is a variable that can interrupt the process or state of inclusion at any point, highlighting the contingency of inclusion for both nonstatus and legal immigrants. The arrow along the top of the figure indicates this possible movement from temporary

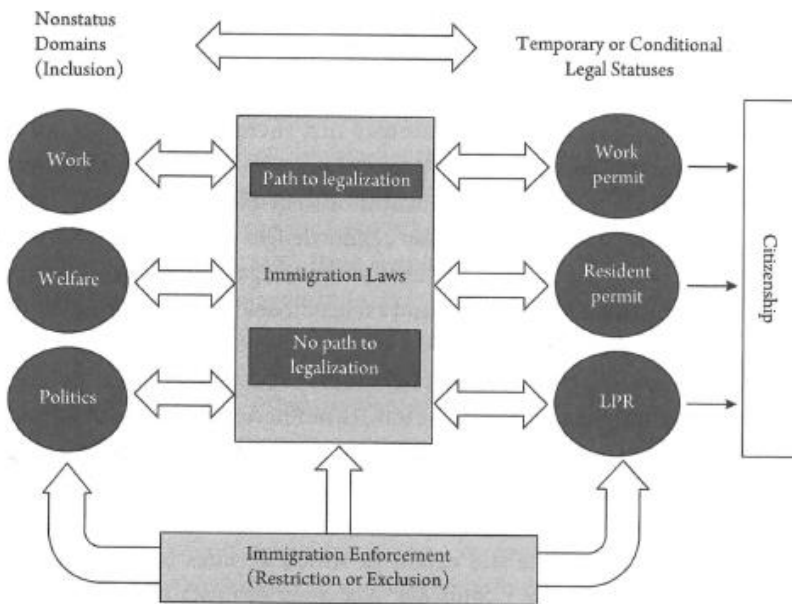


Figure 2.1 Contingent Processes of Inclusion for Nonstatus and Legal Immigrants

or conditional legal immigration status back to nonstatus. The two-way arrows on the left, right, and top of the graph also show the potential movement toward legal status and the possible return to nonstatus. Again, this indicates that short of citizenship, legal immigrant status is always conditional, and

hence inherently insecure.

### **Inclusion through Institutional Domains: Work, Welfare, and Politics**

Nonstatus migrants can potentially find means of inclusion in the institutional and policy domains of work, welfare, and politics. These domains encompass the major activities in which migrants engage: labor, social reproduction, and community. Within each of these domains are laws, policies, institutions, and opportunities for association or membership that can provide some means of inclusion for nonstatus immigrants in addition to the possibility of acquiring greater levels of inclusion. Here migrants may acquire resources—material, symbolic, associational—that can be used to press for further inclusion.

Each of the domains—work, welfare, and politics—may also offer the possibility of acquiring legal status. In this case the key question is the extent to which each of the domains provides a basis within immigration law for regularizing status. Immigration laws can either provide or prohibit a path to legalization. In cases where a path is provided by law, activity or membership in a particular domain may lead to legal status. For example, the terms of a temporary work permit may offer a path to legalization, or proof of residency (welfare domain) combined with other requirements may enable someone to adjust his or her status under a regularization program. In Spain, for instance, unauthorized migrants already in the country could adjust their status via a process of *arraigo social*, literally “social rootedness,” based on a minimum period of residency, a work contract, no criminal record, and family ties in the host country.<sup>23</sup> This does not mean, however, that individuals *necessarily* move toward legalization or citizenship if a pathway exists. Indeed, the experience of inclusion without legal status can mean that migrants may prefer to remain where they are rather than undertake the risks and costs of pursuing legalization.

These domains might also be viewed as spaces where migrants may attain and exercise rights *independent* of immigration status *because there is a public interest in ensuring access to these rights for all individuals in the domain*. In

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<sup>23</sup>Migrants could also regularize their status via a process of *arraigo laboral*, proving that they had spent one out of two years illegally in the country working. The number of those who had regularized their status via one of these two *arraigo* methods went from 7,427 in 2006 to 82,300 in 2009. After the start of the economic crisis, the number declined to 65,676 in 2010 and 70,684 through June 2011 (Rodríguez-Pena and Pérez de Pablos 2011). The Popular Party, elected in November 2011, pledged to put an end to this means of regularization.

the United States, the employment relationship is one such place where workplace protections and antidiscrimination laws apply to employees regardless of immigration status (Lyon 2008). The logic of such inclusion is that US citizens and legal immigrants might suffer if unauthorized employees are treated differently (Motomura 2010,1753). Put another way, some scholars have referred to the possibility of acquiring “informal rights” or “alien citizenship” in the absence of formal citizenship (Sassen 1999; Bosniak 2000). This idea is present in this notion of inclusion.

What follows is an effort to operationalize inclusion by detailing the ways in which legal and institutional contexts, membership, and actions associated with the domains of work, welfare, and politics constitute forms of inclusion.

*Work:* The work domain includes labor laws, enforcement agencies, courts, and worker-based organizations such as trade unions and worker centers. This domain is one of the most important for nonstatus migrants because many migrate precisely to seek employment. In the United States, this domain is where the existence of rights and protections for *all* individuals emerges most clearly in that employment laws extend workplace protections to immigrants qua workers.<sup>24</sup> Work may also provide the grounds for seeking legal status, as in the case of employer-sponsored green cards or work permits that then allow employees to apply for other markers of legal status or even citizenship.

Labor laws, particularly if they are status blind, can offer a means of inclusion, especially in unionized environments or where worker centers or other community-support systems are in place.<sup>25</sup> Similarly, the more rigorous the enforcement of labor protections and the greater the separation between immigration and labor law enforcement are, the better the prospects for nonstatus immigrants to experience the worksite as a source of rights, social inclusion, and membership.

Whether courts uphold status-blind labor rights is critical to ensure that these protections are enforced in the case of nonstatus immigrants. In the United States, recent court decisions have injected immigration considerations into labor matters to the detriment of immigrant workers (Griffith 2011; Nunez 2010). The best example of this is the US Supreme Court’s 2002 decision in the case of *Hoffman Plastic Compounds v. National Labor Relations Board*, in which

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<sup>24</sup> Nonetheless, courts in the United States have limited nonstatus immigrants’ access to remedies for employment law violations (see Nunez 2010).

<sup>25</sup> In the United States laws covering the workplace include the National Labor Relations Act (NLRA), the Fair Labor Standards Act (FLSA), Title VII of the Civil Rights Act of 1964 regarding employment discrimination, and state workers’ compensation and employment laws (Nunez 2010; Griffith 2011).

the Court determined that workers' undocumented immigration status precluded them from receiving back pay as a remedy in cases of violations of their right to engage in union activity or in cases of workplace discrimination. One argument of the majority of justices was that lending full protection to undocumented workers would encourage illegal immigration (Lyon 2008, 29).

Another consideration is whether international law serves to guide domestic courts and aid advocates in protecting workers from immigration enforcement. For example, Spanish judges have rendered a series of workplace decisions affecting immigrant workers that are based on International Labour Organization (ILO) conventions (Lopez 2007). In the United States, immigrant workers' advocacy organizations have used international courts and law to stake claims to rights, even though the outcomes of these efforts do not impinge upon legal decisions in the United States (Lyon 2008).

Unions and worker centers can provide a powerful mechanism for inclusion of nonstatus immigrant workers, offering protection, potential allies, and a means to lobby politically for expanded rights in the labor and immigration arenas. In both the United States and Spain, unions have actively organized immigrants. In the Spanish case, unions have done so despite a legal prohibition against nonstatus immigrants joining unions, which unions successfully challenged in Spanish courts as unconstitutional (Watts 2002). In 2000 the AFL-CIO adopted a policy of support for immigrant workers and since then has emerged as a strong advocate for immigration reform that includes legalization (Milkman 2011). In the United States worker centers have also emerged as important institutions that defend the rights of immigrant (and many nonstatus) workers in nonunion settings, especially in the informal economy (J. Gordon 2005; Fine 2006).

Finally, the domain of work can provide a pathway to legal status in several ways. Employers may sponsor their employees for a work permit or green card, leading to either short-term or permanent legal status. Workers may be authorized to enter a country through special visas for temporary work, after which workers are typically expected to return to their country of origin.<sup>26</sup> Among the most contentious debates surrounding immigration reform in the United

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<sup>26</sup>The H-2A and H-2B programs permit US employers to bring temporary foreign workers into the United States for seasonal agricultural work (in the case of H-2A) or for nonagricultural work (H-2B). Employers must certify that US workers are not available to perform the work before they may hire a temporary foreign worker under these programs.

States is whether temporary work programs should provide a path to citizenship. In Spain possession of a work permit could satisfy one of the requirements for legalization (Calavita 2005).

*Welfare:* The welfare domain includes such areas as education, housing, health services, social services, and others specifically aimed at legal immigrants and nonstatus migrants, such as legal aid and integration services. The extent to which immigrants are granted rights, membership, and social capital in this domain may constitute a form of inclusion despite immigration status. Conversely, the inability to access key resources in this domain can produce greater levels of insecurity and may ultimately lead to exclusion.

Similar to the work domain discussed earlier, inclusion through welfare may provide the grounds for legalized status in some countries and under certain circumstances. For example, in Spain proof of residency for at least a three-year period in combination with a one-year work contract enables an unauthorized migrant to apply to adjust his or her status (Calavita 2005). In the United States under the 1986 Immigration Reform and Control Act (IRCA), candidates for legalization had to show entry into the United States prior to January 1, 1982, and continuous residence thereafter “in an unlawful status.” Similarly, laws may specify use or nonuse of services as part of eligibility requirements for legalization. This is the case with the DREAM Act, proposed legislation that targets nonstatus immigrant children who were brought to the United States as minors, in which graduation from a US high school or GED<sup>27</sup> and continuous residence in the United States for five years prior to the bills enactment would be among the prerequisites for eligibility to apply for legal status (conditional nonimmigrant status).<sup>28</sup> Immigrants would have to meet further higher education or military service requirements to qualify for legal permanent residency under the DREAM Act.

Access to free public education is a critical dimension of immigrant inclusion. In *Plyler v. Doe*, the US Supreme Court found that nonstatus immigrant children could not be denied access to K-12 education. Nonstatus youth who

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<sup>27</sup> Adults who do not have a high school diploma may take the GED or General Educational Development test to obtain a high school equivalency certificate.

<sup>28</sup> These requirements reflect the version of the DREAM Act introduced in 2010 in the 111th Congress, S. 3992. Eligibility for Deferred Action for Childhood Arrivals in 2012 was similar: it required arrival prior to one’s 16th birthday; five years of continuous residence in the United States; attendance in school, graduation from high school, a GED certificate, or an honorable discharge from the US Armed Forces or Coast Guard; and no felony or significant misdemeanor convictions or conviction on three other misdemeanors, among other requirements (USCIS 2012).



attend public primary and secondary schools in the United States may evade most obstacles related to status until they apply to college or seek employment; such is the protection afforded by access to education (Gonzales 2011). Some states in the United States now stipulate that students who have resided in and attended high schools in the state for a designated period of time are eligible for in-state college tuition, potentially increasing access to postsecondary education by lowering its costs. Most other countries similarly provide compulsory primary and secondary education for those residing within their borders. Without a path to legalized status, however, nonstatus students who finish their education are unable to use it as a basis from which to move toward more secure immigration status or citizenship.

Not only does access to housing confer security, but also, as the basis for residency, it can lead to access to other services, such as health and education, and thus to higher levels of inclusion. In Spain all residents, including immigrants, are legally required to register in the municipality where they reside. The registration, or *padron*, gives unauthorized immigrants access to many services and benefits available to citizens, including access to health care, free legal counsel in some cases, and proof of stay in Spain, which can be used to qualify for legalization programs (Duran Ruiz 2003, 25).<sup>29</sup> The ombudsman (*.Defensor del Pueblo*) of Andalucia, Spain, considered it his role to defend all residents of the autonomous region regardless of immigration status. Among other things, this meant that nonstatus immigrants were included in public housing lotteries.<sup>30</sup> On the other extreme, multiple local initiatives in the United States have aimed to restrict private housing markets to citizens and legal immigrants, although not all of these initiatives have survived legal challenges (Motomura 2010).

Access to regular (nonemergency) health services and entitlement to health care can also provide a measure of security and inclusion. In Andalucia, Spain, possession of a health card, which is extended to all residents regardless of immigration status, signals inclusion as a member of the community with a

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<sup>29</sup> In April 2012 the Spanish government issued a decree amending the Law on Foreigners and denying access to health care services for undocumented migrants. Faced with strong criticism from medical professionals, nongovernmental organizations, and regional governments, the government amended the provision to enable access provided unauthorized migrants paid a fee. Many medical professionals and regional governments pledged to continue to provide free public services to migrants regardless of status after the new law took effect on September 1, 2012 (PICUM 2012).

<sup>30</sup> Author interview with Jose Chamizo, Ombudsman for the Andalusian People, Seville, Spain, October 19, 2006.

right to health care.<sup>31</sup> In contrast, in the United States many immigrants must go to hospital emergency rooms for health care. Under President Obama's health care reform initiative, one debate revolved around whether unauthorized immigrants would have access to the public exchange portion of health insurance. In the Affordable Health Care Act of 2010, the controversy was ultimately resolved in favor of nonstatus immigrants' exclusion.<sup>32</sup>

Access to social services such as unemployment, aid to children, disability, social security, and so forth contributes to an individual and household's sense of security. Since many of these services are primarily destined to families with children or elderly, disabled, and sick members, they also recognize immigrants as members of families and households and not just as individualized workers, which is arguably an important element of inclusion. Laws and regulations that consider employment, residency, and contribution (e.g., taxes) rather than immigration status as grounds for entitlement to these programs clearly provide more inclusive settings for immigrants. Limited access to social services can affect citizens as well insofar as citizen children may be harmed by immigrant parents' restricted access or fear of claiming services to which children are entitled. In the United States welfare reform laws passed in 1996 greatly restricted even legal immigrant access to most public benefits.<sup>33</sup>

The existence of immigrant integration services signals the value placed on immigrant incorporation. While federal, state, and local governments may provide such services, many of these may be undertaken by private nonprofit organizations, some with public funding. In Spain the network of publicly funded service providers is vast, and many of these have tried to provide services to nonstatus as well as legal migrants, despite overt prohibitions in the law. Also in this category are immigrant-friendly policies aimed at greater inclusion that have emerged in several US cities, such as municipal initiatives to grant ID cards to all residents or Sanctuary-city policies in which municipal officials pledge not to collaborate with federal immigration authorities in the

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<sup>31</sup> Author interview with Carmen Zamora, *Medicos del Mundo* (Doctors of the World), Seville, Spain, November 30, 2006. The regional government of Andalusia stated that it would maintain this health care system and provide free health care to unauthorized migrants despite the new law that restricts access to public health services (De Benito 2012).

<sup>32</sup> Immigrants eligible for Deferred Action for Childhood Arrivals (DACA) would also be restricted from access to affordable health insurance options available under the health care act (NILC 2012).

<sup>33</sup> The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 restricts welfare access for legal immigrants.

arrest of nonstatus immigrants (Mitnik and Halpern-Finnerty 2010).

*Politics:* The politics domain refers to institutions, policies, and laws that provide immigrants with the means to act politically, either directly or through representation. Included here are constitutional and civil rights, voting rights, and representation on policy-making bodies (local or national). However, the model also acknowledges that protest (e.g., building occupations, marches, and hunger strikes) itself can constitute political activity, shape policy, or effect political change. Finally, the politics domain can provide nonstatus immigrants with a source of inclusion, especially in the case of membership in associations such as unions, hometown associations, or religious communities that in turn engage in political activity. Protest and political activity can obtain further security, rights, or even legal status.

The extent to which constitutional and civil rights extend to all individuals residing within a nation's boundaries is an important marker of the potential for greater inclusion of immigrants. These rights can include rights of assembly and speech, freedom from discrimination, equal protection, and due process and provide procedural protections, as well as constitute grounds for defense against basic rights violations (Cole 2006; Bosniak 2000, 979).<sup>34</sup> Although voting rights are often exclusively associated with citizenship, in a growing number of instances worldwide noncitizens are entitled to vote where they reside.<sup>35</sup> Voting rights for nonstatus immigrants, that is, purely on the basis of residence, are not as widespread but also exist. For example, some cities in the United States (e.g., Takoma Park, Maryland) permit resident nonstatus migrants to vote in local elections. In Spain immigrant advocacy groups continue to campaign for municipal voting rights for non-EU immigrants based on residence (Andalucfa Acoge, n.d.). Transnational or binational membership can also be leveraged into demands for rights and recognition, as in the granting of consular identification cards or the organization and implementation of extraterritorial voting in the host country (Fox 2006).

Immigrant representatives may be directly incorporated into state-sanctioned organizations, boards, or councils to provide input for policy making. This can be at the national level, as with the Forum for Immigrant Social

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<sup>34</sup> But see Motomura (2010) on the limited effectiveness of equal protection arguments in combating restrictive immigration legislation. In these cases he suggests that preemption arguments may be more successful in striking down state and local laws (pp. 1742-1743).

<sup>35</sup> See the site of the Immigrant Voting Project at [http://immigrantvoting.org/ivp/index.php?option=com\\_content&task=section&id=7&Itemid=32](http://immigrantvoting.org/ivp/index.php?option=com_content&task=section&id=7&Itemid=32).

Integration in Spain, or at the local level, as in school boards in the United States. Nonstatus immigrants may either participate directly or have their interests represented by immigrants with legal status or even by citizen co-ethnics.

Immigrant participation in a range of organizations and social communities such as unions, churches, hometown associations, community groups, soccer leagues, nongovernmental organizations, and so forth can provide an important means of inclusion. Membership in such groups can also build social capital and provide resources for political activity such as mobilizations, demands for representation and policy change, and so forth. In parts of South Florida, participation in the 2006 immigrant rights marches sprang from prior organization in soccer leagues, whereas unions and churches were important in getting people to march in Los Angeles (Zepeda-Millan 2011; Milkman 2006).

Finally, collective mobilization and protest—marches, occupations, strikes, hunger strikes, and the like—may constitute political actions that can lead to changes in policy and even to legalization. Immigrants may mobilize as part of broader, citizen-based coalitions, or they can focus on specific threats to immigrants such as detention and deportation (Nyers 2010). Even absent policy outcomes, collective action and individual cases of protest can expand issue visibility and increase protestors' resources and networks. Examples of the broad range of immigrant political actions include the 2006 immigrant rights marches in the United States (Bada, Fox, and Selee 2006); Elvira Arellano's resistance to deportation, which helped spawn the New Sanctuary movement (Barron 2007); young immigrants' (DREAMers) willingness to "come out" as undocumented (Preston 2009); church and university occupations in Spain and France that ended with occupiers receiving "papers" to regularize their status (Suarez-Navaz, Pareja, and Garcia 2007; Hayter 2004); and even incidents of self-harm and suicides in Australian detention centers that call attention to the plight of asylum-seeker detainees (M. Gordon 2011).

## Conclusion

I have argued that inclusion is a preferable concept to incorporation when discussing unauthorized immigrants. The model outlined here guides researchers to look at the domains of work, welfare, and politics in assessing where migrants might find inclusion and how they might use domain resources to pursue more of it. At the same time, the immigration policy and legal

enforcement environment further enables or limits inclusion. Inclusive immigration policies, or even lax enforcement of restrictive laws, can allow unauthorized migrants to achieve some degree of stability and security where they reside. Restrictive environments can subject nonstatus migrants and even legal immigrants to exclusion from the nation via deportation. These elements of the model underscore the need to view immigrant inclusion as a contingent process.

The model also suggests that immigrant inclusion should be considered separately from the incorporation of ethnic and racial minorities who are citizens. This is not to deny that the native born can also face forms of exclusion, or that race and ethnicity often intersect with immigration status in important ways. Heightened enforcement in places like Arizona affects all Latinos, native born and immigrant; local police collaboration with federal immigration authorities makes members of racial and ethnic minorities especially subject to scrutiny.

Yet an important divide still separates immigrants from citizens. Simply put, immigrants' *deportability* renders them uniquely vulnerable and makes questions of status a critical part of any discussion on immigrant inclusion.

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