

Substantive Members Should Receive Financial Aid

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Abstract: Policymakers have not reached a reasonable consensus on whether undocumented immigrants should receive financial aid nor developed a consistent set of conditions for eligibility. This article builds on an earlier case study and explores some of the critical issues that prevent actors from creating policy that reflects our underlying attitudes of membership. It addresses critical points of tension so that readers and policymakers can possibly reconcile intuitions and actions.

Resumen: Los políticos no han llegado a un consenso razonable respecto a si deben recibir ayuda financiera inmigrantes indocumentados, ni tampoco han desarrollado un grupo consistente de condiciones para ser elegibles a ella. Este artículo edifica sobre un caso anterior y explora algunos de los asuntos críticos que previenen que actores creen reglas que reflejen nuestras actitudes fundamentales de membresía. Se presentan puntos críticos de tensión para que los lectores y políticos puedan posiblemente reconciliar intuiciones y acciones.

Keywords: *undocumented students; financial aid; membership; immigrants; higher education*

The economic and social entrenchment of this current wave of undocumented immigrants has created intense policy debates around immigrant rights and privileges. Policymakers struggle to delineate criteria that determine the appropriate beneficiaries of communally determined goods. The issuing of drivers' licenses as well as the subsidizing of health care and education are issues that are reaching their legislative apexes in numerous states. Many of the current disputes around immigrant rights and immigration bubbled after September 11 and surfaced during the passage of the 2004 Intelligence Reform Bill.

Policymakers have not reached reasonable consensus on whether undocumented immigrants should receive financial aid nor developed a consistent set of conditions for eligibility. Currently, states run the range of denying and permitting eligibility for financial aid based on their interpretation of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA; National Immigration Law Center, 2004). Numerous interest groups are busy trying to influence policy, which may contribute to a watershed framework for dealing with immigration and immigrant acculturation issues. States are arguing who should be the beneficiaries of postsecondary

educational benefits—citizens or durable residents. These are broadly issues of membership.

Walzer (1983) defined *membership* as the general sense of the individual and group's commitment to divide, share, and exchange resources firstly among others who have the same commitment. Membership is important because whom we deem as members determines with "whom we make those choices, from whom we require obedience and collect taxes, [and] to whom we allocate goods and services" (Walzer, 1983, p. 31).

If we can assume that a political community is generally obligated to distribute resources to its members, then a framework that captures our expectations for membership can be helpful. Perry (2005) found that stakeholders involved in Texas House Bill 1403 generally agreed on the conditions for membership in society. Empirically, the case study posited a moral based on stakeholders' common intuitions of membership. In other words, the study generally established an evidence-driven account of what we believe membership should be. More specifically, it responded to the question "What makes me (a stakeholder) a member of society?"

Separately, the framework's principles do not define membership. (Many of the enacted policies that give undocumented students benefits are based on one or few of the principles.) The principles derived from the multiple data sources make a logical map of political membership. These principles make up substantive membership.

The philosophical analysis used Rawls's methodological ideas of forming a conception to induce principles, which can organize a reasonable conception of membership (Rawls, 1971, 1993). Rawls had a practical goal of achieving "reasonably reliable agreement in judgment to provide a common conception of justice" (YEAR, PG #?). Rawls in *Theory of Justice* posited that differing conceptualizations of a supposedly comparable idea make it difficult to adjudicate claims of distributive justice. Rawls went on to say that we do not know our sense of justice until "we know in some systematic way covering a wide range of cases what these principles are" (1971, p. 46).

Rawls knew that so many of our conceptualizations of justice are tinted with culture, politics, religion, and other doctrines that often are irreconcilable in the same political space. Therefore, Rawls attempted to disarm these sociopolitical and cultural biases in trying to come up with a rational conceptualization of justice. Methodologically speaking, Rawls sought to get at people's rational, intuitive beliefs about what is a just means of distributing communally determined goods. Rawls's original position and veil of ignorance was the methodological device used to achieve his aims. Rawls conceptualized that if people were hypothetically placed in a situation of otherness (original position) in which they could not have access to their personal sociopolitical, cultural, and economic backgrounds (behind a veil of ignorance), they would make rational choices about justice.

As an attempt to get fair and intuitive beliefs about membership, Perry developed two primary interview questions: Do you feel like you're a part of an American

community? Why do you think that? By these questions, he attempted to get at what stakeholders felt membership is without removing their moral doctrine of that belief. Also, he attempted to minimize contentious belief systems that are inherent in the interviewee. Affirmative and negative responses to the questions identified people's basic ideas around membership. From these responses, various themes of membership emerged, which were used to form a conception or framework.

The analysis generally found that stakeholders share the same beliefs regarding membership. Citizens and noncitizens, Republicans and Democrats, students and nonstudents all mentioned similar views of what it means to be a member. Perry attributed this commonness to the ability of the primary questions to eliminate bias associated with sociopolitical status. The general findings corroborate Rawls's ideas of the original position and veil of ignorance in that an unbiased account can possibly lead to some universal principles (Rawls, 1993).

Perry stated that substantive members entailed residency, social awareness, reciprocity, investment, identification, destiny, patriotism, and law abidingness. However, if stakeholders generally agree on the conditions for membership, why don't they use their own criteria to determine who should receive certain social goods?

Assuming the aforementioned principles are universal, the bulk of this conceptual article addresses some impediments that prevent national actors from creating policy that reflects underlying attitudes of membership. These issues include naturalization rules, conflicts regarding the amount of resources needed to ensure citizens' postsecondary benefits, beliefs about how members are developed, beliefs about how the distribution of postsecondary benefits to undocumented residents may effect national goals, and discrimination. These problem areas may be intellectual detours that move policymakers away from enacting legislation that reflect basic beliefs.

In route to identifying the intellectual detours that dissuade us from coherent policy, this article first reviews the legal or policy context in the Background section. Next, it summarizes stakeholders' agreed-on criteria for membership in Principles of Substantive Membership. The following sections discuss sticking points as to why policymakers do not reach consensus on membership criteria. The corresponding sections focus on the five areas of distribution of individual and citizen rights, membership development, limited resources, discrimination, and state rights versus national goals. The issues of distribution of individual and citizen rights and discrimination are merged into one section. Limited resources and state rights versus national goals are also combined.

Background

The 1982 U.S. Supreme Court decision held in *Plyler v. Doe* prevents public elementary and secondary schools from considering immigration status when a student is seeking to enroll. The Court held in a five-to-four decision that a Texas law, which

blocked state funds from being used to educate undocumented citizens, was unconstitutional. The ruling was based on the equal protection provisions of the Fourteenth Amendment. Of particular concern to the Court was the fact that children—rather than parents—were involved. The Court believed that denying undocumented children access to education punished children for their parents' behavior. Such an action, the Court noted, did not square with basic ideas of justice (Hunter & Howley, 1990; Yachnin, 2001). In addition, the Court acknowledged that residency, time spent in the country, and unlikelihood of deportation are factors to be considered in the allocation of education benefits (*Plyler v. Doe*, 1982). The Court noted that children of undocumented parents should be taken as future members of society and granted benefits befitting such a status.

As a result of this act, thousands of undocumented school-aged children attend public primary and secondary institutions. Although graduation rates of the population are difficult to assess, the Urban Institute calculated that in 2001 there were probably 60,000 to 80,000 undocumented high school graduates who had lived in the United States for at least 5 years and that there were an additional 65,000 who appeared to be currently enrolled in college (Passel, 2001). However for those who attend college, many do not receive the benefit of in-state tuition partly because of IIRIRA.

Because of a common interpretation of Section 505 of IIRIRA, undocumented students are ineligible for in-state tuition. IIRIRA amended the Immigration and Nationality Act, which served as the primary law that regulated border control and immigration. The provisions of IIRIRA have five aims: to improve border control and facilitate legal entry; enhance enforcement and penalties against alien smuggling; advance the inspection, apprehension, detention, and removal of inadmissible and deportable aliens; bolster the enforcement of restrictions against alien employment; and place restrictions on benefits for aliens—namely, higher education benefits. Section 505 says that if a state offers in-state tuition or any other higher education benefit to undocumented students, the state must provide the same benefit to out-of-state U.S. citizens. This ruling is grounded in the belief that if states are going to provide undocumented immigrants with benefits that are typically reserved for citizens, then the same benefit must be provided equally to all members—namely, U.S. citizens. Unlike the decision in *Plyler v. Doe*, the act does not take into consideration residency, time spent in the country, or unlikelihood of deportation as factors to be considered in the allocation of education benefits. In other words, IIRIRA does not conceptualize undocumented immigrants as being resident members who are eligible for in-state tuition.

Although the legitimacy of Section 505 is questionable—Congress does not have the ability to regulate state benefits—many states deem this statute as binding (Olivas, 1995, 2002). Because citizens and permanent residents are the only statuses that are eligible for federal financial aid, a state's adoption of IIRIRA effectively

removes all forms of financial aid from undocumented students. Subsequently, many undocumented graduates are without financial aid that could remove financial barriers for college attendance (King, 1999).

Because the passing of Section 505 of IIRIRA created legal uncertainty, legislators and interest groups have introduced pieces of legislation that aim to clarify a state's ability to determine tuition benefits. Prior to September 11, proponents of immigrant postsecondary education access made significant, political strides as many state and federal legislators introduced proposals that made undocumented high school graduates eligible for financial aid (Hebel, 2001). Texas, California, Utah, New York, Washington, Oklahoma, and Illinois codified legislation that makes undocumented, college-bound students eligible for in-state tuition rates (Ferg-Cadima, 2003). During the 2003-2004 legislative term, at least 15 states explored legislation that would make college more affordable for undocumented high school graduates.¹

Some legal analysts and legislators argue that states have the constitutional right to determine benefits for its resident members and that Section 505 interferes with that right (Olivas, 1995, 2002). Others believe that a state's allocation of public benefits should not interfere with the federal government's responsibility to control borders, encourage legal entry, and limit benefits to noncitizens (Federation for American Immigration Reform [FAIR], 2003). Subsequently, many organizations oppose legislation that would grant educational benefits to undocumented students. Conflicting beliefs, political activity, and varying sociopolitical climates around immigration have led to several court cases regarding the allocation of various benefits (educational and other types) to immigrants (Hebel, 2001, 2002). As a result, very different laws exist regarding the allocation of tuition benefits to undocumented students. Yet the Perry study found that stakeholders agree on the overall conditions that determine with "whom we make those choices, from whom we require obedience and collect taxes, [and] to whom we allocate goods and services" (Walzer, 1983, p. 31).

Principles of Substantive Membership

This section summarizes findings from the Perry (2005) study that identified stakeholders' intuitive beliefs about membership. Six themes or principles emerged. These principles represent important components of membership. Collectively they make up substantive membership. Substantive membership answers the question "What makes a person a member?"

Much of the debate around undocumented immigration financial aid centers on the question "Who are the appropriate benefactors, citizens, or residents?" Again, if we can assume that a political community is generally obligated to distribute

resources to its members, then a framework that captures our expectations for membership can be helpful. Not only will a framework provide theoretical explanations and points to the current debate, it will also assist policymakers in creating appropriate policy. The following findings encapsulate and organize what Texas stakeholders require of themselves for membership. From this data, we can come closer to establishing membership criteria that meet commonly agreed-on standards. After each principle of membership, I attempt to operationalize these principles and provide mechanisms for stakeholders to transform these theoretical precepts into the practical policy (see the Appendix).

Residency

Residency was born in the data, which suggested that stakeholders believe that sustained time in a particular space is a relevant factor in membership. Sustained living in a particular space provides opportunities for cultural and material exchanges, which affect how individuals and groups develop their sense of belonging to a community. In addition, residency facilitates cultural and material exchanges, which in turn foster real community recognition of membership. Real community recognition does not mean legal acknowledgements of membership—that is, designations of permanent resident or citizen. Real community recognition of membership is acknowledged by social exchange. Exchanges that make for membership are characterized by the principle of reciprocity.

How can policymakers assess how long a person has been living in the United States? For the children of undocumented immigrants, school records can be a rich source of information. Because primary and secondary schools do not consider immigration status for enrollment, attendance records provide detailed accounts of students' presence within a community. Most bills that would or do permit undocumented residents to obtain resident tuition rates require a certain amount of time attending a state school (between 1 and 5 years depending on the bill) and high school graduation.

There are advantages to this approach. School data may be the only institution that takes a daily account of a child's presence in a community, which makes school data much more reliable than other sources. For instance, employment history can provide evidence of residency. However, children may not work until their adolescent years. If used independently, actors may miss years that a student was ineligible for employment. In addition, some undocumented immigrants may not work at all or take under-the-table jobs. Other possible forms of verification may include library and church records as well as driving history. In all, officials must look for creative ways of calculating how long a person has lived in the country.

Determining an appropriate length of stay is more difficult. The time required before one becomes a member is dependent on acquisition or development of other

membership principles. If a person lives in the country but is not linked to critical institutions that facilitate membership, then that person may take a longer time to develop a sense of commitment to exchange with likeminded beings. Many of the proposed state and federal bills require between 1 and 5 years of residency. To come up with an appropriate number, policymakers must weigh and make provisions for other components of membership.

Social Awareness

Stakeholders' comments revealed that knowledge of a political community's values, norms, rules, and constitution² is a factor in how a stranger comes to commit to exchanging and sharing resources with likeminded members. More specifically, *social awareness* is defined as the degree to which a person has acquired the basic knowledge that enables them to communicate with members and participate in the sociopolitical, cultural, and legal environments of the political community. The principle of social awareness simply suggests that individuals are more likely to commit to sharing and exchanging resources with members of a political community if they are familiar with the sociopolitical, cultural, and economic environment in which members reside.

Although U.S. schools have been maligned for their inability to provide all children with this basic education, we generally consider the successful completion of high school as an important indicator of its acquisition (No Child Left Behind Act, 2002). Therefore, an accessible standard for assessing if a person has the basic skills required to communicate with others is the award of a high school diploma or its equivalent. It can be assumed that awardees have at least the basic skills involved in verbal communication, quantitative literacy, civic matters, history, and culture. This study recommends that policymakers look toward a high school diploma or its equivalent as a sign of the obtainment of basic skills. As supplemental information, they can look at driving records (depending on the nature of the test) and employment history.

Reciprocation

Stakeholders generally believed that membership in a political community is facilitated when individuals are linked to a network of institutions³ and those institutions maintain and enable those linkages. Many institutions need to maintain these linkages for their own survival. Likewise, people need various institutions of the community to survive. The mutual relationships between individuals and institutions describe part of a process that helps develop membership. For instance, participation in the workforce, school systems, and family structures are factors that contribute to membership.

How can policymakers assess reciprocity? What institutions instill the basic knowledge needed to be a member of a political community? For the above reasons, school attendance, employment history, and mixed family status can and should be used. School attendance records and employment history are readily available and should be considered. In addition, the idea of a family or employer sponsor can be used. Family members or employers have to fill out an application to register as a permanent residence or adjust status (U.S. Immigration and Naturalization Service, 2003). Similarly, bills that would grant undocumented student financial aid may require some form of sponsorship. Sponsorship would be used in conjunction with other evidences of social capital.

Investment

In general, data suggested that membership involves some type of investment in communities in which the investors reside. The principle of investment is defined similarly to our everyday understanding. However, Amitai Etzioni's (1998) definition, which he used in the article "A Communitarian Note on Stakeholder Theory," is appropriate. He defined investment as "the outlay of money, time, or other resources, in something that offers (promises) a profitable return" (p. 682). Resources are anything that can be seen as being exchanged for some type of gain or benefit. Just like any investment the returns can be uncertain; they can "rise or fall, or even be wholly lost, depending on the ways the investment is used" (Etzioni, 1998, p. 682). In this regard, members generally invest in their membership.

Not all outlays are intended to yield membership, but they may have affiliated consequences. How then can the concept of investment be assessed? What type of requirements should policymakers implement if considering making undocumented immigrants eligible for instate tuition? I mentioned that money (taxes), time, service, education, work (employment), and holding political office were all forms of investments. Policy could require evidence of work and tax contributions, community service, completion of a high school degree, and extracurricular activities for proof of investment. Community service is also an altruistic investment of time that is an indicator of ethical or moral character. Many schools require community service for graduation, making it another important facilitator of membership.

Identification

This principle or general finding captures stakeholders' intuitive belief that self-concept bears weight on whether a person shares a general sense of a commitment to exchange resources with others who have the same commitment. The identity that a person gives himself or herself affects whether he or she develops that commitment. Plainly, an undocumented immigrant is more likely to exchange resources with American citizens if he or she sees himself or herself as American.

How do people assess self-concept without requiring a battery of social and psychological tests? If identity is a function of the self and various institutions in the community, then policymakers should look for participation in organizations that reciprocate American values, beliefs, and knowledge. They should also consider how the student interacted with these institutions. Again, high school records, evidence of community and military service, and work history are all possible sources. If they cannot test identity, then they can look for participation with institutions that are critical in shaping one's identity.

Patriotism

Patriotism encapsulates stakeholders' apparent need for civic belonging in a political community that is diverse and pluralistic. "Civic patriotism—as what promises to replace nationalism by providing the civic bond of citizenship necessary for one's sense of belonging and identity while avoiding nationalism's damaging features" (Shabini, 2002, p. 420). Citizens and noncitizens in the study conveyed the need for civic belonging in their descriptions of membership. However, one's sense of patriotism can apparently be based on principles of homogeneous unity for purposes of exclusion or it can be based on principles of collective unity for inclusion. Ultimately, patriotism is a noticeable need that is inherent to one's commitment to sharing and exchanging resources with likeminded beings.

How can one assess the apparent need for civic belonging in a political community that is diverse and pluralistic? I think policymakers must look for civic engagement in its various forms. In conjunction, they can request evidence of cross-cultural collaboration and work within diverse settings. Undocumented immigrants who are members may be able to offer experiences that reflect how they formally deliberate with their community for the benefit of that community. Simultaneously, persons should be able to produce accounts of how they deliberated with others who are racially, ethnically, and economically different. Gutmann (1987) saw this as an "ideal of citizens sharing in deliberatively determining the future shape of their society" (p. 289).

Destiny

Destiny encompasses the future vision of where someone sees himself or herself inside or outside of a particular political community. It is the extent to which a person links herself to the fate of the community. Basically, the responses indicated that members tie their fate to that of the community's.

Signing an affidavit declaring one's future intent to apply for citizenship is the most direct way to operationalize the concept of destiny. Applying to college also

seems to be a good indicator that the person sees some future connection to the United States. Most of the students interviewed stated that they were going to college so they could realize their professional and academic dreams. The interview data suggested that if one is educated in the states, he or she is probably more likely to stay in the states. Therefore, school attendance at the primary, secondary, and postsecondary levels is an important indicator of destiny.

Law Abidingness

Law abidingness is the belief that people are more likely to develop a commitment to exchange and share resources with likeminded beings if they are willing to work within the moral parameters of the state. Law observance seems to be a pragmatic and sensible way to examine basic moral behaviors. There is the obvious assumption that public policy and law generally comport with basic notions of justice that are considered morally sound. There are certainly instances where good people break laws for just reasons. Ignoring aberrant circumstances, the principle assumes that breaking laws is in part a reflection of a person's aversion to the moral doctrine of the state, which is negatively correlated with being a member (or at least a good member). Therefore, criminal records should be used in developing mechanisms to capture substantive membership.

As a collective, integrated whole, membership principles answer the question "How are members of political communities developed?" or they answer "How do undocumented immigrants develop a commitment to share and exchange resources among citizens?" Defining or locating membership is important because it broadly determines to whom we allocate goods and services. Separately, the components do not define membership. For instance, we would never consider a foreign investor a member based upon their investment. A French scholar who studies American culture and politics would not be considered a member solely on the basis of her knowledge. Still, some policies favoring undocumented immigrant eligibility make the argument that residency is a sufficient condition that should make one eligible for various social goods (National Immigration Law Center, 2004). The findings in the Perry study suggest that a comprehensive framework should be used to determine eligibility.

This section illustrated the dynamic set of conditions that facilitates a perception of membership. Members are amenable to award benefits to those who reside durably in a state, meet minimum communication demands, belong to significant institutions that are central to the community's well-being, invest in the community, identify as a member, see their subcommunity as a part of the mother country, make a connection between their personal future and that of the state, and obey the laws. The principles of substantive membership signify a priori conditions that substantiate people's rights to social benefits in the United States. They are the assumed necessary conditions that a person must achieve before claiming benefits.

This article assumes that many undocumented immigrants have developed into substantive members and policymakers recognize them as substantive members based on the responses that lead to the framework. However, assuming that social constitutions divert our basic intuitive beliefs on issues of justice and membership, policymakers are unable to come to consensus regarding the allocation of postsecondary educational benefits. We cannot place actors in the original position or behind a veil of ignorance. As a result, race, class, gender, political affiliation, and ethnicity may color our thinking regarding the distribution of individual and citizen rights, membership development, available resources (limited resources), fair allocation of resources (discrimination), and state and national goals (state rights vs. national goals) and subsequently preclude policymakers from infusing beliefs of membership in education policies. Stakeholders voiced conflicting views on these issues in the aforementioned Perry study.

These aforementioned problem areas may also be intellectual detours that move policymakers away from enacting policies that reflect basic beliefs. Stakeholders seem to wrestle with these tensions on their way toward action (policymaking, lobbying, advocating, etc.). The author can only speculate that stakeholders' interpretations or reactions to these five areas may direct whether they see undocumented immigrants or substantive members as meeting commonly held notions of membership. Further research will illuminate how these factors shape notions of membership in our actual socioeconomic and political realms. Nevertheless, these critical points of tension are discussed to help guide future research.

The following section is primarily organized by the five problem areas of distribution of individual and citizen rights, membership development, limited resources, discrimination, and state rights versus national goals. The distribution of individual and citizen rights and discrimination are combined into one section. Limited resources and state rights versus national goals are also merged. The conversation in each section provides the grist behind the conclusive argument that countries should provide noncontributory (health care, child assistance), contributory (retirement unemployment), and social investment benefits (primary and secondary schooling) to substantive members.

Distribution of Individual and Citizen Rights/Discrimination

Questions around the distribution of individual and citizen rights as well as discrimination include the following: What fundamental rights do people carry regardless of citizenship status? How should citizenship be distributed? What is the responsibility for countries to issue social (higher education) benefits to its citizens, residents, and nonmembers? Does denying or awarding educational benefits to undocumented immigrants promote or discourage democratic practices?

Likewise, does it promote or discourage practices like discrimination and social stratification?

In addressing these questions, five important points must be explained. First, all people carry certain rights in the United States. Second, nations do have a right to determine who is or is not a citizen. Third, nations also have the right to permit limited membership as well as the right to determine various privileges and responsibilities that are associated with the various statuses. However (fourth), liberal democratic societies cannot generate membership criteria that prejudice specific groups. Fifth, democratic states cannot entice workers to the country, benefit from their labor, ignore employment and immigration laws, permit and encourage substantive membership, and then deny noncontributory, contributory, or social investment benefits to noncitizen substantive members. A discussion on citizenship will expand these points.

Citizenship is probably the most important benefit in democratic states because it guarantees the full allotment of rights, privileges, and benefits that are afforded to people in a country. For sound and just reasons, democratic states establish rules around citizenship. Two prominent reasons are for protection and self-determination (Joppke, 1998; Shafir, 1998; Soysal, 1994; Walzer, 1983). Citizenship helps countries defend the rights of people who are committed to sharing and exchanging resources with likeminded beings. Citizenship protects those rights that are necessary to individual freedom, including the right to property, personal liberty, and justice. It also grants and guards individuals' political rights such as the right to vote or hold office. Citizenship provides a layer of protection by guaranteeing certain social goods that are necessary for security and welfare such as healthcare and education. For these reasons, countries have a legitimate right to determine the terms of citizenship.

Likewise, citizenship and the rights associated with it shelter a country's ability to self-determine. If people of the nation-state are to be the primary architects of its character, then certain political rights must be privileged to citizens. For instance, voting privileges and the right to hold public office (with the exception of the presidency in the United States) should be reserved for citizens. In this regard, citizenship enables political communities to be sovereign states first and foremost through powers to determine who is and who is not a citizen (Joppke, 1998; Soysal, 1994; Walzer, 1983). Citizenship then becomes the ultimate form of membership in liberal democracies because citizens have the right to create and construct the laws that govern the state. Although citizenship is the ultimate form of membership, communally determined goods are not distributed in a closed system comprised of beneficiaries and nonbeneficiaries, citizens and noncitizens (Walzer, 1983). A range of benefits, rights, and other communal goods are intricately distributed to all person within the system on moral, economic, political, and social grounds, all of which aim to sustain the political community.

For several reasons—the needs of labor markets account for more than a few—people seek entrance and acquire residence in countries. For primary reasons of protection and self-determination, countries are not obligated to grant full membership benefits to persons simply because a person lives or works within its borders. The United States has established a litany of naturalization rules and regulations in which hopeful residents or expectant citizens must engage to obtain citizenship. Within the battery of rules, several membership statuses exist with several rights attributed to each designation. Various work and educational permits are issued under a range of immigration regulations. Countries should expect people to follow immigration law if they want to become citizens or have access to certain rights.

The problem of status ambiguity enters the equation. Numerous political communities apparently cannot orchestrate or control a system of absolutes (Guiraudon, 1998; Hammar, 1990). In particular, we hire members and strangers, which support the overall community. The market does not discriminate in this regard. Businesses are not constrained. Immigrants primarily come for work and employers oblige them (Borjas, 2000; Castles & Miller, 1998; Keely, 1979; Massey & Espinosa, 1997).⁴ For these reasons, it is important that all people are afforded certain unalienable rights to protect a democracy from exploitation, discrimination, and segregation. Undocumented immigrants are especially vulnerable in this regard. In *Plyler v. Doe*, the Supreme Court evoked the Fourteenth Amendment equal protection clause, which prohibits states from denying equal protection to any person within its jurisdiction.

[The] Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says “Nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protections of the laws.” These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, or color, or of nationality; and the protection of the laws is a pledge of the protection of equal laws. (*Plyler v. Doe*, 1982, p. 212)

Despite their immigration status, undocumented aliens are persons within the jurisdiction of a state entitled to life, liberty, property, and due process. In the case of children of undocumented status, the Court also noted that children did not commit a crime entering the country. In considering the rights of children of undocumented immigrants, we must eliminate discussions of the rights of the criminal. There are several rights associated with life, liberty, and the pursuit of happiness that are entitled to persons regardless of status. Although not codified in the Constitution, the Court noted that education is afforded extraordinary treatment because citizens and potential citizens cannot achieve any meaningful degree of individual equality without it (*Plyler v. Doe*, 1982).

The idea of a potential citizen is an attempt to demarcate levels of membership that are not considered in administrative or legal structures. I believe that it is an

attempt to get at substantive members. Making this distinction is critical for individual freedom as well as for the country's wellness. Hence, the court granted certain undocumented immigrants various educational provisions because their futures were deemed as personal investments and as connected to the political community. Once that distinction was made, the Court juggled ideals of the Fourteenth Amendment and the practical needs of the state. The Court found that the individual and country needed all substantive members to receive a basic education. Therefore, a question that must be addressed is "Can a person or substantive member achieve any degree of individual equality without a postsecondary education?" In addition, why does a country need all of its substantive members to receive the highest degree of access to postsecondary education?

The economic and social realities of the 21st century demand high school completion at a bare minimum. The lack of a high school diploma and the presence of low income grant access to impoverished and oppressed lifestyles (U.S. Census Bureau, 2002, 2003). The unemployment rate is highest among people without a high school degree (U.S. Census Bureau, 2002). Furthermore, overall income is positively correlated with educational attainment (U.S. Census Bureau, 2002). There is also a strong relationship between income and various factors of well being.⁵ In addition, those who cannot earn a high school diploma or enter the workforce may turn to crime (U.S. Census Bureau, 2002, 2003). In general, former prisoners report lower levels of income and education than do nonprison populations. All of this accentuates the importance of access to postsecondary education for a country's substantive members.

There is mounting evidence that a high school diploma simply does not grant access to jobs that generate the type of income correlated with individual achievement. There is a growing gap between the annual earnings of those with just a high school diploma and those with a postsecondary education. In 1975, full-time, year-round workers with a bachelor's degree had 1.5 times the annual earnings of workers with only a high school diploma. That ratio rose to 1.8 by 1999. The U.S. Census Bureau attributes this historical change to the supply of labor and the demands for skilled workers (U.S. Census Bureau, 2002). Jobs that do not require a minimum of a high school diploma are diminishing nationally.

Technological changes favoring more skilled (and educated) workers have tended to increase earnings among working adults with higher educational attainment, while the decline of labor unions and a decline in the minimum wage in constant dollars have contributed to a relative drop in the wages of less educated workers. (U.S. Census Bureau, 2002, p. 3)

Employers are demanding more skilled and educated workers, making access to postsecondary education a critical component to individual equality, especially among substantive members.

Marlene B. Seltzer, President of Jobs for the Future, stated,

Across our country, there is a crisis among many families and individuals who lack the basic skills necessary to move into family-supporting employment. Even those working full-time jobs too often still find themselves unable to provide for the basic needs of their families—food, shelter, clothing, transportation, and medical care. (Jobs for the Future, 2004)

This is primarily because many jobs afforded to those with a high school diploma pay low wages. “For many people, getting into work doesn’t mean getting out of poverty” (Kazis, 2001, p. 1). Fewer than 2 million Americans head families that are on welfare, but 9 million working Americans live beneath the official poverty line (Kazis, 2001). Many of the jobs that do not require a college degree place people in a socioeconomic bracket that is associated with substandard living conditions, limited health care access, meager educational outcomes, and higher rates of incarceration. Compounding matters, low-income jobs are requiring workers to upgrade their skills (Prince, 2004).

A postsecondary education adds value, which is manifested by the positive correlation between educational attainment and earnings. For instance, the average of all individuals’ annual earnings in 2002 was \$34,700 (U.S. Census Bureau, 2002). However, the “average earnings ranged from \$18,900 for high school dropouts to \$25,900 for high school graduates, \$45,000 for college graduates, and \$99,300 for workers with professional degrees” (U.S. Census Bureau, 2002, p. 2). These data suggest that the skills associated with a postsecondary education as well as credentials provide access to individual economic freedom. Moreover, postsecondary schooling equips persons with higher-order skills, which increase chances of getting a higher paying job.

The importance of educational attainment is not only significant for individuals. States recognize the need to fix the leaky educational pipeline, which weakens capacities to be economically competitive among other states and nations (Kazis, Pennington, & Conklin, 2003).

In today’s knowledge-based economy, states will compete internationally and with one another based on the education and skills of the workforce, including entry-level, professional, managerial, and technical employees. States with a weak K-12 education pipeline will lose out in the competition for jobs and economic growth, at great cost to business vitality and family incomes. (Kazis et al., 2003, p. 4).

On behalf of the National Governors’ Association, Kazis et al. (2003) went on to say,

The economic returns from higher educational achievement levels are already significant for both individuals and states. College graduates earn on average 70 percent more

than high school graduates—a gap that has widened in the past two decades even as the supply of college-educated workers has risen. Higher levels of educational attainment lead to higher per-capita income levels. (p. 4)

Carnevale and Fry's (2001) work estimates that nearly \$230 billion would be added to the gross domestic product and \$80 billion to tax treasuries if we narrow the gap in postsecondary attendance between the highest- and lowest-income Americans (substantive members). Federal and state governments recognize the basic need for a highly educated workforce and populace. In addition, states have concentrated on raising the educational levels of those in lower socioeconomic brackets (Kazis et al., 2003). A high school education does not provide individuals with the skills that are needed in a knowledge-based economy. It is a national interest that we reconceptualize our understanding of basic education.

Since the Morrill Land Grant Acts, the government has recognized the need to increase access to institutions of higher learning (Higher Education Resource Hub, 2004). The shift from an agricultural, industrial economy to today's knowledge-based economy has increased the importance of a college education. There is general consensus among higher education theorists that colleges and universities play a major role in maintaining and facilitating the social health of society (Bok, 1982; Gumpert, 2000; Kerr, Gade, & Kawaoka, 1994). Higher education helps promote societal wellness by providing education for civic or democratic engagement; preserving knowledge and making it available to the broader public; working cooperatively with government and private industry to foster their missions; promoting, advancing, and preserving arts and humanities; developing the intellectual talents of its students; preparing society's future leaders; broadening access to ensure a diverse democracy; and serving as an unbiased critic of society (Kezar, 2002). These social benefits, in addition to supporting economic and market goals of society, comprise what many consider to be the primary elements of the charter between higher education and society (Bok, 1982; Kezar, 2002).

By providing various social benefits and producing workers and knowledge for industry, higher education helps U.S. society to thrive. The Court noted in the *Plyler* decision that a basic education should entail the rudimentary knowledge a person needs to be able to achieve equality. However, access to this knowledge is beneficial to both the community and the individuals within it. If the United States does not provide substantive members access to a basic education, the costs could be devastating to its residents and institutions. I am swayed by the evidence that suggests that higher education is basic and necessary for both individual and societal wellness. Therefore, postsecondary education financial assistance should be a social investment benefit like primary and secondary school.

The newest iteration of basic education should incorporate postsecondary attainment primarily because of its importance to economic wellness and social goals of the state.

Substantive members must have the ability to contribute to a system of government that is built to protect and supports them. Under this framework, basic education includes the necessary schooling along with skills that give individuals the ability to pursue life, liberty, and happiness. Within this conceptual shift, states must also begin to explicitly acknowledge that all of its substantive members are included in aspirations for a highly educated populace primarily because political, economic, and social systems are built around and on its substantive members. Increased skill development is needed for those substantive members who are filling the economic needs of the state. Many undocumented immigrants and substantive members are those persons.

States need substantive members to apply new basic skills (Kazis et al., 2003) in an evolved market and technical community, for substantive members are by definition the people who are committed to sharing and exchanging goods with likeminded beings. Substantive members are the people who are working, sharing, and exchanging in our communities, homes, businesses, and schools. The denial of postsecondary benefits to durable residents of our states will economically disadvantage those individuals and the communities in which they reside.

The last few paragraphs provide reasons why countries and states should enhance financial access to higher education institutions. However, a denial of benefits to substantive members may violate the United States' normative principles of unity, community, and equality. By limiting access to substantive members, we discriminate against those who share and exchange with other likeminded beings and who contribute to the overall progression of society. Making college more affordable to undocumented substantive members may change the bias that possibly underlies the resistance to recognizing substantive membership.

The lifeblood of democracy is cooperative and continuous learning beyond class, race, sex and religion. This is meant to forge new understandings that will change bias and social rigidism. It is important to note that universities control access to almost all the major institutions in the society. In political terms this is why open enrollment in universities is so crucial. (Raskin, 1986, p. 124)

Raskin's assertions are fundamental to the claim that substantive members should receive financial aid. It should be assumed that social bias and rigidity are traits that are to be avoided among all people, especially among its substantive members. If there are limits based on nationality, then there is a possibility to institutionalize discrimination among noncitizens and substantive members. However, the passage does not suggest that a country has a responsibility to educate all within its borders. It does imply that bias among substantive members of the state will prevent a democracy from reaching its highest levels. Therefore, a distinction must be made between substantive members and nonmembers. For instance, there is a difference between a country's need and responsibility to provide access to an immigrant on a travel visa

and an undocumented immigrant who has lived in the country for 10 years and who has developed into a substantive member. In other words, access to higher education among substantive members is critical if a democracy is to thrive.

In this regard, countries cannot recruit immigrant workers, choose not to enforce immigration laws in significant sectors of society, reap the benefits of their labor, and then deny benefits to those who have become substantive members. Such exploitive behaviors are forms of discrimination that countries attempt to legitimize through citizenship status. As indicated by the Fourteenth Amendment, countries cannot discriminate against people because they are noncitizens. Moreover, to deny benefits to people that the country's institutions help acculturate is removing its culpability in transforming people into substantive members.

Membership Development

Questions involving membership development include the following: Does the nature of the community facilitate a type of membership that is not acknowledged by the U.S. construction of citizenship? Does the nature of the community develop a type of membership that is not acknowledged by its laws involving higher education benefits? A basic illustration can help bring awareness to these questions.

The stark economic differences between the United States and other countries paired with the economic needs of the United States pull a great deal of undocumented immigrants into the country (Fix, Zimmermann, & Passel, 2001; Friedberg & Hunt, 1995). Employees bring their families as they take available jobs in the market. Employees go to work, many undocumented families join relatives in the states, and children go to schools where they reside. Various institutions facilitate, support, and develop substantive membership. The Perry study found a mutually beneficial relationship between various institutions of the labor market, schools, and families. As a result, a significant number of undocumented immigrants develop the basic commitment to exchange with citizens. Consequently, institutions within the United States play a significant role in recruiting, hiring, sustaining, and benefiting from millions of people who are not citizens. The country's institutional involvement has psychological, economic, and material consequences that affect a person's sense of membership.

If a country does not enforce immigration laws especially among various employers, then it must deal with the consequences of immigrants' possible acculturation in society. However, enforcing immigration policies will be difficult if the basis for which U.S. policy distributes citizenship does not encompass elements of substantive membership. This country may have thousands if not millions of residents who meet its expectations of membership. The millions of durable undocumented immigrants apparently demonstrate that the naturalization processes

are not sophisticated enough to identify those residents who have become substantive members.

Moreover, it may be economically and socially impossible to enforce current immigration policy if the policy cannot make distinctions between those immigrants who have fulfilled expectations of membership and those who have not. The Immigration Reform and Control Act of 1986 was expected to curb the flow of illegal migration into the country by placing penalties on employers that hired undocumented immigrants (Meissner & Trilateral Commission., 1993; Urdang, 1996). However, the large number of undocumented immigrants that are working in the United States suggests that the workforce needs immigrant residents. In addition, the country is reluctant to impose sanctions tough enough to curb the hiring of undocumented immigrants because stringent enforcement may weaken the economy.

Limited Resources and State Rights Versus National Goals

Several questions emerged regarding limited resources and state rights versus national goals: Does the denial of financial aid eligibility make a class of persons stateless and vulnerable to essential goods needed to thrive in society and for society to thrive? Will providing benefits to noncitizens weaken or strengthen the country's ability to provide for its official members? Would advancing benefits to undocumented immigrants create a system too open for us to control, administer, or pay for? Does the denial of postsecondary benefits undercut or support education's role in facilitating certain goals of the state? How does immigrant participation in higher education factor in the state's general investment in education?

The FAIR makes an argument that is widely held in the debate of whether undocumented immigrants should receive financial aid. FAIR claims that with the finite number of seats, a slot taken by an undocumented immigrant means one less opportunity at that university for a deserving citizen (FAIR, 2003). In addition, the public subsidy is given to a person who if granted a degree would still be an illegal resident. Therefore, it is a subsidy that is wasted. FAIR and others who oppose undocumented access to financial aid also claim the endeavor would burden taxpayers.

Much of the research in this area is flawed significantly because researchers are unable to capture the many variables that are required to do a credible cost-benefit analysis (Rothman & Espenshade, 1992). Most limited-resource arguments question whether the taxes generated by undocumented immigrants cover the costs of the services they use. Determining the costs and tax revenue is difficult because the data needed to make such analyses are generally not available. We cannot accurately determine the degree to which immigrants use services, nor do we know immigrants' added value to the economy. However, most people recognize that any type of mass

exodus of undocumented immigrants would cause economic havoc on major industries (Borjas, 2000; Lowell & Suro, 2002; Martin, 2002).

Rothman and Espenshade (1992) found that most of the limited-resource arguments against undocumented immigrant access to various social goods understate tax collections from immigrants; overstate service costs for immigrants; do not consider the range of economic benefits of undocumented labor, spending, and business; exaggerate job displacement of native workers; neglect to show that native workers often consume more services than they pay in taxes; and overestimate the size of the immigrant population. Further studies must incorporate economic analysis to clarify the cost and benefits of undocumented immigrants' presence in society and schools.

However, researchers seem to miss a larger point in the limited resource debates. When considering limited-resource arguments, one must have a sense of what type of benefit financial aid should be. Based on earlier discussions, higher education financial assistance should be a social investment benefit primarily because some postsecondary education is basic and necessary for both individual and societal wellness. All substantive members receive financial aid at the primary and secondary levels for those aforementioned reasons. States must have the right to prevent the devastating social costs associated with not providing basic needs for its residents.

The provisions in IIRIRA limit states' ability to determine the types of benefits their residents and businesses need. However, states must have the right to serve their substantive members. States have long recognized that many of their residents are substantive members and contribute to the social and economic well being of communities. If higher education is considered basic, then states must have the ability to empower and protect their residents. In-state tuition is a benefit that can be allocated because substantive members contribute to it and because the potential social and economic costs of not providing basic necessities would far exceed the cost of the subsidy.

Conclusion

If the debate continues to ask whether undocumented immigrants should receive financial aid, conflicting policies will continue to miss the critical question of who should be eligible for this class of benefit. This article argues that substantive members should receive aid. Individuals develop into members although our policies do not make those distinctions. Members contribute to the health and vitality of our primary institutions in this country. If substantive members of the state are denied schooling and skills, then those institutions are denied its most capable resources.

Membership Framework: Substantive Membership

	Social Awareness	Reciprocation	Investment	Identification	Patriotism	Destiny	Law-Abidingness
Principle	Residency	Reciprocation	Investment	Identification	Patriotism	Destiny	Law-Abidingness
Key analytic questions	Has the person been living in the community long enough to become socially aware, work, learn, and invest in the community?	Is the person linked into a network of institutions through a series of exchanges of values, skills, and basis knowledge that enables a person to thrive in the sociopolitical, cultural, and legal environments of the political community?	Has the person invested time, money, skills, education, and other resources for the return of membership?	Does the person identify as a member?	Does the person incorporate his or her identity in a larger conceptualized on of the community?	Does the person place his or her fate with that of the community?	Does the person abide by the law of the land?
Practical assessment	School attendance records, library records, driving history, church records, after-school program attendance	School attendance, high school diploma, participation in community centers, employment, family status	High school diploma, community service, extracurricular activities, wages earned, taxes paid	Completion of high school, extracurricular activities	Cross-cultural collaborations, evidence of working well with others, military background	Education track, career path	Criminal history, school disciplinary records

(continued)

Membership Framework: Substantive Membership (continued)

Principle	Residency	Social Awareness	Reciprocation	Investment	Identification	Patriotism	Destiny	Law-Abidingness
Policy requirements	Be present in the state long enough to meet current residency laws; attend high school for at least 3 years.	Graduate from a high school in the state in which the student is a resident.	Graduate from a high school in the state in which the student is a resident; show evidence of sustained community service.	Graduate from high school; show evidence of sustained community service; participate in the armed forces or ROTC.	Graduate from high school.	Show evidence of cross-cultural collaboration or working with people of different socioeconomic backgrounds.	Apply for and be accepted in an accredited college or university; sign an affidavit promising to initiate the naturalization process.	Have no felonies.

Notes

1. For an updated list of states that introduced bills, see the Mexican American Legal Defense and Education Fund Report by James A. Ferg-Cadima (2003).
2. By *constitution*, I mean the moral, legal, and political doctrine of the political community.
3. By *institution*, I mean an organization or society founded for a particular purpose or an established law, practice, or custom (Urdang, 1996).
4. Many undocumented immigrants give employers falsified Social Security numbers for identification and tax-collection purposes. Because many undocumented workers provide fake Social Security numbers to employers, exact calculations of their contributions cannot be made. However, undocumented immigrants contribute billions to federal and state governments because income taxes are deducted from undocumented workers' regular earnings (Social Security Administration [SSA], 2002). These earnings are not posted to individuals' earning records in the SSA's Master Earnings File because the Social Security numbers are either invalid or do not match the workers' names. If there is not a proper match in the system, the wages are placed in the Earnings Suspense File (ESF), a repository for the wages of unmatched names and numbers. "As of July 2002, the ESF contained approximately 236 million wage items totaling about \$374 billion related to TYs [tax years] 1937 through 2000. In TY 2000 alone, 9.6 million items and \$49 billion in wages were posted to the ESF" (SSA, 2002, p. 1). The SSA reports that nine states accounted for 70% of the suspended items (California alone contributed 35%). Three industries accounted for 46% of the items. Agriculture, fast food, restaurants, and other service industries make up large percentages of the ESF—industries populated by migrant and immigrant work.
5. Well-being is a composite factor comprised of variables of possession of basic household materials (appliances and electronic goods such as refrigerators, televisions, telephones, computers, etc.), housing conditions (physical problems, space, warmth, privacy), neighborhood and community conditions (crime, traffic, fire and police protection), ability to meet basic needs (paying bills, avoiding eviction, having enough food), and whether help would be available from family friends or other sources if it were needed in the household (U.S. Census Bureau, 2003).

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