

# Solidarity in Place? Hope and Despair in Postpandemic Membership

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War-time metaphors have been adapted to the fight against the novel coronavirus. “This enemy can be deadly, but it is also beatable,” Boris Johnson told an anxious world after the World Health Organization declared COVID-19 a global pandemic.<sup>1</sup> Unlike the traditional battlefield, where armed forces occupy the frontlines, the early days of this crisis saw nurses, doctors, supermarket cashiers, subway drivers, and agricultural workers hold the line. In the United States, these foot soldiers—many of them racialized minorities employed in low-income sectors—put their lives at risk to keep the country and the economy running. Immigrants made up a substantial part of this vanguard, representing nearly one in five members of the total U.S. essential workforce.<sup>2</sup> In major European countries such as Austria, Belgium, Germany, Italy, and Sweden, migrant workers also played a key role, similarly occupying around 20 percent of the essential workforce.<sup>3</sup> Yet millions of these “pandemic warriors” who performed tasks defined by governments as essential or critical during the pandemic held only temporary legal status or no recognized legal status at all.<sup>4</sup> In this essay, I explore the ripple effects of the pandemic and the pressures that it revealed, especially when it comes to the deep inequalities that are

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baked into existing membership regimes. I begin the discussion by recounting the sobering social disparities and vulnerabilities that the pandemic has unearthed and exacerbated, before turning to narratives of hope and democratic renewal.

Throughout the discussion, I seek to identify key resources, principles, and justifications that may be mobilized to expand the boundaries of citizenship. Focusing on pathways to the acquisition of full membership status for those who are currently denied it, I deploy logics and policies that have already begun to take shape in different parts of the world, with the goal of amplifying their effects and multiplying their scale. Moreover, I emphasize opportunities for reversing existing practices that reward “red-carpet” migrants—be they highly skilled, super talented, or ultrarich—and instead recognize the contributions made by those who are too often marginalized, racialized, or “invisibilized.”

In developing the argument, I will draw insights from law, political theory, and comparative analysis to identify three different models of postpandemic response by states, two of which offer ways to enhance equality of status and political voice by enlarging the circle of membership: first, through contribution (or what I will term “*jus contribuere*”), and second, by highlighting what we might call “solidarity in place.” The third reaction, which we might call the “stratification of membership,” pulls in the opposite direction by sharply redrawing lines—legal, economic, social—that distinguish insiders from outsiders, exacerbating inequality of status and opportunity. The illustrative examples I explore shine a spotlight on the relationship between borders, (im)mobility, and struggles for recognition and inclusion that have long been central to the practice of citizenship.

## ON HOPE AND DESPAIR

Looking at the glass half empty, it is easy to succumb to despair. In the United States, to provide but one example, the pandemic’s toll revealed sharp disparities along racialized lines, with Black, Indigenous, and other people of color experiencing the highest death rates. Gender violence spiked. Food insecurity rose. Countless families’ savings disappeared and many small businesses went under. By contrast, the tech superpowers, including Amazon, Apple, Google, Microsoft, and Facebook-turned-Meta, saw their profits soar just as America’s billionaires saw their wealth surge. Across the Atlantic, as countries transitioned out of the pandemic, voters’ anger and distrust translated into ballot box victories for far-right parties not only in Hungary and Poland but also in Sweden and Italy.

Galvanized by variations on the rallying cry of “Our country first!” these far-right parties, and others across Europe, portrayed unfounded links between the spread of COVID-19 and the arrival of immigrants, and seized on this to call for an abolition of legally entrenched asylum protections.<sup>5</sup>

The aftershocks of the pandemic and current geopolitical uncertainties may exacerbate these patterns and give way to populist, nationalist anti-immigrant sentiments that fuel the politics of exclusion and democratic backsliding. This is a predictable, yet bleak, future. I wish to explore here whether the current moment offers a rare window of opportunity for reshuffling the definitions of contribution and the scales of membership to find some emancipatory potential in the pandemic’s disruption. The search follows a methodological process that Jakob Huber refers to as excavating “hope from despair.”<sup>6</sup> Accordingly, we must confront the harsh realities on the ground to “uncover not only persistent inequalities and injustices but perhaps also the kernel of unrealized potentialities for transformation.”<sup>7</sup>

## POSTPANDEMIC MEMBERSHIP: THREE SCENARIOS

The search for alternatives relates to some of the oldest and most fraught questions that any political community (short of a global one) must address: Who may gain access to membership, and according to what criteria? The pandemic has put these questions back on the agenda with newfound urgency. It has revealed the tremendous organizational and regulatory capacity that states have retained to shut down borders and arrest movement, just as it has highlighted the potential for new openings in social struggles for redefining access and membership in a community. Throughout its history, the contours of citizenship as an ideal and as an institution have always been a topic of contestation. Today is no different. While I concentrate here on migrant workers—those who, in the words of the International Labour Organization, “suffered the worst of the pandemic”—my argument is located within a broader framework that seeks to expand the horizon of our political imagination.<sup>8</sup> My goal is to consider a greater range of principles, or justifications, for extending citizenship to those who are already co-present in our societies yet remain locked outside its legal gates.<sup>9</sup> What keys might open these sealed entryways in a postpandemic world? While none of us possess a crystal ball, my analysis identifies three prospective directions from emergent trends adopted by policymakers in the world around us. In the following

pages, I speculate on three different bases for achieving more (or less) inclusive citizenship models and explain how they matter for the future of migrants' rights, democratic revival, and struggles for equality and recognition.

### ***Jus Contribuere: Essential Contribution as a Basis for Membership***

Responding to the shock of the pandemic, countries such as Canada and France introduced pathways to permanent residency for certain categories of essential workers, offering them a fast track to citizenship in recognition of their frontline contributions. Marlène Schiappa, the former French citizenship minister, articulated the spirit of this essential contribution principle for granting membership, which we might call *jus contribuere* (Latin for “contribute,” “unite”): “France wanted to show its gratitude to those who had ‘shown their attachment to the nation’ by taking on burdensome tasks and risks to save others in the battle against COVID-19. Reminiscent of the logic of granting citizenship to immigrants who volunteered for military service, France accelerated access to membership for those who had “actively participated in the national effort with dedication and courage” during the pandemic. By granting citizenship to these individuals, “the state wishes to recognise their commitment.”<sup>10</sup> In introducing a pilot project for fast-tracking essential workers to permanent residence, Canadian officials similarly emphasized the “incredible contributions of newcomers” in the fight against the pandemic.<sup>11</sup> In return, essential workers in select occupations (healthcare provision, caregiving, and food production and distribution, among others) were offered an expedited pathway to naturalization.<sup>12</sup> Further echoing the war effort analogy, the United Kingdom established a bereavement scheme granting permanent residency to direct relatives of foreign National Health Service staff who died as a result of contracting COVID-19.<sup>13</sup> Access to membership is conceptualized in these examples as a reward (a posthumous reward, in the U.K. example) that is given in recognition of the vital contributions by these pandemic warriors.<sup>14</sup> Such acts of state largesse are reminiscent of historical examples of bestowing citizenship on those who volunteered to serve in the military or otherwise performed extraordinary civic acts.

The essential contribution model has two variants: in the first scenario, it takes the form of a tailor-made program, a window of opportunity that has a clear sunset clause and does not entail a structural reform. Rather, it offers a special platform for recognition of contribution *extraordinaire*. Call this the “narrow conception.” Compare this conception to a second variant—“the broad conception”—

that contemplates a more fundamental change by foregrounding the realization, shared by philosophers, economists, and social activists, that society cannot operate without essential workers. Remarkably, a recent study found that in the United States close to three-quarters (74 percent) of the nation's undocumented workers met the government's definition of essential workers.<sup>15</sup> Public opinion polls show that more than 65 percent of Americans support offering these essential workers a green card, regardless of their documentation status.<sup>16</sup> Accordingly, pro-immigrant advocates argued that “as the nation emerges from the COVID-19 pandemic and looks toward the future, legalization is a key component of a just, equitable, and robust recovery.”<sup>17</sup>

Though the impulse to link membership with contribution is not new, the nature of contribution has been given different interpretations in different times. Most recently, we have seen a trend that reserved the grant of citizenship to those who have proved that they “earned” it—either through cultural and civic integration or through proof of economic self-sufficiency.<sup>18</sup> Elsewhere, I have critically analyzed the rise of increasingly instrumental, flexible, and market-oriented approaches to citizenship that are actively *facilitated* by governments.<sup>19</sup> The pandemic's extreme circumstances foregrounded the contributions made by often “invisible” precarious workers. They heeded the call to perform their “special obligations” (as U.S. officials put it) in a moment of crisis. As such, the current postpandemic moment provides an opportunity to offer essential workers access to these privileged pathways typically reserved for the well-off. This is an *ex post facto* recognition, not an *ex ante* demand for additional sacrifice and risk taking. If these workers' contributions were important enough to be labeled as “essential” during the pandemic, then they must be sufficient to justify access to secure legal status as a matter of fairness, reciprocity, and just reward.

The moral intuition here is as straightforward as it is powerful: Their *actions* merited their membership.<sup>20</sup> In this version of *jus contribuere*, those who received the short stick in birthright lottery, and as such cannot claim an inheritance stake in society's “common possession” (to draw on T. H. Marshall's definition of citizenship), can overcome this initial deficit by acquiring membership in the common possession as a fruit of their labor. This may be thought of as a present-day twist on the classic Lockean labor theory of property. By performing necessary work—from participation in the paid labor force to various forms of unremunerated care—these newcomers acquire a stake and share in the membership, as they have joined the common possession by mixing their labor with it.<sup>21</sup> Note that this

rationale provides powerful ammunition to assist those whose rootedness in the fabric of society has not translated into legal citizenship and the protections it grants to the individual.<sup>22</sup> However, it does nothing either to challenge the initial arbitrariness of the allocation of membership status by birthright or to address the global restrictiveness of mobility, both of which I address elsewhere.<sup>23</sup>

Returning our gaze to the United States, the logic of contribution as a basis for membership informed the introduction of the Citizenship for Essential Workers Act in 2021. This bill, which has languished in both the House of Representatives and the Senate, proposed granting essential workers and their families the opportunity to regularize their status as a stepping stone to citizenship. Many of the potential beneficiaries had already established deep roots in American society prior to the pandemic. Indeed, more than half had resided in the United States for longer than fifteen years, and more than 70 percent of immigrant essential workers had lived in the country for over a decade.<sup>24</sup> In addition, over a third had fulfilled another key element of the American Dream: purchasing a home.<sup>25</sup> Nevertheless, their legal status (or lack thereof) continued to stipulate and perpetuate their exclusion from what Judith Shklar described in *American Citizenship* as “public standing.” One who has no standing is denied not only formal status and the franchise but also social dignity and a civic personality.<sup>26</sup> Viewed through this prism, which recounts the claims of equal citizenship arrayed in the American past against slavery, racism, and sexism, the injustice of the present situation is glaring: “We must not allow the workers who are called essential today to be deported tomorrow.”<sup>27</sup>

This legislative proposal brings together themes of public standing and entitlement to membership: “Essential workers deserve to stay here in their home and to be recognized as the heroes—the Americans—they are.”<sup>28</sup> The reference to “heroes” also helps explain the act’s extension of resident status to relatives of those who died from COVID-19 while performing a job defined as essential or critical by the government (analogous to the U.K. bereavement scheme). As commentators have noted, such grants invert the “typical relationship between membership and responsibilities... Usually, someone becomes a member of a group *before* taking on special duties and responsibilities of membership.”<sup>29</sup> In the case of providing critical services during the pandemic, the performance of the duty *preceded* membership and, as such, legitimizes its postpandemic bestowment.

While a powerful ally to the cause of essential workers, *jus contribuere* runs the risk of romanticizing sacrifice. It sets a high bar by requiring extraordinary contribution while overlooking the reality that many members of the essential workforce may have had little choice *but* to expose themselves to working in dangerous conditions, at great risk to themselves and their families.<sup>30</sup>

Another attempt to expand pathways to permanent status for millions of long-term U.S. residents was introduced in 2022. The new bill, entitled *Renewing Immigration Provisions of the Immigration Act of 1929*, would update the existing registry statute so that migrants who endured the pandemic hardship alongside other Americans could qualify for a green card as a stepping stone to citizenship if they lived in the country continuously for at least seven years before filing an application for adjusting their status. This proposal connects citizenship reform to the postpandemic economic recovery. It is estimated that if “the undocumented individuals covered in this bill became citizens, they would contribute approximately \$83 billion to the U.S. economy annually and about \$27 billion in taxes.”<sup>31</sup> An estimated eight million migrants would be eligible to apply. This route to citizenship gives greater weight to co-presence and continued residence as indications of the roots that people are likely to have established to the country, waiving the administratively taxing requirement of proving that they individually “earned” their status through essential contribution. It offers a universalizing version of the call to expand access to postpandemic membership, encapsulated in the slogan recently adopted by a broad coalition of migrant activists: “We are all essential.”<sup>32</sup>

To date, the real-world postpandemic implementation of *jus contribuere* has primarily seen the adoption of the narrow conception of essential contribution as a basis for membership, though the recent U.S. proposal and related policy developments in other countries are now fusing the essential contribution logic with the economic recovery narrative to expand the scope of the principle to potentially regularize a more expansive swath of the migrant population—in line with the broad conception.

### ***Solidarity in Place***

Through the limitations placed on individual mobility, the pandemic has reminded us of the significance of movement, the “most ancient freedom” as Hannah Arendt once memorably put it.<sup>33</sup> It has also brought about a sharper appreciation of the significance of place and space in shaping human relations,

constituting community, and generating special obligations. Notions of membership that are grounded in place-specific activities and obligations began to flourish before the pandemic and may well accelerate in its aftermath.<sup>34</sup>

The basic idea of what we might call “place-based membership,” the second observed trend, is that newcomers establish a claim to membership through their interdependence with local jurisdictions, practices, and institutions, and by participating in schemes of cooperation with the people inhabiting such places. Given the centrality of borders and shelter-in-place measures in the arsenal of pandemic response, the COVID-19 crisis has brought home the realization that space *matters*. It mattered dramatically when policymakers had to decide where and how to implement the authority to arrest mobility, reviving once-dormant jurisdictional boundaries within states and between them, and keeping in—or freezing out—people depending on what side they were caught on when the pandemic hit.

In Italy, an early epicenter of COVID-19, government authorities issued emergency decrees that severely constrained mobility, defining when and where people could move, for what purposes (“essential movement” was restricted to authorized essential work and health emergencies), at what times, over what distances, and in which color-coded zones (different localities were categorized as red, yellow, or green depending on infection rates). These restrictions on movement between Italian provinces “reactivated” dormant subdivisions within the country. Italy’s actions, much like China’s early lockdown in Wuhan and nearby cities in Hubei, proved a precursor to the action taken by other countries. Subnational divisions, frequently treated as little more than administrative categories before the pandemic, turned out to be vital policy tools in the desperate bid to stop the transmission of the virus. These responses, which did not always prove as effective as planned, were designed to “break the chain of infection” through an added spatial barrier or layer of distancing. While the closure of international borders was predictable, the amplification of *subnational* borders came as a surprise.

With such massive rebordering, we saw community-based and neighborhood-scale organizations step up to help individuals obtain critical services. The local became ever more pronounced, fitting a pattern of ground-up democratic resistance and contestation whereby “social movements . . . [are] acting in multiple places and on multiple scales at once.”<sup>35</sup> This variant of democratic politics is imagined as at once decentralized and transnational. In emphasizing the importance of the spatial element, activists and policymakers responding to the

pandemic were echoing a trend that geographers refer to as “rescaling” membership, both above and below the national level. An example of the latter may be found in the call among city planners to endorse the “fifteen-minute city” concept. Originating in Paris (as the “*ville du quart d’heure*”), this concept calls for designing or redesigning urban areas so that residents will be able to find everything they need for their daily activities without traveling too far; a fifteen-minute walk or bike ride is the target. The ideal is to create “a city of proximities”—not only between structures but people,” a view enhanced by the adoption of participatory budgeting practices, which reinvigorate local democracy by allowing residents to propose projects and vote on how to allocate 5 percent of the municipal spending in Paris.<sup>36</sup> The mayor of Paris, Anne Hidalgo, made the quarter-hour city a pillar of her reelection campaign in 2020, before the outbreak of COVID-19, emphasizing the social, economic, and environmental benefits of reducing stress and our carbon emission footprint. This “ecological transformation” is based on mixed-use districts and promises to improve sustainability and the quality of life of both residents and visitors. When the pandemic hit, this reimagination of social life in megacities soon became a lived reality for millions around the globe.

Thinking about place-based membership need not be confined to the local, however. It may also operate in the opposite direction, on a large-scale canvas, expanding to “macro-territories” encompassing multiple political units. This model, which provides greater freedom of movement within the macro-territory, already exists with different levels of formalization in regional blocs or through bilateral and multilateral agreements. For instance, the Nordic Passport Union allows citizens of Iceland, Denmark, Norway, Sweden, and Finland to move to any Nordic country without needing a visa or residence permit as they establish their life plans in their jurisdiction of choice. In South America, the Southern Common Market, or MERCOSUR, countries have established a “right to migrate” among the member states. Regional citizens who wish (or need) to move across national borders within this macro-territory gain temporary residence wherever they settle, a status that can be converted into permanent residence after a two-year stay. In the European Union, free movement is a promise given to all citizens but not equally or immediately extended to all migrants (known as “third-country nationals”), let alone to those kept outside EU territory through the combination of locked gates and shifting borders that guard Fortress Europe.<sup>37</sup>

While macro-territories challenge the exclusivity of the national, they do little to overcome interregional inequalities in mobility, or what has been aptly termed the

“global mobility divide,” which traces not only contemporary economic disparities but also the histories of violent and racialized forms of power and domination that were exerted by the metropolises toward their colonies.<sup>38</sup> During the pandemic, the abrupt closure of borders coupled with the lopsided distribution of vaccine supplies across the globe saw widening gaps between high-income and low-income countries, exacerbating the disparities in opportunity that were already attached to the birthright lottery in the prepandemic world. We also witnessed the creation of “bubbles” of safe movement among richer countries and high-vaccination locations, while all others were excluded, a pattern that may well prove to be a precursor to future responses to acute global crises.<sup>39</sup> Pandemic-era insularity not only affected human mobility; it also handicapped global supply chains that rely heavily on “just-in-time” inventory, manufacturing, and cross-border transport of products (by ship, plane, train, truck), reminding us again of the significance of the local in the global. To address the contradictory demands of sovereigntist impulses and globalization pressures, Victoria Hattam proposes that we engage in an “imaginative politics” that unsettles existing dichotomies and prescribed answers, inviting us to engage in the kind of excavation of hope from despair that I mentioned earlier.<sup>40</sup>

The pandemic has taught us that none of us can survive in solitude. It revealed the complex and influential ways in which proximity and distance impact our interactions with one another, with civil society organizations, and with government officials at various levels, especially when it comes to vital interests. Current accounts of place-based membership focus primarily on complementing and supplementing existing national models, but in theory, they could also serve as their alternatives. New scales of membership may emphasize the importance of cities as centers of gravity for human engagement (generating notions of “city-zenship,” as some of have put it), just as they may contribute to transnational interpretations of solidarity and participation.<sup>41</sup> Indigenous claims for self-governance similarly invite a reimagination of the relationship to land and its cosmology at a scale that diverges from the fixed black lines on maps that currently delineate boundaries of all kinds.<sup>42</sup>

Add to this the urgent need to respond to the devastating effects of climate change on populations living in low-lying areas, as well as the calls to preserve the sovereignty and communal existence, including the nationality, of the citizens of island nations such as Tuvalu, the Marshall Islands, and Kiribati, for whom rising sea levels are a truly existential threat. To address these challenges, we will

need new international conventions, fresh thinking, mutual obligations, issue linkage (for example, linking climate disaster relief by the major polluters in the richer parts of the world with debt relief to poorer nations as part of the effort to “decolonize” international law in ways that are more just and equitable), and a great deal of good will.<sup>43</sup> None of this will be easy to achieve, as emerging visions for reorganizing community and territory challenge the vested interest in maintaining the international system of states’ default reliance on “spatial statism” models.<sup>44</sup> Yet neither citizenship nor democracy are static concepts. They have operated at many different scales in the past—before the rise of the modern territorial state—and may shape-shift again in the future.

### ***Stratified Membership***

While the first two trends describe inclusive shifts, the pandemic and its aftermath may also engender a darker and more exclusionary future—one that increasingly highlights the disparity in status among residents who are not members by forcing them into a “forever temporary” predicament.<sup>45</sup> We can call this the “stratification of membership.” The treatment of migrant workers in the Gulf countries, for example, has shown the unscrupulous power of current members not only to lock the gates to new entrants but also to push out those who were already in. Under the *kafala* system, legal status depends on sponsorship by specific employers in specific sectors; after the pandemic hit and the economy faltered, prohibitive public health measures and premature termination of contracts caused these migrants to lose their jobs. Millions found themselves stranded in their destination countries without legal residency, unemployed, and with no access to healthcare or other basic protections. In this example, the pandemic exposed not only the relationship of uneven interdependence between wealthy citizens of the Gulf states and migrant workers hailing from poorer countries but also, in the words of human rights activists in the region, decades of “systemic racism and discrimination against migrant workers.”<sup>46</sup> Furthermore, the COVID-19 crisis “has made clear that migrant workers have never been considered true members of these societies—they are viewed as temporary sources of labor, nothing more.”<sup>47</sup> Brenda Yeoh’s unsettling description of this approach as a “use-and-discard” policy emphasizes the precariousness resulting from the structural nonincorporation of migrant workers.<sup>48</sup> Globally, the International Labour Organization reported that millions of temporary migrant workers were “suddenly repatriated, without operational systems and protocols in place.”<sup>49</sup> In some circumstances, public

health laws were used to justify the expulsion of migrant workers (such laws were also used to bar entry for asylum seekers).<sup>50</sup> India alone counted more than five million stranded workers who had to be flown home when the pandemic took hold.<sup>51</sup> Close to 1.5 million Sri Lankan migrant workers could neither work in their destination countries nor return home.<sup>52</sup> Migrant workers from countries in the Asia-Pacific region bore the heaviest brunt of the pandemic's disruption, but they are not alone.<sup>53</sup> Across the globe, migrant workers were either forced to leave or remained in host countries under compulsory lockdowns and in constant fear of the impact of COVID-19. Moreover, in too many parts of the world, migrant workers faced arbitrary detention and deportation; inadequate healthcare and no access to vaccination; greater risk of contagion due to residence in overcrowded living quarters; and heightened surveillance of their bodies and movement through mandatory contact-tracing apps, biometric identification tools, ankle and wrist geolocator monitors, facial recognition technologies, and even drones guided by AI algorithms to restrict the movement of "suspected" bodies in public spaces.

For those on the move and in search of international protection, the abrupt closure of borders was accompanied by harsh enforcement measures including forms of "expulsion, containment, and abandonment."<sup>54</sup> In contrast with the word and spirit of refugee law and other human rights instruments, fifty-seven countries completely closed their borders to those seeking asylum during the pandemic.<sup>55</sup> Refugees who sought safe haven were locked out of the countries whose territorial waters or land ports they had reached (Malta, the smallest nation of the EU, was an early mover and emulated by others countries)—assuming they had not been stopped en route by shifting borders that nowadays operate potentially anywhere in the world, in countries of origin and transit, along checkpoints in major migration routes, and in "buffer zones" or amorphous "transit areas."<sup>56</sup> International students, too, were prevented from traveling to institutions that had admitted them; conversely, some became trapped in their host countries with no opportunity to return home. Family members were prevented from rejoining loved ones; even citizens, the most privileged category of entrants and returnees, were stranded outside their home countries with no means of return (Australia is a case in point). Even prior to the pandemic, countries devised sophisticated entry, settlement, and naturalization policies based on an alchemy of upholding membership boundaries that were both closed and open simultaneously, by making it harder and harder for "undesired" migrants to enter while rolling out the red carpet for "desired" migrants.<sup>57</sup>

Pushing the stratified-membership narrative a step further, imagine a world in which displacement due to civil strife, warfare, and climate disaster intersects with resource scarcity—a world wherein struggles for habitable land, clean water, and breathable air become the battlegrounds for survival. We can only imagine the length to which well-off societies will go to protect their “turf,” including by deterring unwanted migrants. Recall the images of government officials forcibly separating children from their parents at the U.S-Mexico border, under a Trump era “zero tolerance” policy that saw undocumented asylum seekers imprisoned and their accompanying children under the age of eighteen handed over to federal detention facilities and other shelter and care arrangements. Many of these children were under the age of five. Audio recordings of sobbing children screaming for their parents shocked the conscience of the nation. In arts and film, we find many chilling visual depictions of caged refugees; Alfonso Cuarón’s *Children of Men* comes to mind. Even today, the European Court of Human Rights, widely regarded as the most effective human rights court in the world, has scaled back its pro-immigrant jurisprudence. The court has developed, in the aftermath of the 2015 migration crisis, a body of judgments that refuses to condemn states that engage in pushback operations when uninvited migrants are caught trying to cross the border without authorization. Such judgments claim, instead, that those who put their lives at jeopardy by seeking to cross the border irregularly are estopped by their own conduct—essentially making them culpable for circumventing legal pathways even where no legal pathways were realistically available.<sup>58</sup> This catch-22 is further exacerbated by the invention of invisible “shifting borders” that stop people in their tracks long before they can reach the territories of the countries in which they seek international protection.<sup>59</sup>

It is thus not surprising that there is despair in the air. For some, COVID-19 has revealed the ultimate bankruptcy of today’s democracies, which placed migrant workers, people of color, and women in harm’s way by defining their contributions as essential during the pandemic—meaning they exerted a deadly cost that they and their families disproportionately bore—before disowning any societal responsibility to provide them the security of status, and with it, access to societal safety nets and political voice. Several commentators have further argued that the pandemic provided a pretext for producing and reproducing hierarchized differences that are based on racial capitalism and new forms of coloniality.<sup>60</sup> These accounts excel at capturing the devastation of today’s moment, but they offer no grain of hope. By contrast, a more forward-looking approach

can be found in the robust mobilization received by #StatusforAll grassroots advocacy campaigns calling for the grant of citizenship to migrant workers and their families in the context of a just recovery from COVID-19. These campaigns share an adamant critique of today's conditions but have turned their criticism into fuel for claims-making by, for, and with migrant workers' networks and advocacy groups seeking a better tomorrow.

## DEMOCRATIZING THE FUTURE

Of course, these three scenarios do not exhaust the universe of future membership constellations: they center on the statist model, which itself may prove outdated. If we believe that democratic renewal with emancipatory potential relies on extending voice and agency to those who currently lack it, then we would be wise to invest in novel thinking. The grave challenges the pandemic has wrought will require inspiration from those “who see farther, who dream bigger, who fight harder.”<sup>61</sup> We saw that the pandemic generated fear, closed doors, and prejudice. It aggravated patterns of stratification and immobilization, both globally and domestically. These were not, however, the only responses triggered by COVID-19. Several countries extended healthcare and social protection measures to noncitizen residents in a display of solidarity with migrants. Consider the decision taken by the Portuguese government to give all migrants already on its territory, including asylum seekers, access to the same rights as citizens to “health, social security and job and housing stability as a duty of a solidarity society in times of crisis.”<sup>62</sup> Here, sharing the same risks, in the same place, at the same time created camaraderie and community. In a similar spirit, a citizen-led initiative has called on the Spanish government to regularize the status of the country's migrant workers in the postpandemic era. To secure the five-hundred thousand signatures required for such bottom-up democratic and solidaric mobilization to generate legislative action, a broad-based coalition played on the theme of essential contribution by uniting under the banner of “essential signatures for essential rights to essential people.”<sup>63</sup>

The rationales of *jus contribuere* and solidarity-in-place insert fresh nuance into long-standing social struggles for an expanded view of membership. In this iteration, citizenship boundaries are edged along in directions that are equality centered and rights enhancing. In the darkest hours of the pandemic, we learned that out of devastation may come innovation. As we move toward an unknown

future, we will need to pursue any and all avenues for innovation and democratic contestation. If we are true to the radical potential of rescaling as a challenge to the dominant model of the Westphalian territorial state, training fresh scrutiny on the unilateral and near absolutist authority of “insiders” to determine the fate of “outsiders”—a reality laid bare in the face of a virus that knows no borders—is a good place to start.

#### NOTES

- <sup>1</sup> Boris Johnson, quoted in Kevin Rawlinson, “‘This Enemy Can be Deadly’: Johnson Invokes Wartime Language,” *Guardian*, March 17, 2020.
- <sup>2</sup> The data are drawn from reports by FWD.us. See FWD.us, *Immigrant Essential Workers Are Crucial to America’s COVID-19 Recovery* (Washington, D.C.: FWD.us, December, 2020), [www.fwd.us/news/immigrant-essential-workers/](http://www.fwd.us/news/immigrant-essential-workers/).
- <sup>3</sup> For a comprehensive overview of the contributions of migrant essential workers in different European countries, see Francesco Fasani and Jacopo Mazza, “Immigrant Key Workers: Their Contribution to Europe’s COVID-19 Response” (IZA Policy Paper No. 155, IZA Institute of Labor Economics, April 2020).
- <sup>4</sup> For detailed estimates, see Donald Kerwin and Robert Warren, “US Foreign-Born Workers in the Global Pandemic: Essential and Marginalized,” *Journal on Migration and Human Security* 8, no. 3 (September 2020), pp. 282–300. The Australian Broadcasting Corporation used the term “pandemic warriors” in a documentary series with same title. See “Pandemic Warriors,” *ABC iView*, [iview.abc.net.au/show/pandemic-warriors/series/o/video/AI2127H001Soo](http://iview.abc.net.au/show/pandemic-warriors/series/o/video/AI2127H001Soo).
- <sup>5</sup> Jakub Wondreys and Cas Mudde, “Victims of the Pandemic? European Far-Right Parties and COVID-19,” in special issue on pandemic nationalism, *Nationalities Papers* 50, no. 1 (January 2022), pp. 86–103, at p. 88.
- <sup>6</sup> Jakob Huber, “Hope from Despair,” *Journal of Political Philosophy* (Early View, July 18, 2022, publication forthcoming), pp. 1–22, [onlinelibrary.wiley.com/doi/10.1111/jopp.12283](https://onlinelibrary.wiley.com/doi/10.1111/jopp.12283).
- <sup>7</sup> Ayelet Shchar, “Gated Citizenship,” *Citizenship Studies* 26, nos. 4–5 (2022), pp. 625–37, at p. 635. For further discussion of this method, see Svenja Ahlhaus, “Plural Reconstruction: A Method of Critical Theory for the Analysis of Emerging and Contested Political Practices,” *Philosophy & Social Criticism* 48, no. 5 (June 2022), pp. 703–25.
- <sup>8</sup> “COVID-19 Has Made Life Even More Precarious for Migrant Workers,” International Labour Organization, November 22, 2021, [www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_829452/lang--tr/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_829452/lang--tr/index.htm).
- <sup>9</sup> On copresence, see, for example, Robin Cohen, “Citizenship: From Three to Seven Principles of Belonging,” *Social Identities* 28, no. 1 (2022), pp. 139–46.
- <sup>10</sup> Marlène Schiappa, quoted in Kim Willsher, “Foreign Covid Workers in France to Be Fast-Track for Nationality,” *Guardian*, September 15, 2020, [www.theguardian.com/world/2020/sep/15/foreign-covid-workers-in-france-to-be-fast-tracked-for-nationality](http://www.theguardian.com/world/2020/sep/15/foreign-covid-workers-in-france-to-be-fast-tracked-for-nationality).
- <sup>11</sup> Marco E. L. Mendicino, quoted on Government of Canada, “New Pathways to Permanent Residence for 90,000 Essential Temporary Workers and International Graduates,” April 14, 2021, [www.canada.ca/en/immigration-refugees-citizenship/news/2021/04/new-pathway-to-permanent-residency-for-over-90000-essential-temporary-workers-and-international-graduates.html](http://www.canada.ca/en/immigration-refugees-citizenship/news/2021/04/new-pathway-to-permanent-residency-for-over-90000-essential-temporary-workers-and-international-graduates.html). In Canada, such pathways targeted refugees and temporary migrant workers in the healthcare sector, as well as other preapproved essential occupations. International students already in Canada were also granted a fast track to remain in the country as permanent residents.
- <sup>12</sup> *Ibid.*
- <sup>13</sup> Home Office and UK Visa and Immigration, “Coronavirus (COVID-19): Bereavement Scheme for Family Members of NHS and Health and Social Workers,” GOV.UK, last updated June 16, 2021, [www.gov.uk/guidance/coronavirus-covid-19-bereavement-scheme-for-family-members-of-nhs-and-health-and-social-care-workers](http://www.gov.uk/guidance/coronavirus-covid-19-bereavement-scheme-for-family-members-of-nhs-and-health-and-social-care-workers).
- <sup>14</sup> See Australian Broadcasting Corporation, “Pandemic Warriors,” *supra* note 4. Early tributes to “front-line corona warriors” (referring primarily to doctors and medical staff) appeared in early 2020. See, for example, “A Tribute to Frontline Corona Warriors: Doctors Who Sacrificed Their Life while Saving

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- <sup>15</sup> Kerwin and Warren, *supra* note 4, pp. 284, 285, tab. 1, col. 7.
- <sup>16</sup> “POLLING UPDATE: Pathway to Citizenship for Undocumented Immigrants Remains Overwhelmingly Popular,” FWD.us, March 24, 2021, [www.fwd.us/news/polling-update-pathway-to-citizenship-for-undocumented-immigrants-remains-overwhelmingly-popular](http://www.fwd.us/news/polling-update-pathway-to-citizenship-for-undocumented-immigrants-remains-overwhelmingly-popular).
- <sup>17</sup> Giovanni Peri and Reem Zaiour, *Citizenship for Undocumented Immigrants Would Boost U.S. Economic Growth* (Washington, D.C.: Center for American Progress, June 2021), p. 1, [www.americanprogress.org/article/citizenship-undocumented-immigrants-boost-u-s-economic-growth/](http://www.americanprogress.org/article/citizenship-undocumented-immigrants-boost-u-s-economic-growth/).
- <sup>18</sup> Ayelet Shachar, “Earned Citizenship: Property Lessons for Immigration Reform,” *Yale Journal of Law & the Humanities* 23 (2011), pp. 110–58; and Ayelet Shachar, “Unequal Access: Wealth as Barrier and Accelerator to Citizenship,” *Citizenship Studies* 25, no. 4 (2021), pp. 543–63.
- <sup>19</sup> See, for example, Ayelet Shachar, “The Marketization of Citizenship in an Age of Restrictionism,” in “Rising Powers and the International Order,” special issue, *Ethics & International Affairs* 32, no. 1 (Spring 2018), pp. 3–13.
- <sup>20</sup> There is a rich literature on the performativity of citizenship and acts of citizenship, see, for example, Engin F. Isin and Greg M. Nielsen, eds., *Acts of Citizenship* (London: Zed Books, 2008).
- <sup>21</sup> The present-day twist on the classic Lockean labor theory requires several moves and updates: exertion of labor upon natural resources is replaced with essential work in an advanced economy setting and is then applied to the acquisition of membership status in the state rather than of property in cultivated land.
- <sup>22</sup> For further discussion, see Ayelet Shachar, “The Missing Link: Rootedness as a Basis for Membership,” in Sigal R. Ben-Porath and Rogers M. Smith eds., *Varieties of Sovereignty and Citizenship* (Philadelphia: University of Pennsylvania Press, 2013), pp. 124–146.
- <sup>23</sup> A full account lies beyond this essay. I have explored these difficult questions in Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Cambridge, Mass.: Harvard University Press, 2009); Ayelet Shachar, *The Shifting Border: Legal Cartographies of Migration and Mobility* (Manchester: Manchester University Press, 2020); and Ayelet Shachar, “Reply to My Critics,” *European Journal of Political Theory* 21, no. 3 (2022), pp. 615–23.
- <sup>24</sup> FWD.us, *Immigrant Essential Workers Are Crucial to America’s COVID-19 Recovery*, *supra* note 2.
- <sup>25</sup> Donald Kerwin, José Pacas, and Robert Warren, “Ready to Stay: A Comprehensive Analysis of the US Foreign-Born Populations Eligible for Special Legal Status Programs and for Legalization under Pending Bills,” *Journal of Migration and Human Security* 10, no. 1 (March 2022), pp. 37–76, at p. 46, tab. 6.
- <sup>26</sup> Judith N. Shklar, *American Citizenship: The Quest for Inclusion* (Cambridge, Mass.: Harvard University Press, 1998), p. 39.
- <sup>27</sup> Joaquin Castro, quoted in Jesse Rifkin, “Citizenship for Essential Workers Act Would Give Green Cards to All Undocumented Immigrants Who Worked ‘Essential’ Jobs during the COVID-19 Pandemic,” GovTrack Insider, January 10, 2022, [govtrackinsider.com/citizenship-for-essential-workers-act-would-give-green-cards-to-all-undocumented-immigrants-who-2dc8bd09f327](https://govtrackinsider.com/citizenship-for-essential-workers-act-would-give-green-cards-to-all-undocumented-immigrants-who-2dc8bd09f327).
- <sup>28</sup> Joaquin Castro, quoted in *ibid*.
- <sup>29</sup> Cara Wong and Jonathan Bonaguro, “The Value of Citizenship and Service to the Nation,” *Russell Sage Foundation Journal of the Social Sciences* 6, no. 3 (November 2020), pp. 96–116, at p. 97.
- <sup>30</sup> The focus on essential contribution as facilitating the acquisition of status also runs the risk of not recognizing those who have not similarly performed.
- <sup>31</sup> FWD.us, quoted in “Padilla Introduces Legislation to Broaden Legal Pathway to Citizenship,” Alex Padilla: U.S. Senator for California, September 28, 2022, [www.padilla.senate.gov/newsroom/press-releases/padilla-introduces-legislation-to-broaden-legal-pathway-to-citizenship](http://www.padilla.senate.gov/newsroom/press-releases/padilla-introduces-legislation-to-broaden-legal-pathway-to-citizenship).
- <sup>32</sup> “27,000 New Immigrant Invitations,” Migrant Rights Network blog, posted February 22, 2021, [migrant-rights.ca/27000immigrants/](https://migrant-rights.ca/27000immigrants/). For an open letter calling for full immigration status for all, see “Act on Historic Opportunity to Improve Lives of 1.7 Million People without Equal Rights,” Migrant Rights Network, [migrantrights.ca/status-for-all/](https://migrantrights.ca/status-for-all/).
- <sup>33</sup> Hannah Arendt, *Men in Dark Times* (London: Jonathan Cape, 1970), p. 9.
- <sup>34</sup> For a comprehensive exploration, see Paulina Ochoa Espejo, *On Borders: Territories, Legitimacy, and the Rights of Place* (Oxford: Oxford University Press, 2020).
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- <sup>37</sup> Shachar, *The Shifting Border*, supra note 23.
- <sup>38</sup> Steffen Mau, Fabian Gulzau, Lene Laube, and Natascha Zaun, “The Global Mobility Divide: How Visa Policies Have Evolved over Time,” *Journal of Ethnic and Migration Studies* 41, no. 8 (2015), pp. 1192–1213.
- <sup>39</sup> The lack of transnational mechanisms to ensure more equitable distribution of lifesaving supplies have already ignited discussions about the urgent need to envision new multilateral agreements that will form actionable solutions, such as calls for waivers of intellectual property protections for COVID-19 “prevention, containment and treatment technologies.” See “Vaccine Apartheid: Global Cooperation and Equality,” *The Lancet* 399 (April 16, 2022), pp. 1452–1453, at p. 1453.
- <sup>40</sup> Victoria Hattam, “Border Economies/Capitalist Imaginaries: Dispelling Capitalism’s System Effects,” *Borderlands* 21, no. 1 (January 2022), pp. 39–66.
- <sup>41</sup> On current prospects for “emancipating” cities so that they occupy as an autonomous or semiautonomous layer or level of governance, see Ran Hirschl, *City, State: Constitutionalism and the Megacity* (Oxford: Oxford University Press, 2020); on “city-zenship,” see Avner de Shalit, *Cities and Immigration: Political and Moral Dilemmas in the New Era of Migration* (Oxford: Oxford University Press, 2019).
- <sup>42</sup> These fixed lines were, in fact, themselves imposed by colonizers and imperial regimes with little regard for the political organization and voices of the people who resided on or traversed these lands.
- <sup>43</sup> On issue linkage between climate justice and debt relief, see, for example, Olúfẹ̀mí O. Táíwò and Patrick Bigger, *Debt Justice for Climate Reparations* (San Francisco: Climate and Community Project, April 2022), [www.climateandcommunity.org/\\_files/ugd/d6378b\\_d2a7db36122c4d31a9b14aa69f6274da.pdf](https://www.climateandcommunity.org/_files/ugd/d6378b_d2a7db36122c4d31a9b14aa69f6274da.pdf). See also Michèle Morel, Maria Stavropoulou, and Jean-François Durieux, “The History and Status of the Right Not to Be Displaced,” *Forced Migration Review* 41 (2012), pp. 5–7, [www.fmreview.org/sites/fmr/files/FMRdownloads/en/preventing/morel-et-al.pdf](https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/preventing/morel-et-al.pdf).
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- <sup>47</sup> Aziza, *Ibid* (citing Kalush).
- <sup>48</sup> Brenda S.A. Yeoh, “Bifurcated Labour: The Unequal Incorporation of Transmigrants in Singapore,” *Tijdschrift voor Economische en Sociale Geografie* 97, no. 1 (February 2006), pp. 26–37, p. 32.
- <sup>49</sup> “COVID-19 Has Made Life Even More Precarious for Migrant Workers,” International Labour Organization, supra note 8.
- <sup>50</sup> Title 42 is an example of such use of health laws and regulations to prohibit admission of asylum seekers. For an analysis of the impact of Title 42 on immigration enforcement at the U.S.-Mexico border, see John Gramlich, “Key Facts about Title 42, the Pandemic Policy That Has Reshaped Immigration Enforcement at U.S.-Mexico Border,” Pew Research Center, April 27, 2022, [www.pewresearch.org/fact-tank/2022/04/27/key-facts-about-title-42-the-pandemic-policy-that-has-reshaped-immigration-enforcement-at-u-s-mexico-border/](https://www.pewresearch.org/fact-tank/2022/04/27/key-facts-about-title-42-the-pandemic-policy-that-has-reshaped-immigration-enforcement-at-u-s-mexico-border/).
- <sup>51</sup> Faisal Ahmed and Michel Penke, “Please, Go Home: How COVID-19 Halted Labor Migration,” *Deutsche Welle*, June 7, 2022, [www.dw.com/en/please-go-home-how-covid-19-halted-labor-migration/a-61839447](https://www.dw.com/en/please-go-home-how-covid-19-halted-labor-migration/a-61839447).
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- <sup>55</sup> “Beware Long-Term Damage to Human Rights and Refugee Rights from the Coronavirus Pandemic,” UNHCR, April 22, 2020, [www.unhcr.org/en-us/news/press/2020/4/5ea035ba4/beware-long-term-damage-human-rights-refugee-rights-coronavirus-pandemic.html](https://www.unhcr.org/en-us/news/press/2020/4/5ea035ba4/beware-long-term-damage-human-rights-refugee-rights-coronavirus-pandemic.html).

- <sup>56</sup> Shachar, *The Shifting Border*, supra note 23.
- <sup>57</sup> For a concise overview, see Shachar, “Gated Citizenship,” supra note 7.
- <sup>58</sup> This exception was introduced by the Grand Chamber of the European Court of Human Rights in *N. D. and N. T. v. Spain* [GC] (app. nos. 8675/15 and 8697/15, February 13, 2020), para. 200, and further expanded in the case of *A. A. and Others v. North Macedonia* (app. no. 55798/16 and four others, April 5, 2022).
- <sup>59</sup> For further discussion, see Shachar, *The Shifting Border*, supra note 23.
- <sup>60</sup> For a lucid articulation of this line of argument, see, for example, Ayse Caglar, “Reorganization of Borders, Migrant Workers, and the Coloniality of Power,” in “Citizenship Struggles: 25th Anniversary,” special issue, *Citizenship Studies* 26, nos. 4–5 (2022), pp. 401–10.
- <sup>61</sup> This quote is drawn from civil rights activist turned judge Thelton E. Henderson. See Thelton E. Henderson, quoted in Thelton E. Henderson Center for Social Justice, Berkeley Law, [www.law.berkeley.edu/research/thelton-e-henderson-center-for-social-justice/](http://www.law.berkeley.edu/research/thelton-e-henderson-center-for-social-justice/).
- <sup>62</sup> Eduardo Cabrita, Portuguese Minister of Internal Affairs, quoted in “Portuguese Government Gives Temporary Residence to Immigrants with Pending Applications,” European Commission, March 28, 2020, [ec.europa.eu/migrant-integration/news/portuguese-government-gives-temporary-residence-immigrants-pending-applications\\_en](http://ec.europa.eu/migrant-integration/news/portuguese-government-gives-temporary-residence-immigrants-pending-applications_en). The Portuguese government provided status to more than 350,000 migrants through two decrees; the first was issued on March 27, 2020, and the second on November 8, 2020. See “Despacho no. 3863-B,” *Diário da república* 62, 3rd supp. (March 27, 2020), pp. 3–5.
- <sup>63</sup> I am grateful to Diego Acosta for calling my attention to the citizen-led initiative in Spain. See [esenciales.info/que-es/](http://esenciales.info/que-es/).

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Abstract: Initially portrayed as the “great equalizer,” the COVID-19 pandemic has proved anything but. This essay recounts the sobering social disparities and vulnerabilities that the pandemic has exposed, especially when it comes to the inequalities that are baked into existing membership regimes, before turning to narratives of hope and democratic renewal. My discussion shines a spotlight on the relationship between borders, (im)mobility, and struggles for recognition and inclusion that have long been central to the practice of citizenship. Focusing on pathways to the acquisition of full membership status for those who are currently denied it, I will deploy logics and policies that have already begun to take shape in different parts of the world, with the goal of amplifying their effects and multiplying their scale. I identify three possible trajectories for postpandemic recovery, two of which offer ways to enhance equality of status and public standing by enlarging the circle of membership: first, through contribution (or what I will term “*jus contribuere*”), and second, by highlighting what we might call “solidarity in place.” The third reaction, which we might call the “stratification of membership,” pulls in the opposite direction by sharply redrawing the lines—legal, economic, social—that have distinguished insiders from outsiders, and exacerbated patterns of stratification and inequality of status and opportunity that predate the pandemic.

Keywords: COVID-19, postpandemic recovery, citizenship, membership, inequality, status, essential migrant workers, contribution, solidarity