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I would like to address the Symposium's theme by talking today about the relationship between two ideas: citizenship and work. The nature of the relationship between citizenship and work is complex and an important reason for this is that our conventional understandings of citizenship vary a great deal. We use the idea of citizenship to talk about quite a broad range of different institutions, practices, and experiences. So the way we think about work (which is itself a big idea) is going to be shaped by the particular concept of citizenship we're employing at any given time.

What I want to do is to outline some of the different ways that people think about citizenship, and link these to the subject of work. Then I want to argue that most often, there is very little communication between these different discourses about citizenship and work; instead, each seems to operate in isolation from the others. But I think it is worthwhile to try to bring them together, and a good way to do that is to look at the recent alliances being forged between labor organizations and immigrant workers in the United States. In this context, the various practices, institutions, and experiences that we call citizenship are converging in interesting ways—and citizenship is being redefined in the process.

How, then, is citizenship linked with work? As I said, the starting point is determining what we mean by the idea of citizenship itself. Citizenship is understood in a variety of ways by both scholars and lay people.[1] For most lawyers, the idea of citizenship is probably most commonly associated with a kind of

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[1] For a comprehensive discussion of citizenship's multiple meanings, see Linda Bosniak, *Citizenship Denationalized*, 7 IND. J. GLOBAL LEG. STUD. 447, 453–87 (2000).

legal status. In this understanding, citizenship is akin to nationality: it is full, formal membership in the national community. And it is a membership status that brings with it certain rights. Among these are the right to a passport issued by the state of citizenship, the right to diplomatic protection by that state while traveling abroad, and the right to return to and remain in the country of citizenship. In most countries, there are also certain internal or domestic rights reserved to citizens—classically, the right to vote, but there are often others, such as political rights and certain welfare rights.

Notice that when we are thinking about citizenship in this way, we are counterposing the category of citizen to the category of persons who lack citizenship by legal definition: This is the group of people technically called aliens (though many of us prefer the term "noncitizen" in many settings, given the often-pejorative connotations of "alien"). Aliens, or noncitizens, are people who specifically do not possess this formal status of state membership; they are defined as legal outsiders to the national community. By virtue of this, they do not enjoy all the rights associated with citizenship that I have mentioned. Among other things, they usually cannot vote, and perhaps most significantly, they don't have the right to remain in the country unconditionally as citizens do. Under some circumstances they can be expelled or deported.

Of course, there are a variety of noncitizen or alien statuses. In this country, there are, among others, short term visitors on student or tourist visas; there are undocumented immigrants (some of whom crossed the nation's borders without permission and some of whom came on visas and then violated the conditions of their stay); and there are refugees. And there are also lawful permanent residents—the immigrant group enjoying the greatest level of rights and protections, including certain protections against expulsion.

The distinctions among these groups of noncitizens are important. But all noncitizens are divided, in turn, from the category of people who possess citizenship status. This latter group—national citizens—acquired their citizenship by birth in national territory, by birth to citizen parents, or by way of the naturalization process. And because naturalization is available in

this country on fairly liberal terms,[2] the divide between alienage and citizenship is not necessarily impenetrable and permanent. But the divide is real, and in some cases highly consequential.

When we talk about citizenship in the law and in the legal academy, then, we are often talking about citizenship as a legal status. On this understanding of citizenship there is, of course, a great deal to say about the relationship between work and citizenship. In the U.S. context, we can talk, first of all, about the immigration rules that permit admission of noncitizens into this country specifically to work, both temporarily and permanently. We can talk about the so-called employer sanctions rules that bar employers from hiring "unauthorized aliens" and that require employers to verify prospective employees' eligibility to work. And we can talk about the rules that address the question of whether an employer may prefer a citizen to a noncitizen in hiring, or, stated differently, whether discrimination against noncitizens in employment is permissible. There is much grist for discussion on all of these matters.

Beyond the law, moreover, there is a great deal to talk about in the domains of political economy and sociology. Patterns of employment of citizens and noncitizens in different sectors, the effect that noncitizens entering the job market have on domestic workers, methods of worker control exercised by employers of immigrants: all of these merit—and have received—substantial attention.

One way to think about work and citizenship, then, is to think about the way in which citizenship as status structures the law, the labor markets, and the labor process itself. But there are other ways to approach the relationship between work and citizenship as well. There are two other conceptions of citizenship that I want to talk about which lead to an entirely different set of concerns about work. These are conceptions of citizenship that are embraced and

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2 Note, however, that not all noncitizens in the United States have ready access to citizenship via naturalization. The most significant group that lacks such access is the class of undocumented immigrants, now estimated to number between seven and nine million. Susan Sachs, *The Nation: A Hue, and a Cry, In the Heartland*, N.Y. TIMES, Apr. 8, 2001, at D5. Most of these immigrants will never have a chance to naturalize unless the government enacts a broad legalization program—a prospect unlikely in the short term in the wake of September 11, 2001. Many lawful permanent residents who committed crimes are also currently ineligible to naturalize.

employed by political and social theorists, and sometimes legal theorists as well.

In the first of these alternative conceptions, citizenship is understood to represent the enjoyment of rights and entitlements in the political community. In this conception of citizenship, the core normative idea is very often expressed as "equal citizenship," with the term meaning full recognition and enjoyment of rights in society. Equal citizenship is understood to entail enjoyment of various kinds of rights—civil rights, political rights, social rights, and cultural rights—but all of these rights are described in the language of citizenship. Enjoyment of these rights is viewed as a necessary condition for the enjoyment of equal citizenship in our society.

One way to see how this is a different conception of citizenship than the legal status conception is by looking at what it means *not* to possess this citizenship. To be denied equal citizenship is not to be relegated to the status of alien as in the first case, but rather to be what we often call a second-class citizen—someone who is denied full rights and recognition of membership in society. Notice that second-class citizens will often *be* status citizens. Many of the people who have been characterized as second-class citizens are subordinated or marginalized *notwithstanding* their formal citizenship status. The classic example of this is the treatment of African Americans after the passage of the Fourteenth Amendment, and in some respects even to this day. Of course there are other examples. It is common to hear talk about the second-class citizenship status of women, gays and lesbians, the disabled, and ethnic minorities. These folks very often have passports but are said to be outside the sphere of full and meaningful citizenship.

Something else to notice is that, in this understanding, exclusion from rights citizenship—from equal citizenship—is presumptively illegitimate; it is hard to find anyone who will argue that second-class citizenship is acceptable. Whereas when it comes to status citizenship, most people do not believe that there is anything inherently wrong with having distinctions between citizens and aliens (though people certainly disagree about how difficult it should be to acquire citizenship status, and what possession of citizenship status should count for in terms of rights). The point is that the idea of equal citizenship presupposes

a commitment to universality, to universal citizenship, whereas the idea of status citizenship presupposes a commitment to some degree of exclusivity, to citizenship as a bounded category.

Now, as it happens, several scholars have linked this conception of citizenship as rights, or equal citizenship, to the subject of work. A number of commentators have begun to argue that work is something that a person has to have in order to enjoy equal citizenship. Kenneth Karst,[3] William Forbath,[4] Vicki Schultz,[5] and others have contended that equal citizenship requires access to good jobs, or what they call "decent work." They echo an idea set out by the political theorist Judith Shklar a decade ago, that the right to earn is fundamental to the enjoyment of citizenship.[6] They also draw on broader ideas of a number of theorists who have been arguing on behalf of rights to "economic citizenship," by which they mean the right to a decent quality of life and basic economic empowerment. In these accounts, the relationship of work to citizenship is one of necessity; a person needs to have access to decent work in order to enjoy equal citizenship.

There is, finally, a third conception of citizenship that is relevant to this discussion. In the world of political theory, this is actually the most prevalent understanding of citizenship. It has its roots in Aristotelian thought and conceives of citizenship as the process of "ruling and being ruled."[7] We might say this conception of citizenship denotes the process of self-governance, or active democratic engagement in a society's political life. Being politically engaged is associated with virtue and is often described as "good citizenship." Today, civic republican and deliberative democratic theorists champion this conception of citizenship in a fast-growing body of literature.

Notably, we have also incorporated this understanding of citizenship into colloquial speech. It is common for us to say that

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3 Kenneth L. Karst, *The Coming Crisis of Work in Constitutional Perspective*, 82 CORNELL L. REV. 523 (1997).

4 William Forbath, *Caste, Class, and Equal Citizenship*, 98 MICH. L. REV. 1 (1999).

5 Vicki Schultz, *Life's Work*, 100 COLUM. L. REV. 1881 (2000).

6 JUDITH N. SHKLAR, AMERICAN CITIZENSHIP: THE QUEST FOR INCLUSION (1991).

7 ARISTOTLE, THE POLITICS (T.A. Sinclair trans., Penguin Books 1962).

someone is a good citizen for being involved, for example, in her neighborhood, in her university, or in the domain of formal politics. We often think of citizenship as responsible involvement in the world beyond the self, involvement in some sort of public domain (however we define that term).

Who is *not* a citizen in this understanding? A noncitizen here is someone who is passive rather than active, uninvolved rather than involved, someone who is focused entirely on the private interest instead of some version of the public interest, or someone who is not engaged in the process of ruling and being ruled in the context of some collective endeavor.

Interestingly, this third conception of citizenship as self-governance also has been recently linked by scholars to the subject of work. Some constitutional theorists have maintained that participation in work fosters democratic citizenship.[8] In labor law and labor relations literature, it is increasingly common to hear scholars talk about "workplace citizenship," meaning active participation by workers in the running of their workplace. One hears labor and management theory scholars talking about occupational citizenship behavior, meaning worker commitment to the workplace that goes beyond the narrow specifications of the job description. One also hears of citizenship unionism, meaning unionism that is not linked to a specific industry or a specific workplace but to a specific geographical region.[9] In these latter cases, the idea of citizenship is linked to the process of self-governance, but the domain of engagement is extended from the polity to the economy and even to the workplace itself.

Citizenship is thus conventionally understood in at least three different senses: as status, as rights, and as democratic engagement. And each one of these three conceptions of citizenship implicates the idea of work in very different ways. In fact, in the abstract, it is tempting to suggest that these three

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[8] *E.g.*, Forbath, *supra* note 4; *see also* Linda C. McClain, *Care As A Public Value: Linking Responsibility, Resources, and Republicanism*, 76 CHI.-KENT L. REV. 1673 (2001).

[9] *See, e.g.*, Katherine V. W. Stone, *The New Psychological Contract: Implications of the Changing Workplace for Labor and Employment Law*, 48 UCLA L. REV. 519 (2001) ("citizenship unionism," "occupational citizenship behavior"); George Ross, *Labor Versus Globalization*, 570 ANNALS AM. ACAD. POL. & SOC. SCI. 78 (2000) ("citizenship in the workplace").

citizenship-and-work discourses address different phenomena altogether and really do not have much connection with one another. As a practical matter, one often finds that people who talk about citizenship in one of these idioms tend to ignore the other understandings. The "citizenship as rights" folks tend to ignore the "citizenship as active engagement" folks, and vice-versa. In addition, people who talk about citizenship as rights *and* as political engagement almost always ignore the understanding of citizenship as a legal status. They ignore the fact that citizenship is a matter of formal national membership that is not available to everyone, which means that the group of people who are entitled to enjoy equal citizenship and participatory citizenship is limited by national boundaries. There has long been a disconnect among these discourses on citizenship,[10] and therefore, a disconnect between the corresponding discourses on citizenship and work.

Yet I would like to suggest that there is one context in which all three discursive traditions must and do inevitably come together: this is the arena of labor/immigrant relations. Historically, of course, American labor has long opposed immigration and supported restrictive measures, including limited admissions, employer sanctions, and deportation of undocumented immigrants. One way to describe this history is to say that traditionally, labor activists have regarded exclusion of noncitizen immigrants from the labor market as a precondition of equal citizenship in this country. They have felt that immigrants were being used to undermine their equal citizenship by driving down wages and working conditions. Many labor activists historically have engaged in a variety of what we might call active citizenship practices, such as using pressure campaigns of various kinds to ensure restrictive immigration policies. Certainly there have been exceptions, but that is the basic historical profile.[11]

What is quite striking, however, is that in the past couple of years a variety of labor groups, including, most notably, the AFL-CIO, have formally and quite dramatically changed their positions

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[10] I have examined at length the relationship among these discourses and the implications of the disjunctures for status noncitizens in Linda Bosniak, Constitutional Citizenship Through the Prism of Alienage (manuscript in preparation, on file with author) and in Linda Bosniak, *Universal Citizenship and the Problem of Alienage*, 94 NW. U. L. REV. 963 (2000).

[11] *See generally* VERNON BRIGGS, IMMIGRATION AND AMERICAN UNIONISM (2000).

on immigration. In February 2000, the AFL-CIO announced that it will now oppose employer sanctions,[12] and the following year, the Federation formally endorsed passage of a legalization or amnesty program for undocumented immigrants.[13] Moreover, in the past few years, unions and labor rights groups around the country have become integrally involved in organizing in sectors of the economy where undocumented immigrants are concentrated. I am thinking particularly of the janitorial sector, with the campaigns of "Justice For Janitors," but there have been a variety of other efforts as well.[14]

This shift in orientation among national labor groups raises a number of important questions. We can talk about why this has occurred and whether it is a good thing (I certainly think it is) and what the likely impact will be. I will just say for the moment that in these new developments we can see a reconceptualization of citizenship and work at every level. Labor organizations now are specifically defending the rights of status-noncitzens in the workplace. They are doing this at least in part because they have come to believe that these immigrants are here to stay and are going to keep coming. Perhaps they also believe that to ensure enjoyment of equal citizenship for all Americans, immigrants are going to have to be protected as well, both so they cannot be used to undercut Americans and so that unions will not slide into total irrelevance. This is of course an instrumental rationale—the idea that protecting "their" rights is good for "us."

But I don't believe that this is the whole story. It appears that at least some unionists and labor rights advocates have begun to believe not merely that it serves "our" interests to protect immigrants, but that divisions between us and them are becoming less relevant.[15] Instead, in this view, the concern is protecting

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[12] Steven Greenhouse, *Labor Urges Amnesty for Illegal Immigrants*, N.Y. TIMES, Feb. 17, 2000, at A26.

[13] Frank Swoboda, *Unions Reverse on Illegal Aliens; Policy Seeks Amnesty, End to Sanctions*, WASH. POST, Feb. 17, 2000, at A1; *see also* Kris Axtman, *Why Unions Embrace Illegal Immigrants*, CHRISTIAN SCI. MONITOR, August 29, 2001, at 4.

[14] *See generally* Andrew L. Stern et al., *California: An Exchange: Progressives and the New Immigrant Movement*, AM. PROSPECT, July 2, 2001, at 18.

[15] *See, e.g.*, AFL-CIO, Testimony of AFL-CIO President John J. Sweeny on "U.S.-Mexico Migration Discussions: An Historic Opportunity," (September 7, 2001), http://www.aflcio.org/publ/test2001/tm0907.htm:

working people in general. So for some advocates, at least, the understanding of the community of people entitled to "equal citizenship" is expanding to include (somewhat paradoxically) people who lack the formal legal status of citizenship.

It is also worth commenting on the nature of the activism involved in this developing labor/immigrant alliance. In the "Justice For Janitors" and other campaigns, we can see a new kind of social movement activism on behalf of economic justice, one which involves not just immigrant and labor rights groups but also religious groups, community groups, and student anti-sweatshop groups. This social movement activism involves not just union organizing but also demonstrations, marches, and community outreach and education, in addition to traditional forms of political pressure. Some people characterize this kind of activism as a kind of social movement citizenship in the republican sense, or citizenship unionism.[16]

It is important to notice that this is a practice of active, republican citizenship which does not depend upon possession of citizenship status. The disjunctive between the status and practice of citizenship in such efforts has been implicitly noted by others. Jennifer Gordon, for instance, has described the activism of undocumented immigrants organizing for unpaid wages in New York as a movement of "citizenship-in-action."[17] Paul Johnston has written of the "citizenship practices" of undocumented immigrant workers in California who have organized on behalf of workplace rights.[18]

> [W]orkers here and around the world want to be treated with basic dignity and respect, free from persecution and harassment based on who we are or where we come from. These fundamental aspirations of the human spirit do not distinguish between workers based on their immigration status. Nor, we believe, should we.

Id.

16 *See* Stone, supra note 9.

17 JENNIFER GORDON, THE CAMPAIGN FOR THE UNPAID WAGES PROHIBITION ACT (Carnegie Endowment for Int'l Peace, Int'l Migration Policy Program, Working Paper No. 4, 1999), *at* http://www.ceip.org/files/PDF/imp_wp4gordon.pdf (last visited May 8, 2002) (on file with the North Carolina Journal of International Law and Commercial Regulation).

18 *See* Paul Johnston, *The Emergence of Transnational Citizenship Among Mexican Immigrants in California*, *in* CITIZENSHIP TODAY: GLOBAL PERSPECTIVES AND PRACTICES (T. Alexander Aleinikoff & Douglas Klusmeyer, eds., 2001).

These authors' references to "noncitizen citizenship" may sound paradoxical, and in some respects they are. But the formulation also reminds us that citizenship is not exhausted by considerations of legal status. Instead, citizenship is conventionally understood in ways that extend beyond formal nationality to include universal rights and democratic participation. Perhaps, in light of these latter understandings, the citizenship concept can be seen as possessing important rhetorical resources for the developing movement of noncitizen immigrant workers and their supporters.