

## Noncitizens' Rights

### Moving beyond Migrants' Rights

*Sin Yee Koh*

■ **ABSTRACT:** In this reflective essay, I argue that it is timely to think of noncitizens' rights rather than migrants' rights *per se*. Using insights gained from my research on expatriates in Brunei and Malaysia, I show how expatriates become institutionalized as *perpetual noncitizens* and therefore systematically excluded from the assemblage of rights afforded to "recognized" residents. In other words, like their relatively underprivileged migrant counterparts, expatriates are also subjected to differentiated rights tied to their noncitizen status. Linking this insight to my reading of recent scholarship on "forced transnationalism" and "hierarchies of deservingness," I discuss how these conceptual tools could be useful in advancing a research agenda on noncitizens' rights. Finally, I reflect on the role universities can play in supporting and advancing this agenda.

■ **KEYWORDS:** Brunei, deservingness, differentiated rights, expatriates, Malaysia, noncitizens, residence-based citizenship

### Introduction

The invitation to write this essay has been timely. I am in the midst of teaching an undergraduate course on migration in the twenty-first century in which I explore, with my students, questions about the differential rights afforded to different types of migrants (broadly, economic, lifestyle, and forced migrants) and the consequences of migration and citizenship policies on migrants' lives. Alongside this, I have been working on a few research projects on student migrants, skilled migrants, expatriates, and ethnic minority diasporic communities in Malaysia and Brunei. Writing this essay has given me an opportunity to reflect on the common theme underlying these research and teaching endeavors—that of differential rights accorded to those who are deemed partial or noncitizens and, by extension, undeserving of equal rights enjoyed by citizens.

In extant literature and public debates on migrants' rights, there seems to be a lopsided focus on less privileged migrants—refugees, asylum seekers, forced migrants, victims of human trafficking and human smuggling, irregular migrants, and undocumented migrants. Oftentimes, such migrants have less recourse to seek assistance or protection in either claiming for,

or defending, their social, economic, cultural, and political rights. As relatively less privileged migrants, they sit at the powerless end of the spectrum against the more powerful agents and decision makers, such as their migration brokers, their employers, and state authorities. The lack of acceptable, legal documentation often leaves them in the precarious position of not being recognized as persons worthy of enjoying equal rights as other residents who are living in the same place.

Notwithstanding the salience of research and activism advocating for the rights of relatively less privileged migrants, I think it is timely to *also* pay attention to the rights of relatively privileged migrants. This is because both underprivileged and privileged migrants share the common status of being noncitizens. Their noncitizen status, in turn, circumscribes the assemblage of rights they may have in their host countries.<sup>1</sup> Moreover, both underprivileged and privileged migrants are equally subjected to systems of discretionary (and oftentimes nontransparent) acceptance that selectively includes or excludes them as rightful members of their host countries. As Patricia Landolt and Luin Goldring (2016: n.p.) write: “Variable and dynamic frames of deservingness mediate all interactions, negotiations, and claims, and these moral scripts play a crucial role in determining legal status worthiness. These various social interactions, forms of agency, and discretionary practices intertwine in systematic and contingent ways to assemble noncitizenship.”

In what follows, I will first use some insights gained from my research on expatriates in Brunei and Malaysia to demonstrate why it is important to pay attention to their status as noncitizens, even when they are relatively privileged and may have a greater degree of choice and negotiating power in their mobilities. I will then argue why it is timely and more useful to think about *noncitizens’ rights* as a whole rather than limiting the discussion to migrants’ rights, or splitting hairs about migrant categories.<sup>2</sup> Finally, I will briefly reflect on the role universities and higher education teaching can play in supporting the rights of noncitizens.

### **Insights from Research on Expatriates in Brunei and Malaysia**

In 2016 and 2018, I worked on two separate qualitative research projects on expatriates in Brunei and in Malaysia. I found, to my initial surprise, that there were similar themes underlying the respondents’ narratives.

First, despite their perceived elite status vis-à-vis underprivileged migrants, the expatriate respondents were also similarly subjected to rules and regulations that determine their right to immigrate (including the duration of stay and what they can or cannot do while living in the host country), as well as their right to permanent residence and citizenship. In both Brunei and Malaysia, criteria for permanent residence and citizenship by naturalization or registration are highly stringent and curtailed. Even expatriates who have married local citizens and who have resided for decades in the country may not necessarily be successful in their permanent resident and citizenship applications. In effect, they become *perpetual noncitizens* and are systematically prevented from full integration and belonging to their host countries. This has implications for their individual and family lives, their retirement years, and the prospects of their next generations.<sup>3</sup> For example, a retired noncitizen expatriate—who no longer holds an independent employment visa—may lose the right to reside in the country once there is marital dissolution, as s/he would lose the dependent spouse visa. For a noncitizen expatriate who holds an independent employment pass, the marital dissolution may mean the loss of child custody. These examples show that privileged migrants are also subjected to differentiated rights tied to their noncitizen status.

Second, a significant proportion of the expatriate respondents have gone into expatriation because they *had* to, not because they want to or because they really had a choice. I have heard stories about shrinking job markets and unsustainable work options at home, as well as unanticipated financial pressures due to unexpected events such as later-in-life divorce. Others who have left home for decades find that they had to continue a life of expatriating because they faced challenges when attempting to (re)insert themselves back into the job market at home. Having left home for so long, they no longer understood the local culture and way of life. Furthermore, they may no longer have a local social network they can tap into. Most importantly, they could not adjust to the discrepancies in their expectations and the realities of work and life at home. As a result, some expatriates are pushed into a life of “forced transnationalism” and “permanent temporariness” (Piper and Withers 2018). On the one hand, expatriation affords them global mobility—at least during their early and prime career stages. On the other hand, and paradoxically as a result of their globetrotting lives, they become caught in a transnational web of “curtailed economic and political rights that produce migrant precarity and precarious livelihoods” (ibid.: 560). Going into expatriation means that they have given up a life of sedentary existence—which, unfortunately, is still the key principle for the recognition and conferment of rights.

### Toward Noncitizens' Rights

In addition to the insights gained from my research findings described above, my argument in this essay also builds on two recent developments in scholarship debates.

First, there is an emergent scholarship highlighting the need to consider the coexistence of vulnerability and privilege in relatively privileged migration (e.g., Botterill 2017; Leonard and Walsh 2019). This development suggests that there is growing awareness that relatively privileged migrants, like *all* migrants, are also exposed to vulnerabilities in their lived migration experiences. More importantly, these vulnerabilities could arise from these migrants' differential rights as noncitizens in their host countries. I argue that this emergent scholarship opens up the space for discussions about the differential rights of relatively privileged migrants vis-à-vis “rightfully recognized” citizens. In other words, similar to their less privileged counterparts, relatively privileged migrants are also conceptually and legally considered noncitizen “others.” This has consequences for the rights they are conferred and their ability to enjoy and assert those rights.

Second, there are some recent contributions offering conceptual tools to think about a more inclusive conceptualization of rights that transcends the underprivileged and privileged divide. While these contributions may have been derived from reflections on underprivileged migration, I argue that their conceptual insights can be applied to all noncitizen migrants. For example, Nicola Piper and Matt Withers argue that state policies deliberately keep migrants “strictly temporary” (2018: 562), thereby resulting in “migrants' truncated rights” (ibid.: 559) in their respective locations. As shown in the previous section, this is similarly experienced by relatively privileged migrants who are also kept temporary and have restricted access to some rights. Using their analysis of the construction of healthcare deservingness for various categories of migrants by the Malaysian state, Meghann Ormond and Alice Nah (2019) argue that the neoliberal state strategically calculates and structures the degree of deserved access to healthcare on the basis of a hierarchy of preference. Migrants who are deemed “desirable” are wooed to partake in medical tourism and have access to quality private healthcare. By contrast, migrants who are deemed “undesirable” have limited access to healthcare and are in turn pushed into becom-

ing “disposable” migrants. Ormond and Nah’s conceptualization of “hierarchies of healthcare deservingness” (ibid.: 7) can be applied to theorizations of “hierarchies of rights deservingness” afforded to noncitizens.

### Universities’ Role

What role can universities play in supporting this call toward a focus on noncitizens’ rights? To my mind, the core function of the university is to educate, inspire, and broaden minds. The university is a place where young people from different backgrounds and experiences encounter their peers—including their noncitizen peers—and become exposed to new ideas and new ways of understanding. The university is also an institution that has credibility in public education and engagements with the third sector—for example, through holding research dissemination seminars, exhibitions, collaborative projects, student internships, and in integrating practice into academic teaching.

In my current teaching, I introduce my students to the world of migration scholarship, the complexity of migration, and the importance of thinking analytically about the rationales for, and implications of, migration policies on people’s lives. In addition to academic content, I regularly bring in current affairs and news coverage to help my students see and understand the connection between the academic concepts they have learned and real-life happenings around them. I have also invited guest speakers from international organizations and independent documentary filmmakers to share with my students their experiences of working with migrants and the insights they have learned. While I am unable to measure the exact impact of my teaching practice, my hope is that one day, when my students are in the position to shape migration and noncitizens’ rights in some way, they will remember what they have learned during our journey of exploration in the university.

### Concluding Remarks

As all migrants—underprivileged and relatively privileged alike—are perceived as perpetual noncitizens in their host countries, their rights to full enjoyment and contribution to social, economic, cultural, and political life are perpetually partial, discounted, and restricted. Universities play a crucial role in public education and in raising awareness about the importance of rights for noncitizens. As the world becomes more mobile and more people will be living lives on the move, it is timely to rethink the basis for the existing binary conceptualization and operation of the citizen-noncitizen divide. More importantly, we need to make the shift from thinking about migrants’ rights to thinking about noncitizens’ rights. While it may not be immediately possible to institutionalize residence-based citizenship (Stavilă 2013) globally, the least we can do now is to educate young people and the general public about the importance of rights for all.

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## NOTES

1. In this essay, I use the term “host countries” in reference to origin and destination countries as these countries perform the same function of “hosting” people—citizens, residents, migrants, and noncitizens alike. Furthermore, an individual may be ascribed noncitizen status in his/her country of origin (e.g., stateless person, person not recognized as indigenous).
2. To be clear, I am not saying that migrant categories are unimportant. They are, because they are used by state authorities to categorize and determine individuals’ legal status and access to the corresponding assemblage of rights. What I am arguing for, instead, is for migration scholars to advance our collective understanding of migration and rights beyond such preexisting migrant categories. I believe that it is only when we see individuals as equal human beings, rather than citizens or refugees or expatriates, that we can then tackle the issue as such—that is, an issue about human rights rather than migrants’ rights.
3. Depending on the citizenship legislations of the country, the local citizen spouse may not be able to pass on his/her citizenship to their child.

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