

9. LIMITS OF LEGAL CITIZENSHIP

NARRATIVES FROM SOUTH AND SOUTHEAST ASIA

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Legal principles such as *jus soli* and *jus sanguinis* are sources that define and protect the boundaries of citizenship. Such citizenship principles confirm rights and make visible the eligible politico-body of the state. They are the foundation for the institutional and artifactual enactment and expansion of membership that has marked the West. The struggles of new subjects—slaves, women, racialized minorities, refugees, immigrants—and the institutional expansion of representation of these marginalized groups characterize liberal citizenship. Modern citizenship regimes have introduced new institutional and documentary statuses: the worker visa, the permanent resident, the sponsored spouse, the naturalized citizen, and the frequently traveling dual citizen. These emerging institutional categories and statuses capture the continuing expansion of the Western liberal rights regime beyond national boundaries.

While citizenship studies of the Global North have a long lineage, we know relatively little about citizenship in developing states. What are the citizenship protocols, practices, and experiences of most of the population in most of the world? Legal institutions and forensic documentation (what I call “*jus charta*” and “*jus tabulae*”) designed to produce citizenship matter more in the Global South than legal principles (*jus soli* and *jus sanguinis*). *Administrative citizenship*, actualized through documentation, is what people engage in daily across regimes, as we have seen in other chapters in this collection. In so doing, they

become standard citizens, affirmed as such through juridical inquiries, such as immigration court hearings and inquiries described by Benjamin Lawrance and Kim Rubenstein (this volume). How did administrative citizenship expand throughout developing states over the last half century? Finally, what are the effects of this legal citizenship?

This chapter will trace the evolution of an administrative citizenship, torn between the expansion and regulation of rights, to produce a standardized citizen, fit for administrative manipulation. As administrative citizenship transmits a fixed, certain, stable, and final notion of citizenship, citizenship laws, institutions, and proofs can be contingent, partial, and incomplete. A variety of marginalized groups (immigrants, minorities, homeless, the poor) experience a gap between formalized institutional citizenship and their actual lived reality. Sometimes, administrative citizenship is a hurdle to those who otherwise are eligible by birth and descent. In our rush to strengthen rights and build legal citizenship, we neglect the exclusionary impact of its institutions and documents. In South and Southeast Asia, a highly regulated and formalized administrative citizenship not subject to timely judicial review produces an especially oppressive and exclusionary citizenship.

Expanding Rights or Order

Western citizenship scholarship has celebrated the “Marshallian” expansion of civil and political rights and the drive to equalize social classes and expand the modern welfare state (Marshall 1992). The growth of welfare rights and services narrowed the inequalities that liberal capitalism generated. National health, food grains, and kerosene are some of the rationed but affordable goods and services provided by the welfare state in India and Malaysia. Countering the inequalities of capitalism required enhancing the health, housing, food, and employment rights of the poorest. Bureaucracy’s autonomous role in the expansion of such rights provided by the modern state has been evaluated since Max Weber (1978). In response to the rise of the welfare state, scholars led by Michel Foucault (2003b [1975–76]) have pointed to the emergence of another feature of the state—its desire to order and govern populations.

Foucault’s theory of governmentality suggests an all-pervasive power that orders our society through prisons, hospitals, and policing—standardizing us as homogeneous, disciplined, and regulated objects of a surveillance state (Dandeker 1994; Lyon 2009). Recent historical scholarship by Edward Higgs (2004) points to the insatiable thirst for information that undergirds institutional development of a surveillance state. To deliver or order rights, states have

to first “know” their populations through, for instance, health, food, housing, and employment needs. The transition from paper files to databases corresponds to the growth of such knowledge in Europe and North America. States deliver rights through knowledge-bearing service institutions, but in doing so they regulate and order people. Do developing states follow a similar trajectory of bureaucratic rationalization (Weber 1978), surveillance (Lyon 2009), information gathering (Higgs 2004), and governmentality (Foucault 2003) to create an infrastructure of citizenship (Sadiq 2009) that delivers rights to citizens? What welfare institutions and documents do these states deploy, and how do people negotiate access to citizenship services? What does citizenship mean as a lived reality?

On the basis of findings about European state building Higgs (2004) argues that information gathering by statelike entities is an old tradition. Contrary to recent scholarship, his work shows persuasively that information gathering in Europe was *not* an outcome of the Enlightenment or the Industrial Revolution era but preceded these events. By the nineteenth century, centralization of information became a key feature of the state. The standardized citizens were made and remade by the information gathering and centralization of the state. However now, unlike then, they also are reconfigured by a multiplicity of artifacts associated with that standardization such as health cards, electoral cards, national identity cards, and their corresponding state institutions. Citizenship both as an official category and as a lived reality cannot be explained by the subjects of the state alone (illegal immigrants, border patrol agents, green card holders); it must also be studied as state artifacts. The state itself exists in these objects and is not producing them as a separate material entity. These state papers, documents, and formats tell us more about membership, nationality, belonging, and identity than formal rules alone. In this instance, state artifacts materialize social and political relations. The document manifests society.

Scholars of developing countries trace modern conceptions of information gathering and citizenship to colonial imperatives of governance from afar, providing minimal service to “half-cooked” peoples (Scott 2009). After decolonization, developing states faced hungry, neglected, and expectant masses, so the immediate delivery of welfare to address rights claims was critical. Over time, the provision of subsidized and accessible health care, basic food, kerosene, housing, and employment meant a statewide distribution of ration cards in India and national identity cards in Indonesia (KTP) and Malaysia (MyKad). Documents with appropriately formatted individual biographical information gave access and meaning to rights. Those without such documents were without rights.

Ironically, the programs designed to ensure order created sites of instability. A tension marks the building of rights and order. As developing states systematically began distributing public goods to meet claims for rights among newly liberated populations, a tension arose between their need to expand their welfare and public services and their need to meaningfully regulate welfare's availability. The first is the source of a state's legitimacy, while the second imposes constraints on its capacity. Drawing boundaries around welfare services underlines a state's ability to order populations through rules and regulations. At the heart of the state's relationship to its citizen is an assemblage of legally sourced administrative devices, both institutions and artifacts such as ration cards. To govern populations, institutions and artifacts must order them. Postcolonial scholarship largely ignores the evolution of institutional, administrative citizenship in independent India or Malaysia. While Foucault has shown us how populations are objects of power, we are left to unravel the practices and mechanisms by which power is received and responded to. The micro-negotiations between rights-delivering institutions and artifact-bearing peoples effect citizenship, generalities and theories notwithstanding.

A Standard Citizen

The standardized, legal citizen cannot be understood only as an abstract subject of the state but must also be examined through state artifacts. These artifacts, specifically citizenship documentation, function as tools of the state and have a range of characteristics that extend beyond those placed there by design. In particular, the artifacts have affective attributes (the object instills emotive qualities) of loyalty, belonging, membership, and identity.¹ State artifacts and documentation also enable agency, which complicates and problematizes the efficacy of the tool. For example, an artifact like a passport both weakens a regime's authority over citizenship, by its inherent amenability to forgery or fraudulent acquisition, and nonetheless strengthens it, by performing the state's monopoly over its legitimate production. A ration card for subsidized grains may produce higher loan eligibility (informal or formal), property rights, local respectability, legitimacy, and power. Possessors of ration cards enjoy greater rights than those without them. Here, the state artifact determines the identity, action, and life chances of an individual. Once an individual's biographical and socioeconomic characteristics are captured in standardized information, they are targets for a normalized practice of citizenship. Information and artifacts generate the standard citizen, a citizen the state engages and prefers.

The standard citizen of the “new” India or Malaysia is a product of institutions creating laws and gathering information, and artifacts supposedly representing individuals. In order for Indian and Malaysian institution-building to reach its citizens, an administrative citizenship must generate a “standardized” citizen who will fit into the categories for delivery of services. As the state delivers more welfare, to efficiently do so requires leveling across the classes and hierarchies prevalent in developing states. Administrative citizenship appears through the breakdown of society into rational, autonomous, and stable individuals. Information allows identification of rights that equalize groups marked for interventions.

Administrative citizenship along the lines described produces outcomes that are at odds with the Marshallian concept of citizenship. Citizenship rights, including rights to welfare, fail to be effective among broad swaths of populations in India and Malaysia. This is not happening at the margins, as in the Global North, where significant but small percentages of the population are denied effective citizenship (see, e.g., Lawrance, Rosenbloom, Rubenstein, and Stevens, this volume). For the majority receiving welfare benefits of some kind, their failed administrative citizenship defines their citizenship more generally. To understand citizenship in most of the world, we have to recognize the limits of administrative citizenship and the multiple failures entailed by its search for inclusiveness through standardization.

In India, the ration card emblemizes and performs a leveling of caste. The ration card identifies the poor by categories, those below the poverty line (BPL) and above the poverty line (APL), among others. However, all poor, regardless of their caste (untouchable or backward), religion (Hindu, Muslim, Christian, Buddhist), or regional differences, were eligible. The scheme sought to bypass the constraints of feudal and hierarchical preferences in poverty alleviation. A ration card was for *all* poor Indians, institutionally identified. Similarly, in Malaysia, leveling norms in welfare required balancing between Malays, Chinese, and Indians, while removing regional disparities between advanced (Selangor) and backward (Sabah) states. Initial antipoverty schemes targeted rural Malay, indigenous Orang Asli, Kadazandusun, and Dayak communities among others institutionally identified. Leveling hierarchies was an old developmentalist goal. Yet generating an administrative match of individuals and official documents for the standard citizen became contested and political. Instituting standard norms and behavior among people located in communities of caste, religion, and regional cultures requires huge welfare capabilities. People had to be dependent on such a state for rights and protections to be socialized into such constitutional equality, a statist equality.

Standardization requires bureaucratic categories, classifications, and paperwork. The more a state seeks to intervene on welfare, the more it seeks to know. The more it knows, the more it can secure. Residents give more and more information to the state, hoping for increasing recognition of their rights and delivery of programs. In short, surveillance and citizenship go together in developing countries. This points to a fundamental impulse in both: What is sought to be standardized? Information about the survival needs of an individual is standardized in exchange for meeting those needs, for example, food delivery, health access, shelters, and electoral and property rights. Only a “standard citizen” can gain these rights, someone whose artifact—the identity card—embodies all the appropriate numerals based on common interdepartmental, interoperable norms with appropriate restrictions to others like him or her. The trifocal interaction over rights among individuals, standardizing institutions, and artifacts creates the standard citizen. Such standardization also requires a fixed territory. So, spatially, these rights have to be available to the standard citizen through institutions and artifacts equally in all corners of the state.

In developing countries, the institutions and artifacts critical to administrative citizenship have expanded immensely. For example, to deliver social rights in India, the Ministry of Food Supplies and Ministry of Health communicate through a range of state artifacts, for example, the ration cards circulating among 500 million individuals (Supreme Court Commissioners 2009, 25). Election procedures also imbue identity artifacts with new meanings. The enhancement of civil rights, the right to elect representatives or be elected, saw the rise of the election commission in India. As its budget expanded, its role in conducting government affairs grew. Its increased number of personnel spread the use and control of electoral rolls and the voter ID across India. Today, all these rights are being ordered into a central database, a national identity number scheme known as Aadhaar. Aadhaar is busy counting Indians. About 560 million Indians are in the database, leaving more than 600 million more to be numbered and tagged (Government of India, Press Information Bureau 2014).

In Malaysia, the identity card was an instrument of order, first issued in British colonial times through the Emergency Ordinance of 1948 and later reintroduced in 1960 when the Federation of Malaya launched the identity card under federal laws and established the National Registration Department (Government of Malaysia, Ministry of Home Affairs 2014). Its latest incarnation—the MyKad—was launched in 2002. This reveals objectives of rights delivery and creating order. It enhances order by compiling biographical information from the national identity card, passport, and driver’s license even as it enables delivery of public needs and services—automatic toll road pass (“Touch n Go”) and

banking (ATM and credit functions), among others (Loo, Yeow, and Chong 2009, 362). Both India and Malaysia rely on a standard citizen constantly emitting information and receiving commands as he or she follows appropriate instructions to participate in democracy and welfare. And yet, the orderly rise of citizenship through welfare ignores specific poor.

*Outsiders, Vagrants, and Bastards: Survey Shortfalls
and Their Consequences*

“From having no nation, I now feel I belong to this country,” exclaimed Jeyaraj when he received a national identity card and citizenship in 2007 after living in Malaysia without citizenship for twenty-five years (Ramachandran 2007). Statelessness, a condition one associates with refugees and illegal immigrants, marks the experiences of actual (i.e., *de jure*) citizens as well. In June 2010, the Malaysian state set up a special task force to tackle statelessness among the Malaysian Indian community. By February 2011, a total of 14,882 Malaysians of Indian descent had submitted appropriate citizenship information in standardized format, while an estimated 10,000 more had collected the forms but not returned them (Government of Malaysia, Prime Minister’s Department 2010). This directs us to a puzzle. How can natives of India and Malaysia, born in their respective countries (*jus soli*), of native parentage (*jus sanguinis*), live in effective statelessness? What institutional structures lead states not to recognize their citizenship?

Lack of Citizenship by Documents	
Birth certificate	3,546
Identification cards	2,569
Citizenship	7,486
Others	1,281
Total:	14,882

Administrative citizenship can be very exclusionary. In the preceding example, the absence of birth certificates led to the denial of rights to 3,546 native Malaysians. More than 14,000 Malaysian Indians were deprived of their rights, due to the demand for state documents the state itself failed to produce or provide, along the lines of the citizen-as-apologue described by Jacqueline Stevens (this volume). It took the combined efforts of several citizenship institutions to bring locally born Indians into citizenship—Ministry of Home, National Registration Department, a Special Implementation Task Force, and the personal initiative of the prime minister (Government of Malaysia, Prime Minister’s

Department 2010)—while the number of those eligible but not provided evidence remains unknowable. The Malaysian task force pointed to several social relationships and practices that did not fit the standardized norms of the state. Both taboo and traditional practices on birth, marriage, health, and death pose a challenge to standardization. States recognize legal and registered marriages only. The birth of a child from a marriage unrecognized and unauthorized by the state produces an illegitimate, outlaw child, disowned socially and also administratively. Birth out of wedlock leads to a child without a birth certificate and citizenship rights because of the “shame” involved. Children of polygamous marriages, of marriages to illegal immigrants, and of marriages across religions that may be socially and politically discouraged have similar fates. Informal marriages produce offspring who first as children and then as adults are unaccepted by the community and unrecognized by the state.

Similarly, a large pool of outsiders (rural-urban migrants), legally pursued as “vagrants” and “beggars,” are confounding the Indian state. Physically kept on the margins of rural and urban life, they are analytically swept under broad categories such as homeless, pavement dweller, street child, orphan, and beggar. The census, unable to count and gather information, renders them invisible. More than 40 percent of India’s population are children, and yet large surveys and national reports reiterate the low coverage of minors and those who are destitute and thus especially in need of care and protection (Government of India, Ministry of Women and Child Development 2006, 58–59). The failure of the state to notice them means a range of rights formally secured by citizenship are not enjoyed by destitute children, a form of effective statelessness. The large Indian state, legally committed to delivering to the poor for decades, is simply not living up to its formal obligations. For example, nongovernmental organizations (NGOs) estimate the homeless population in Delhi at around 100,000 (Manch and Liye 2011). Such organizations are somewhat more successful than the Indian government in counting the homeless because they conduct their surveys at night as well, when the homeless return to their regular places on the pavement. Unsafe and thus insecure, many hide under blankets to conceal their identities. Counting, identifying, or tagging a biographical profile is difficult.

Homeless women and orphaned children also may not show up in NGO surveys because of their vulnerability at night; they simply vanish into hidden crevices and corners to avoid being sexually and physically battered. In contrast, the state census, confined to regular administrative daylight working hours, chose to ignore such populations. Recognizing the invisibility of such populations is rare among state institutions. So, when the Election Commission of India

distributed 7,249 voter IDs to the homeless in Delhi, it was a transformative moment for many, providing respect, dignity, and identity. Julka Khatoon, a homeless recipient, said, “With this identity, we can seek work with dignity” (Pandit 2013).²

It took the combined efforts of several state institutions collaborating with state-recognized NGOs to bring many such native-born Indians into citizenship—the Ministry of Home’s National Population Register, the Municipal Corporation of Delhi, leading NGOs such as Aashray Adhikar Abhiyan, the Supreme Court of India, the Delhi High Court, the government of Delhi’s special task force known as “Mission Convergence,” and the personal initiative of the chief minister of Delhi. Only such a convergence of state and social power could begin the process of constituting the homeless as standard citizens.

This collective effort led to a 2010 survey which revealed that 96.7 percent of the homeless possess no Indian identity card, including welfare cards they are eligible for, resulting in deprivation of their right to food grains and health facilities, and even their right to sleep on pavements (Government of Delhi 2010). Lacking toilet facilities, 44.9 percent defecated in the open, and 47.9 percent slept on the pavement (Government of Delhi 2010, 30). The most vulnerable populations are those most in need of state services, yet these individuals are unable to practice their rights due to a lack of appropriate documentation.

Another survey of India’s homeless in the national capital of New Delhi found that 71.16 percent of those interviewed did not possess identity cards such as a ration card (for subsidized grains), a voter ID card (to vote in elections), a bank passbook (to open bank accounts or receive financial assistance), or any other type of rights card issued by a government organization (Indo-Global Social Service Society 2012, 100). Without the proper state artifacts, these individuals are unable to claim rights from the state, and they remain hidden from state welfare specifically designed to assist them.

In a recent registration drive targeting these hard-to-reach citizens, Sudhir Prajapat, a homeless man in his forties, received a voter ID and said, “I am often subjected to police brutality. . . . They question my whereabouts during night patrolling. I did not have an identity proof to quell their suspicions about me. But now I can produce my voter ID to prove that I am a resident of Delhi. It justifies my existence” (Sikdar 2013). Born in India (*jus soli*), of Indian parents (*jus sanguinis*) but without documents, the homeless and poor like Sudhir are constantly harassed by the police and cannot open bank accounts, vote, or access welfare and rights. Denied citizenship rights, many less fortunate than Sudhir die unidentified. According to data acquired through the Right to Information

Act, the Delhi police had identified 6,800 unclaimed bodies between 2007 and 2011, many of them homeless (Pandit 2012).

Some scholars have tried to explain the exclusions of citizenship through ethnic, caste, racial, and religious prejudices of the state (e.g., Oommen 1997; Nyamnjoh 2006). The Malaysian state dominated by Malay Muslims will exclude Hindus, while the Hindu-dominated Indian state will exclude Muslims and caste minorities. This does not explain the variations and why many but not most Indians live in statelessness. Generalized, ethnicized explanations only skim the surface, diverting us from disaggregating the standardizing impulse of the state, and the exclusions inherent in the process.

Other scholars assert that over time, one's presence on a territory will generate claims of citizenship. However, as Mamdani (2002) points out, long-term immigrants (settlers) are denied citizenship in Africa because of a regional politics of nativity. New arrivals, often immigrants and travelers, cannot instantly claim citizenship. Just as the changing territorial boundaries Rubenstein (this volume) references as changing the citizenship of those whose residence was persistent, for Indians and Chinese immigrants who arrived before the formation of Malaysia, acquiring citizenship can prove elusive or a decades-long process. Fong Chuen Kuen arrived in Malay in 1959, before the formation of Malaysia (*New Straits Times* 2010). After a wait of forty-seven years and six children, he received his citizenship certificate at the age of sixty-one in 2010. Gouri Dasi Malakar came to Malaysia before its formation in 1956 (*New Straits Times* 2011). On receiving her citizenship at the age of eighty, she exclaimed happily, "Finally, I got my citizenship. This has been my country for a long time. With this documentation, it means the country has accepted me. I will be able to die in peace" (*New Straits Times* 2011). One can feel like a native, and spend more than half a century on state territory, and yet without the representation of artifacts and institutions, citizenship is empty.

Time spent in a nation-state may appear to overcome exclusions of administrative citizenship. But we know that *undocumented natives* are commonplace in developing countries (Sadiq 2009). An individual's mere presence or absence on a territory for an extended period of time does not correspond to citizenship. If presence on a territory is cataloged, documented, and recorded in the administrative apparatus, such that information about an individual can be traced, the individual moves closer to citizenship. Residence alone without the recording of proof of identity and location by state institutions renders it meaningless, which is why, despite being eighty years old, Gouri Dasi Malakar was overjoyed to receive her citizenship document.

Arriving before the formation of the state and fitting into preexisting cultures (Indian and Chinese) did not effect citizenship for either Fong Chuen Kuen or Gouri Dasi Malakar. Birth on the territory did not confer citizenship for Sudhir or Jeyaraj. And even being born to citizens did not effect citizenship for Athinagappan Arulappan (Aruna 2011). In India, when Nasreen, a sex worker and migrant to Delhi, was given a state ID at age thirty-four, she said, “I finally have an identity as an Indian. Now I can send my child to school without facing harassment. Life will change; my destiny will change” (Sengupta 2009). For thirty-four years this native of India had lived in statelessness. Like Sudhir and Jeyaraj, a document brought her citizenship. Here we have natives who are meeting the cultural, birth, descent, and temporal criteria of citizenship, and yet they remain stateless. The exclusion that occurs in such a highly regulated regime happens because citizenship is based on rigid artifacts and grids of information. It is based on the exclusions generated by demands for the state-produced paper and plastic the state itself does not disseminate in the first place. Such populations are excluded from the flow of information between artifacts and institutions.

Both the highly regulated Malaysian state and a more diffuse Indian state are unable to cope with the lived reality of their populations. Institutions and artifacts demand stable and regular information that the poor, the homeless, and the mobile do not emit. These individuals neither are beneficiaries of welfare, nor can be regulated. State registrars cannot capture children of illegitimate marriages, mobile individuals, the homeless, the uprooted landless immigrant to cities, the nomad, the runaway, the drug addict, and the vagrant. In each case, their illegitimacy in society, their rootlessness, and their mobility keep them away from the state; their biographical information is not in state records, and their “regular” address is missing. Unable to meet standardized norms, they become stateless in their own state. This shows how dependent populations are on the state for giving individuals their claim to rights. Our cases show that it is very hard to presume citizenship and then demand its recognition. *Jus soli* (being born on the territory) combined with *jus sanguinis* (of native parentage) should have been enough to confer citizenship, but without *jus charta/tabulae*—the state artifact—it was rendered empty.

Citizenship’s operationalization here undoes its own theoretical lattice-work. As a principle, the state recognizes individuals as bearers of rights, yet the state seems to have tied its own hands. The government has laws that, when implemented, result in excluding marginal sections of society from citizenship. The regime of administrative citizenship, enforced through citizenship artifacts, is thus producing an effective statelessness.

As noted in the introduction to this volume, the tension between the expansion of rights and the simultaneous desire for order is the hallmark of a “citizenship in question.” Questioning the contours of citizenship (and the exclusionary power that it rests on) reveals citizenship to be an ongoing process made real through state artifacts such as national identity cards. Driven by the desire for a standard citizen, citizenship comes into question precisely when it misses the mark, when the individuals who have complex lives not responsive to the state’s information requests fall through the cracks of administrative and legal control.

Our cases reveal that many citizens are deprived of citizenship for long periods of time because legal principles (*jus soli*, *jus sanguinis*) are meaningless without the institutions and artifacts in which they are embedded. We now have three categories of citizenship, *jus soli*, *jus sanguinis*, and *jus charta/tabulae*—the artifact, proofs that arise out of the cataloging and archiving of records on individuals. At the very moment liberal societies are expanding rights for *de jure* citizens, they are creating implicit categories of *jus chartae*, the laws for what is charted. Those denied recognition by, or wiped off, the legal administrative grid, so to speak, are unknowable to the state. Because administrative citizenship relies on housing status, ancestral origins, or legitimacy status and not *de jure* criteria, it produces effective statelessness among millions of legal citizens.

NOTES

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1. For a related analysis, see Sara Friedman, this volume, in particular her discussion of Taiwanese officials’ responses to passports.

2. Original in Hindi: “. . . ab is pehchaan se hum izzat se kaam mang saktey hain.” Author’s translation.