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Rising Tensions Between National and Local Immigration and Citizenship Policy: Matrículas Consulares, Local Membership and Documenting the Undocumented

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### Author

Varsanyi, Monica W.

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Rising Tensions Between National and Local  
Immigration and Citizenship Policy:  
Matrículas Consulares, Local Membership and  
Documenting the Undocumented

By Monica W. Varsanyi

School of Justice and Social Inquiry Arizona State University

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Rising Tensions Between National and Local Immigration and Citizenship Policy:  
*Matrículas Consulares*, Local Membership and Documenting the Undocumented

**Monica W. Varsanyi**  
School of Justice and Social Inquiry  
Arizona State University  
PO Box 870403  
Tempe, AZ 85287-0403  
480.965.7682  
[monica.varsanyi@asu.edu](mailto:monica.varsanyi@asu.edu)

**Abstract**

The *matrículas consulares* are identity cards issued by the Mexican government to its nationals living abroad. Since 9/11, businesses, local, and state governments in the US have started accepting them as a valid form of identification for undocumented immigrants living in their communities, who otherwise do not have any form of acceptable identification. In this article, I first outline the history and context of federal jurisdiction over immigration and naturalization policy in the United States, and then expand upon the case study of the consular ID cards. I argue that the increasing acceptance of the *matrículas consulares* provides an example of how, in confronting the local impacts of undocumented migration, communities are formulating both “foreign policy” (as immigration policy is considered as foreign policy in the United States), as well as “citizenship policy,” at the local scale. I conclude by taking the analysis one step further and arguing that this partial rescaling of membership policy enables the nation-state to better manage what political theorist, James Hollifield, calls the “liberal paradox,” or the growing tension between neoliberal economic openness and the continued necessity of national political closure.

Introduction.....2  
Context.....3  
The *Matrículas Consulares*: Background and Context.....8  
Federal Jurisdiction Over Immigration and Naturalization Policy.....10  
The *Matrículas Consulares*: Local Reconfigurations of the National....13  
The *Matrículas Consulares* as “Local Foreign Policy”.....13  
The *Matrículas Consulares* as “Local Citizenship Policy”.....15  
Conclusion: The Emergence of “Neoliberal Local Membership”?.....17  
Acknowledgments and Biographical Note.....20

## Introduction

Prior to the 1990s, the settlement pattern of undocumented migrants in the United States was fairly predictable. Migrants tended to settle, on the one hand, in rural agricultural areas and, on the other hand, large urban areas. However, over the past two decades, drawn by, among other things, job opportunities and expanding migrant networks, migrants are now settling in communities throughout the nation-state, from Dodge City, Kansas to Atlanta, Georgia,<sup>1</sup> thus bringing the phenomenon of "illegal immigration" to communities which had never previously grappled with the issue. At the same time as policy created at the federal scale designates people as "illegal" and (*de jure*) not fit for membership in the national community, unauthorized migrants live in subnational communities throughout the nation-state and are *de facto* members of those local communities. As a consequence of this reality, as well as federal foot-dragging on the question of comprehensive immigration reform, many of these communities are starting to formulate local "membership" policies, which, depending on particularities of place, either extend or restrict the rights and privileges of unauthorized residents.

In this article, I focus on one example of a progressive local policy which has emerged recently in the US context: the increasing acceptance, by a growing number of subnational governments, of the *matrícula consular* as a valid form of identification for their unauthorized residents. The *matrículas consulares* (literally, "consular registrations") are identity cards issued by the Mexican government to its nationals living abroad.<sup>2</sup> While the consular IDs have been issued to Mexican nationals since 1871, it has only been in the post-9/11 environment that local police forces, businesses, and other city, county, and state agencies have started accepting them as a valid form of identification for unauthorized residents in their communities, who otherwise do not have any form of acceptable identification (and are thus "undocumented"). In this article, I explore the tensions which arise between federal immigration and naturalization policy and local policies which authorize the growing acceptance of the *matrículas consulares*. Therefore, I first discuss the *de jure* federal jurisdiction over immigration and naturalization policy in the United States, and then expand upon the particular case study of the consular ID cards. I then explain how the increasing acceptance of the *matrículas consulares* is, in essence, an example of subnational communities formulating both a type of "foreign policy" (as

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1. Víctor Zúñiga and Rubén Hernández-León (eds), *New Destinations: Mexican Immigration in the United States* (New York: Russell Sage Foundation, 2005).

22. Other nation-states, such as Nicaragua, Argentina, the Dominican Republic, and Poland, issue consular identification cards and are seeking similar recognition with various subnational governments and businesses in the United States. However, the Mexican *matrícula consular* provides a strong case study of this movement, as over fifty percent of the unauthorized population in the United States are Mexican. Therefore, I will address only the Mexican consular ID in this article.

immigration policy is considered as foreign policy in the United States), as well as "citizenship policy," as a local response to an expanding global migratory context. I conclude by taking the analysis one step further and arguing that this partial rescaling of membership policy enables the nation-state to better manage what political theorist, James Hollifield, calls the "liberal paradox," or the growing tension between neoliberal economic openness and the continued necessity of national political closure.

### **Context**

Scholars are growing increasingly interested in, broadly speaking, the rescaling of citizenship at a time of globalization and heightened international migration,<sup>3</sup> and more specifically, in the city (or subnational scale) as a site for this renewed and rescaled citizenship. Elsewhere, I've divided the literature on migration, cities, and citizenship into four broad categories: (1) normative approaches, which entertain possibilities of cosmopolitan and/or transnational citizenships in global cities; (2) rescaling approaches, which explore the ways in which citizenship, as a formal political institution, might be detached from the scale of the nation-state and connected (as historically) to the scale of the urban; (3) agency-centered approaches, which discuss the ways in which the (global) city has become the staging ground for migrants' claims for citizenship and belonging; and (4) "local citizenship policy" approaches, which document how subnational governments are formulating membership policy for their resident noncitizen population within the limits of and in tension with federal doctrinal contexts.<sup>4</sup>

I argue that the case study of the *matriculas consulares* can be understood as "local citizenship policy" in the fourth sense. While this approach to cities, migration, and citizenship is still nascent, there are several excellent examples of

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3. For example, see Rainer Bauböck, *Transnational Citizenship: Membership and Rights in International Migration* (Brookfield, VT: Elgar 1994); David Jacobson, *Rights Across Borders: Immigration and the Decline of Citizenship* (Baltimore, MD: The Johns Hopkins University Press 1996); Christian Joppke (ed) *Challenge to the Nation-State: Immigration in Western Europe and the United States* (Oxford: Oxford University press, 1998); Helga Leitner, 'Reconfiguring the Spatiality of Power: The Construction of a Supranational Migration Framework for the European Union', *Political Geography* 16/2 (1997) pp. 123-143; Saskia Sassen, *Losing Control? Sovereignty in an Age of Globalization* (New York: Columbia University Press, 1996); Yasemin Soysal, *Limits of Citizenship: Migrants and Postnational Citizenship in Europe* (Chicago and London: University of Chicago Press, 1994).

4. Monica W. Varsanyi, 'Interrogating 'Urban Citizenship' vis-à-vis Undocumented Migration'', *Citizenship Studies* 10/2 (2006) pp. 224-244.

scholarship in this vein.<sup>5</sup> For example, Adriana Kemp and Rebeca Raijman have recently detailed how the municipal government of Tel Aviv has created an agency, the "Aid and Information Center for the Foreign Community in Tel Aviv-Jaffa" or MESILA, to assist in the incorporation and integration of that city's growing undocumented labor migrant population.<sup>6</sup> Importantly, MESILA and the city government's embrace of undocumented migrant labor stand in direct contrast to not only the Israeli state's position regarding non-Jewish migration—namely, that "there are no migrants but only workers"—but also to the state's principle non-Jewish labor migration policy: deportation.<sup>7</sup> As Kemp and Raijman argue, this locally-generated

...migrant-oriented policy...is not only a reaction to the dilemma of migration flows that it does not control, it is also part of the process whereby national/urban government relations are redefined and negotiated and through which the city becomes a key actor in broader, transnational processes.<sup>8</sup>

In a similar vein, Miriam Wells has written recently about "The Grassroots Reconfiguration of U.S. Immigration Policy."<sup>9</sup> She explains that:

...the divergence between the immigrant-exclusive terms of recent federal immigration policies and their often immigrant-inclusive implementation is due in part to the multi-layered structure of the American nation-state and the openings it creates for alternative interpretations and concretizations of federal policy.<sup>10</sup>

In other words, she offers this "grassroots reconfiguration" as a potential answer to the "gap hypothesis" (first presented by Wayne Cornelius *et al.* in 1994) which asks why there is a growing divide between the goals of national immigration policy in all major industrialized democracies (which are generally restrictive)

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5. Paul Johnston, 'Transnational Citizenries: Reflections From the Field in California,' *Citizenship Studies* 7/2 (2003), pp. 199-217; Adriana Kemp and Rebeca Raijman, "'Tel Aviv is Not Foreign to You': Urban Incorporation Policy on Labor Migrants in Israel', *International Migration Review* 38/1 (2004), pp. 26-51; Gallya Lahav, 'Immigration and the state: The Devolution and Privatisation of Immigration Control in the EU,' *Journal of Ethnic and Migration Studies* 24/4 (1998), pp. 675-94; Rinus Penninx, Karen Kraal, Marco Martiniello, and Steven Vertovec (eds.) *Citizenship in European Cities: Immigrants, Local Politics and Integration Policies* (Aldershot, UK: Ashgate 2004); Alisdair Rogers and Jean Tillie (eds.) *Multicultural Policies and Modes of Citizenship in European Cities* (Aldershot, UK: Ashgate 2001); Miriam Wells 'The Grassroots Reconfiguration of U.S. Immigration Policy', *International Migration Review* 38/4 (2004) pp. 1308-1347.

6. Kemp and Raijman (note 5).

7. *Ibid.*, p. 27.

8. *Ibid.*, p. 44.

9. Wells (note 5).

10. *Ibid.*, p. 1310.

and *de facto* policy outcomes (which are generally expansive).<sup>11</sup> Wells specifically discusses three means by which this grassroots reconfiguration has led to locally expansionist outcomes. Using limited cooperation ordinances as an example, she first details how the disjuncture between the federal government's jurisdiction over immigration control and state and local government's responsibility for the health and welfare of its urban residents has created critical openings for those at the local scale to advocate for more progressive incorporation policies. Second, she explains how the decentralization of the Immigration and Naturalization Service (INS) has provided opportunities to restrict immigration enforcement in local communities. And finally, she explores how the "disjuncture among government agencies," in this case, the INS and Department of Labor, has also led to the formulation of policies more amenable to the needs and concerns of migrant workers.

The need for local reconfigurations of immigration policy has become more pressing as the number of unauthorized, undocumented, or "illegal" migrants in the US continues to grow. It is impossible to know exactly how many unauthorized migrants currently reside in the US, but recent reports published by the nonpartisan Pew Hispanic Center estimate that there are approximately 11.5 to 12 million unauthorized migrants living in the US as of March 2006,<sup>12</sup> which is one-third of the nation's total foreign-born population.<sup>13</sup> Around 5.9 million (or 57%) of this total are from Mexico, with migrants from other Latin American countries and Asia totaling another third of the unauthorized population.<sup>14</sup> Interestingly, from 1992 to 2004, the number of unauthorized migrants coming to the United States has increased faster than the number of legally-admitted migrants, particularly in the post-9/11 period. Undoubtedly, this is in part a reflection of tightening entrance standards for legal immigrants in this period. Regardless of the reason, more unauthorized than legal migrants are currently entering the US on an annual basis.<sup>15</sup>

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11. Wayne A. Cornelius, Philip L. Martin, and James F. Hollifield (eds) *Controlling Immigration: A Global Perspective* (Stanford, CA: Stanford University Press, 1994).

12. Jeffrey S. Passel, 'The Size and Characteristics of the Unauthorized Migrant Population in the U.S.: Estimates Based on the March 2005 Current Population Survey' (7 March 2006), accessed online at: <http://pewhispanic.org/files/reports/61.pdf>.

13. Jeffrey S. Passel, 'Unauthorized Migrants: Numbers and Characteristics' (Washington D.C.: Pew Hispanic Center 2005).

14. Jeffrey S. Passel, 'Unauthorized Migrants: Numbers and Characteristics' (Washington D.C.: Pew Hispanic Center 2005).

15. Jeffrey S. Passel and Roberto Suro, 'Rise, Peak, and Decline: Trends in U.S. Immigration 1992-2004' (Washington D.C.: Pew Hispanic Center 2005).

As stated in the introduction, immigration policy and border enforcement are the responsibility of the federal government in the United States. Therefore, it is federal law which designates as "illegal" those persons who enter the US without authorization—by crossing over land or sea borders or overstaying student and travel visas. However, as law professor Peter Spiro has written, "...immigration law, policy, and enforcement continue to be set and carried out almost exclusively at the national level," though "as a practical matter, immigration is now largely a state-level concern..."<sup>16</sup> And to his words, I would also add that immigration, including undocumented immigration, is also squarely a concern of cities and counties throughout the US. While undocumented residents live within the national territorial boundaries of the United States and are thus living within the jurisdiction of the federal government, they also live simultaneously in these sub-national political jurisdictions. And despite their 'illegal' status, undocumented residents are very much members of these local communities. As such, government officials, schools, businesses, and agencies in cities throughout the nation-state are faced with the day-to-day reality of interacting with, conducting business with, and providing services to people who, legally-speaking, are not supposed to be present.

As a result, these governments have been formulating policies at the local scale which govern and manage their daily relationships with their unauthorized resident populations, despite the fact that these policies may contradict or be in tension with federal authority over immigration and citizenship policy. According to the National Council of State Legislatures, for example, as of mid-2006, state legislatures in forty-three states had introduced over 500 immigration- and immigrant-related bills (see Table 1).<sup>17</sup>

**Table 1: Overview of Immigration- and Immigrant-Related State Legislation Introduced between January and May 2006**

<b>Policy Area</b>	<b>Number of Bills</b>	<b>Number of States</b>
Public Benefits	42	22
Education	42	18

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16. Peter J. Spiro, 'The States and Immigration in an Era of Demi-Sovereignties', *Virginia Journal of International Law* 35 (1994) p. 121. See also, Peter H. Schuck, 'The Reevaluation of American Citizenship', *Citizens, Strangers, and In-Betweens: Essays on Immigration and Citizenship* (Boulder, CO: Westview Press 1998) p. 197; and William A.V. Clark, *The California Cauldron: Immigration and the Fortunes of Local Communities* (New York: Guilford Press 1998).

17. Ann Morse, 'Overview of State Legislation Related to Immigrants, Introduced Jan-April 2006' (Washington, DC: National Conference of State Legislatures, 2006), accessed online at: <http://www.ncsl.org/programs/immig/06ImmigEnactedLegis2.htm>.



Employment	83	33
Human Trafficking	36	19
Driver's Licenses and Voter Identification	59	28
Law Enforcement	68	24
Legal Services	16	11
Calls for Congressional Action	42	17

These policies encompass a wide range of political stances vis-à-vis (unauthorized) immigrants, from the highly restrictionist to the highly expansionist and progressive. As the formulation of immigration and naturalization policy is, *de jure*, reserved for the federal government, these subnational governments have started to exploit critical jurisdictional gaps and/or used the permissible tools in their policy toolkits in addressing the question of immigration and immigrants in their communities. This variation in local policy underscores the geographically uneven impact of and reaction to immigration throughout the country.<sup>18</sup>

For example, in the past several years, a number of restrictionist city and state governments have experimented with using local trespassing ordinances as a means of arresting undocumented migrants within their jurisdictions. In mid-2005, police chiefs in two New Hampshire towns arrested eight undocumented migrants on criminal trespassing charges, stating that if they were illegally within the United States, then this also implied that they were present in their towns without authorization.<sup>19</sup> Furthermore, in mid-2006, the Arizona state legislature passed a bill which authorized local police forces to arrest undocumented immigrants on state-wide trespassing charges.<sup>20</sup> In both cases, these attempts at local immigration enforcement were not codified into local or state law. A state judge rejected the strategy taken by the police chiefs in New Hampshire, and Arizona Governor Napolitano vetoed the legislature's bill, both arguing that using trespassing charges to arrest undocumented immigrants

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18. Clark (note 16).

19. Pam Belluck, 'Towns Lose Tool Against Illegal Immigrants', New York Times (Aug. 12, 2005) p. 7.

20. Randal C. Archibold, 'Arizona Governor Vetoes Bill Aimed at Illegal Immigration', New York Times (7 June 2006) p. 21.

infringed upon the federal government's authority in matters pertaining to immigration.

There are also examples of progressive policies being formulated at the subnational scale. For instance, a number of large cities such as New York, Chicago, and San Francisco, and small cities such as Takoma Park, Maryland and Amherst, Massachusetts, have grappled with (and in a number of cases, passed) legislation authorizing noncitizen residents (including unauthorized migrants in several localities) to vote in elections for local officials and/or school board members.<sup>21</sup> Beginning in the 1980s, as a response to the outflow of refugees from Central American wars, and continuing into today, many cities including Santa Fe, New Mexico; Houston and Austin, Texas; Los Angeles, San Francisco, Tucson and Phoenix, Arizona; and New York, passed 'sanctuary policies' or 'limited cooperation ordinances' which limit or prevent local police forces from cooperating or sharing information regarding legal status with federal immigration authorities.<sup>22</sup> And particularly since 9/11, further tensions have arisen between various states and the federal government over issues such as whether unauthorized migrants should be eligible for state-issued driver licenses, or whether unauthorized students should be eligible to pay in-state tuition at state colleges and universities.<sup>23</sup>

#### **The *Matrículas Consulares*: Background and Context**

The *matrículas consulares*, or consular ID cards, are cards issued by the Mexican government to its nationals living in the United States. *Matrículas consulares* have been issued by Mexican consulates and the federal government for 130 years, but various subnational governments and businesses in the United States have only started accepting the card as a valid form of identification since 9/11.

Prior to 9/11, undocumented migrants and residents in the US had one option for valid state-issued identification: a state-issued driver license. Twenty-two states, including Illinois, Hawaii, New York, Maryland, Minnesota, Montana, New Mexico, North Carolina, Oregon, Texas and Wisconsin did not impose a "lawful presence" requirement on applicants, and thus, unauthorized migrants

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2121. Ronald Hayduk, 'Democracy For All: Restoring Immigrant Voting Rights in the US', *New Political Science* 26/4 (2004) pp.499-523; Tara Kini, 'Sharing the Vote: Noncitizen Voting Rights in Local School Board Elections', *California Law Review* 93 (2005) pp.271-321; Jamin B. Raskin, 'Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage', *University of Pennsylvania Law Review* 141 (1993) pp.1391-1470; XXX.

2222. Wells (note 5).

2323. Victor C. Romero, 'Hitting the Ceiling: The Right to a College Education', *Alienated: Immigrant Rights, The Constitution, and Equality in America* (New York: New York University Press 2005), pp.92-106; Michele L. Waslin, 'Safe Roads, Safe Communities: Immigrants and State Driver's Licenses Requirements', *Issue Brief 6* (Washington DC: National Council of La Raza, 2002).

could legally obtain driver licenses.<sup>24</sup> Additionally, six states did not require a social security number from applicants, and thirty-seven states required social security numbers, but allowed exceptions for individuals who did not have one.<sup>25</sup>

However, the events of 9/11 drastically changed the security landscape in the United States. While the validity of the student and tourist visas they used to enter the United States is still a matter of debate, sixteen out of the nineteen 9/11 hijackers had valid driver licenses or state IDs issued in Virginia and Florida. With valid driver licenses, they were able to open bank accounts, rent apartments, and board the airplanes used in the attacks. In response, a number of states have since tightened their documentation requirements for obtaining driver licenses, such that twenty-five states now have "lawful presence" requirements, forty-seven now require a valid social security number (with the range of exceptions to this rule dramatically reduced), and twenty-six states now require that a driver license issued to a visa-holder now expire with immigrants' visas.<sup>26</sup> Furthermore, the REAL ID Act ("Amendments to Federal Laws to Protect Against Terrorist Entry"), signed by President Bush on 11 May 2005 (scheduled to be in full enforcement by 2008), subjects states' driver license agencies to federally-mandated security procedures and regulations regarding documentation. Under the Act, immigrants must provide proof of legal status to obtain a driver license, thus making unauthorized residents in the United States uniformly ineligible for valid, state-issued photo identification. Therefore, in this post-9/11 heightened security environment, not only are the requirements for obtaining a driver license tightening, but valid identification is increasingly required for access to locations and services, and being detained by the police without valid identification is increasingly grounds for arrest.

This is the context in which the *matriculas consulares* have come to be accepted as valid identification by various subnational governments and businesses. The first local agency to accept the consular ID was the Austin, Texas police department, whose officers had become alarmed at the number of undocumented residents of the city who were victims of robbery. As undocumented residents did not have ID and thus were not able to open bank accounts, many would return home from work carrying large quantities of cash and store it in their homes. This was leading to an increase in the crime rate:

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2424. National Immigration Law Center, 'Driver's Licenses for Immigrants: Broad Diversity Characterizes States' Requirements', *Immigrants' Rights Update* 16/7 (22 Nov. 2002), accessed online on 5 Nov. 2005 at: [www.nilc.org/immspbs/DLs/DL005.htm](http://www.nilc.org/immspbs/DLs/DL005.htm).

2525. *Ibid.*

2626. National Immigration Law Center, 'Overview of States' Driver's License Requirements' (12 July 2005), accessed online on 5 Nov. 2005 at: [www.nilc.org/immspbs/DLs/state\\_dl\\_rqrmts\\_ovrvw\\_071205.pdf](http://www.nilc.org/immspbs/DLs/state_dl_rqrmts_ovrvw_071205.pdf).

undocumented residents were robbed on their way home from work and their houses were broken into. The Austin police department developed a two-pronged response. First, they began accepting the *matrículas consulares* as valid identification and urged Mexican immigrant communities to report crimes should they happen. In doing so, the police department reassured these communities that they were not working in conjunction with the Immigration and Naturalization Service (INS), so that undocumented residents would not fear deportation for contacting the police and reporting a crime. Second, the police department urged local Wells Fargo Bank branches to accept the card as a valid form of identification with which undocumented residents could open bank accounts, so that they would not have to store large quantities of cash in their homes.<sup>27</sup> Other banks, such as Bank of America and Citibank quickly caught on to the possibilities of this untapped immigrant market, and by 2004, over 178 banks accepted the *matrícula consular* as valid identification for opening a bank account.<sup>28</sup>

The Mexican government is also playing a crucial role in the growing acceptance of consular ID cards. Mexican President Vicente Fox made significant campaign promises regarding immigration reform during his run for the Mexican presidency in 2000, and declared, during a September 6, 2001 state visit to the White House that he and President George W. Bush "...must and ... can reach an agreement on migration before the end of this very year".<sup>29</sup> However, discussions of amnesty fell quickly off the table following 9/11, thus leaving Fox in a bind as to how to fulfill his campaign promise. As an interim measure, the Mexican government has turned its attention to the *matrículas consulares*, not as a backdoor means of obtaining amnesty, but as one means of partially stabilizing the tenuous situation of its nationals living without authorization in the US. Importantly, as remittances (money sent by Mexicans living in the United States to family members in Mexico) are currently the second largest source of foreign exchange in Mexico—\$16.6 billion in 2004—behind tourism, but ahead of crude oil exports, the Mexican government also supports the acceptance of the *matrículas consulares* for economic reasons.<sup>30</sup> As possession of consular IDs

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2727. Mary Beth Sheridan, 'An Entry Card for Immigrants: Illegal Residents Gain Access to Services with Mexican ID', Washington Post (26 July 2002) p.B01.

2828. Ana Carrasco, Gerardo Macías, Juan Matus, Alma Alcántara, Jorge Madrazo, and Ruth Pérez, 'Mexicanos en el Exterior: Matrícula Consular de Alta Seguridad (MCAS)', Instituto de los Mexicanos en el Exterior 1/10 (Sep. 2004) p.1-4.

2929. Vicente Fox, as quoted by Edward Epstein, 'Fox Wants to Settle Migrants Issue Soon; Mexican Leader Tells Bush He Seeks Deal by Year End', San Francisco Chronicle (6 Sep. 2001) p. A1.

3030. 'Remittances and Development: The Case of Mexico' (New York, NY: Inter-American Development Bank, 28 June 2005). Accessed online on 18 Nov. 2005 at: [idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=561166](http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=561166).

enables unauthorized migrants to open bank accounts in the United States, they can avoid the costly fees associated with money transfer businesses such as Western Union, and simply send ATM cards to their relatives living in Mexico. According to the Mexican government, as of November 2005, approximately 4 million *matrículas consulares* had been issued to Mexican nationals living in the United States, and the cards were accepted by 1,204 police agencies throughout the United States, as well as 393 cities and 168 counties. In addition, 33 states have at least one state agency which accepts the consular ID card as a valid form of identification.<sup>31</sup>

Thus far, the US federal government has taken no formal or unified stance on the growing acceptance of the *matrículas consulares*, though the Treasury Department, Federal Bureau of Investigation (FBI), and General Accountability Office (GAO) have conducted studies regarding the security and reliability of the consular ID cards, the issue of primary concern. These studies have produced mixed results. For instance, in 2003 in accordance with the USA PATRIOT Act, the US Treasury Department issued regulations dictating how financial institutions should verify the identity of their customers, vis-à-vis the consular ID cards. Following the issuance of these regulations, the Treasury conducted an online survey which solicited public comments regarding the increasing acceptance of the cards by the banking industry and local law enforcement. Of approximately 34,000 comments received, over 80% supported the use of the *matrículas consulares*.<sup>32</sup> On the other hand, the FBI, in its own study, has concluded that the consular ID cards are *not* a reliable form of identification. The main reasons given for their unreliability surround the Mexican government's lack of centralized databases which would prevent multiple cards from being issued in multiple locations, as well as the reliability of documents required to apply for the *matrícula consular* (usually, only a birth certificate).<sup>33</sup>

### **Federal Jurisdiction Over Immigration and Naturalization Policy**

Despite the recent florescence of subnational policies, such as the acceptance of the *matrículas consulares*, concerning (unauthorized) migrants, the federal government still has full jurisdiction and sovereignty over matters pertaining to the constitution of the national populace. As Hannah Arendt wrote in the mid-20<sup>th</sup> century, "Sovereignty is nowhere more absolute than in matters of emigration,

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3131. Personal communication with Mexican consulate in San Diego, California. 14 Dec. 2005.

3232. John W. Snow, Secretary of the US Treasury, 'Letter to Bill Young, Chairman of the House Committee on Appropriations', (July 21, 2004). Accessed online at: FIND.

3333. Steve McCraw, Assistant Director of the Office of Intelligence, FBI, before the House Judiciary Subcommittee on Immigration, Border Security, and Claims on Consular ID Cards, 'Consular ID Cards in a Post-9/11 World', June 26, 2003. Accessed online on 18 Nov. 2005 at [www.fbi.gov/congress/congress03/mccraw062603.htm](http://www.fbi.gov/congress/congress03/mccraw062603.htm).

naturalization, nationality, and expulsion."<sup>34</sup> Specifically, Congress and the President have "plenary power" over immigration and naturalization—policies which entail the power to admit, exclude, and expel aliens—and as such, federal law "occupies the field" and/or preempts local policies regarding immigration. As the Supreme Court has written, "[t]he authority to control immigration—to admit or exclude aliens—is vested solely in the Federal Government" and the "[p]ower to regulate immigration is unquestionably exclusively a federal power".<sup>35</sup>

The most central source of federal plenary power comes from the Constitution's requirement that federal government to create a uniform rule of naturalization.<sup>36</sup> This Naturalization Clause was a response to the Comity Clause of the Articles of Confederation, developed at a time when the individual colonies-*cum*-states had individual requirements for naturalization and citizenship. As each state had its own requirements, the Comity Clause required that each state treat other states' citizens with equal privileges, producing a situation in which a person who could not become a citizen in one state could travel to another state, become a citizen there, then return to his home state and claim all the rights of its citizens.<sup>37</sup> Therefore, the call for national uniformity in the Naturalization clause put a halt to the situation in which each state could "naturaliz[e] aliens in every other State."<sup>38</sup>

While immigration is not specifically mentioned in the Constitution, federal jurisdiction over this process has been reinforced in a series of Supreme Court cases decided in the latter half of the nineteenth century which extrapolated from federal power over naturalization, and gradually defined immigration as a matter of *foreign* commerce and policy, as opposed to a domestic concern. First, the Court used the Foreign Commerce Clause of the Constitution, which provides Congress with the power "to regulate Commerce with foreign Nations, and among the several States,"<sup>39</sup> to strike down a number of states' attempts to levy head

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34. Hannah Arendt, as quoted by Christian Joppke, 'Why Liberal States Accept Unwanted Immigration', *World Politics* 50/2 (1998), p. 266.

35. *Graham v. Richardson* (1971, 403 U.S. 365) and *DeCanas v. Bica* (1976, 424 U.S. 351), respectively.

36. U.S. Constitution, Article 1, Section 8, Clause 4.

37. Anonymous, 'V. The Constitutionality of Immigration Federalism', *Harvard Law Review* 118/1 (2005), p. 12; see also James H. Kettner, *The Development of American Citizenship, 1608-1870* (Chapel Hill, NC: The University of North Carolina Press, 1978).

38. James Madison, *Federalist No. 42*, as quoted by Anonymous (note 25), p. 12.

39. U.S. Constitution, Article 1, Section 8.

taxes on shipping companies bringing immigrants to local ports.<sup>40</sup> Similarly, in the *Head Money Cases*,<sup>41</sup> again grounding their decision on the Foreign Commerce Clause, the Court upheld the right of the federal government to impose taxes on arriving immigrants.

Second, federal plenary power has also been grounded in the foreign affairs clauses of the Constitution.<sup>42</sup> In 1868, the federal government signed the Burlingame Treaty with China, a treaty which guaranteed a relatively free flow of low-wage labor from China to the US. However, growing racism, nativism, and local restrictionist immigration policies, particularly in California, began to impact the movement of Chinese laborers into the state, and therefore, the terms of the treaty. Essentially, as immigration policy effects the relationship of the United States with foreign governments and is therefore considered foreign policy, and as California's "local immigration policy" was impacting the relationship between China and the United States as a whole, and hence, influencing the federal government's foreign policy objectives, the federal government claimed preemption over California under the foreign affairs clauses of the Constitution.

The final leg upon which plenary power stands, the federal government's "inherent sovereign powers," was articulated by the Supreme Court in *Chae Chan Ping v. United States* (1889) (also known as the *Chinese Exclusion Case*), and *Fong Yue Ting v. United States* (1893).<sup>43</sup> In 1882 and 1888, the infamous and well-known Chinese Exclusion Acts were passed, which (other than a token 100 visas per year) prohibited the immigration of Chinese nationals to the United States. Chae Chan Ping had resided in San Francisco from 1875 to 1887, when he decided to return to China for a visit. Though he had obtained the reentry permit required by the 1882 Act, when he arrived back in San Francisco after the more restrictive 1888 Act had gone into effect, he was denied reentry to the US and his appeal eventually reached the Supreme Court. In its decision, the Court articulated three fundamental elements of the federal government's plenary power over immigration matters: (1) that the exclusion of aliens was a fundamental sovereign right of any government; (2) as control over immigration was thus

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40. *Passenger Cases* (1849, 48 U.S. 283), *Henderson v. Mayor of City of New York* (1875, 92 U.S. 252), *Chy Lung v. Freeman* (1875, 92 U.S. 275). See also Gerald L. Neuman, *Strangers to the Constitution: Immigrants, Borders, and Fundamental Law* (Princeton: Princeton University Press 1996), pp.45-48; Daniel J. Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton: Princeton University Press 2000) p.68.

41. *Head Money Cases* (112 U.S. 580, 1884).

42. U.S. Constitution, Article I, Section 8 and Article II, Section 2, Clauses 1-2.

43. *Chae Chan Ping v. United States* (130 U.S. 581, 1889); *Fong Yue Ting v. United States* (149 U.S. 698, 1893).

defined as an element of foreign policy and in the sovereign interest of the federal government to control, that immigration policy is a political and legislative issue, not a judicial issue; and (3) that local governments did not have power over immigration. As the Court stated, "For local interests the several States of the Union exist; but for national purposes, embracing our relations with foreign nations, we are but one people, one nation, one power."<sup>44</sup>

Federal control over immigration and naturalization policy has been reaffirmed throughout the past century on a number of occasions. For instance, to provide a well-known recent example, in a 1994 election, the California electorate supported Proposition 187, the "Save our State" initiative, by a margin of 2 to 1. This proposition denied certain public services, such as publicly-funded health care and public education, to undocumented residents of the state. Most elements of the proposition were eventually overturned by the courts, however, under the grounds that matters pertaining to immigration are strictly a federal concern, and that California was therefore not permitted to develop state-level immigration policy.<sup>45</sup>

### **The *Matriculas Consulares*: Local Reconfigurations of the National**

Given the designation of immigration as foreign policy, and the federal government's plenary power over immigration and naturalization policy, subnational governments are not permitted to enact legislation which effectively operates as locally-generated immigration and naturalization policy; that is, local policy which influences admission, expulsion, and exclusion of aliens into the national community. However, as I argue in this section, locally-generated policies, such as the acceptance of the consular ID card, can be viewed as a challenge to the federal government's primacy in this area. First, as their acceptance is generally the outcome of direct negotiations between the subnational government in question and the Mexican federal government, the consular ID cards present a compelling case study of "local foreign policy" formation. And second, the acceptance of the cards also represents the emergence of "local membership" policies, which indicate a local stance vis-à-vis undocumented residents, unrelated to these residents' national immigration or legal status.

### *The Matriculas Consulares as "Local Foreign Policy"*

To mainstream international relations and foreign policy scholars and practitioners, "local" foreign policy is an impossibility, as foreign policy is, by definition, conducted solely by the federal government. This thinking has long

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4444. As quoted by Louis Henkin, *Foreign Affairs and the United States Constitution*, 2<sup>nd</sup> ed. (Oxford UK: Clarendon Press, 1996), p.422.

45. *League of United Latin American Citizens et al. v. Wilson* (908 F. Supp. 755).



precedent, as James Madison's words from *The Federalist No. 42* indicate: "If we are to be one nation in any respect, it clearly ought to be in respect to other nations".<sup>46</sup> This belief was codified shortly thereafter in the U.S. Constitution which clearly indicates the primacy of the federal government over matters relating to foreign affairs. The Congress is given sole power to regulate foreign commerce, establish uniform rules for naturalization (and by extension, immigration), declare war, and maintain armed forces.<sup>47</sup> Additionally, the states are forbidden from participating in foreign affairs: "No State shall enter into any Treaty, alliance, or Confederation...", "No State shall, without the Consent of Congress, lay any Imposts or Duties on Imports or Exports...", and finally, "No State shall, without Consent of Congress... enter into any Agreement or Compact with another State, or with a foreign Power...".<sup>48</sup> The prohibition on local foreign policy has been further codified within a doctrinal context of Supreme Court decisions and Congressional legislation.<sup>49</sup>

Crucially, this doctrinal context does not completely prevent states and cities from developing foreign policy, it only limits their ability to do so. Or, perhaps, it is more accurate to say that states and localities can do whatever they want to, until such actions are deemed by the federal government as threatening its sovereignty in dictating a cohesive foreign policy. As such, despite common beliefs that subnational governments are not permitted to be involved in foreign affairs, there is a rather wide gap between Constitutional prohibitions and what happens in practice.<sup>50</sup> As specified in the Constitution, states cannot enter into treaties with foreign governments without receiving Congressional consent, but this does not preclude their ability to enter into 'compacts' or 'agreements,' as long as they don't call them treaties, they are not legally binding under international law, and as long as they do not have the potential to seriously impact other states or the nation as a whole (or at the very least, capture the attention of the federal government).<sup>51</sup>

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46. James Madison, 'The Powers Conferred by the Constitution Further Considered' *The Federalist* #42 (22 January 1788). Accessed online on 4 Nov. 05: <http://www.constitution.org/fed/federa42.htm>

4747. US Constitution, Article I, Section 8

4848. US Constitution, Article I, Section 10

49. Richard B. Bilder, 'The Role of States and Cities in Foreign Relations', *The American Journal of International Law* 83 (1989), pp.821-831; Louis Henkin, *Foreign Affairs and the United States Constitution*, 2nd ed. (Oxford: Clarendon Press 1996), Chapter 6; Peter Spiro, 'Cities, States, and Foreign Affairs: The Massachusetts Burma Case and Beyond', *Berkeley Journal of International Law* 21 (2003), p.147.

5050. Michael H. Shuman, 'Dateline Main Street: Local Foreign Policies', *Foreign Policy* 65 (1986-7) p.162.

5151. US Constitution, Article I, Section 10. See also, Henkin (note 47) p.152.

This relative doctrinal and practical leeway has left an opening into which city and state governments have readily stepped. Examples of local foreign policy formation can be loosely grouped into three categories: (1) "economic foreign policy," or the increasing involvement of cities and states in lobbying foreign governments as a means of promoting foreign direct investment (FDI) and economic/industrial development within their jurisdictions; (2) policy stances *vis-à-vis* foreign governments such as the well-known actions taken by numerous subnational governments in the 1980s and 1990s to protest South Africa's apartheid regime. These policies both divested from companies doing business with South Africa and, more effectively, established "selective procurement policies" which prohibited the locality from buying products manufactured by companies who did business in or with South Africa;<sup>52</sup> and (3) agreements *with* foreign governments, such as on the one hand, the relatively uncontroversial "sister city" or "town twinning" movement,<sup>53</sup> or the somewhat more controversial functional *non-security* agreements between local governments which straddle a border (regarding, for instance, the construction of roads).<sup>54</sup>

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5252. John M. Kline, 'Continuing Controversies Over State and Local Foreign Policy Sanctions in the United States', *Publius* 29/2 (Spring 1999), pp.111+.

5353. Wilbur Zelinsky, 'The Twinning of the World: Sister Cities in Geographic and Historical Perspective', *Annals of the Association of American Geographers* 81/1 (1991) pp.1-31.

5454. These examples have been written about extensively elsewhere. For more, see: Francisco Aldecoa and Michael Keating (eds.), *Paradiplomacy in Action: The Foreign Relations of Subnational Governments* (London: Frank Cass 1999); Chadwick F. Alger, 'The World Relations of Cities: Closing the Gap Between Social Science Paradigms and Everyday Human Experience', *International Studies Quarterly* 34 (1990) pp.493-518; Bilder (note 49); Douglas M. Brown and Earl H. Fry (eds.) *States and Provinces in the International Economy* (Berkeley: Institute of Governmental Studies Press 1993); Brannon P. Denning and Jack H. McCall, 'States' Rights and Foreign Policy: Some Things Should Be Left to Washington', *Foreign Affairs* 79/1 (1999) pp. 9-14; Ivo D. Duchacek, Daniel Latouche, and Garth Stevenson (eds.) *Perforated Sovereignities and International Relations: Trans-Sovereign Contacts of Subnational Governments* (New York: Greenwood Press 1988); Earl H. Fry, *The Expanding Role of State and Local Governments in U.S. Foreign Affairs* (New York: Council on Foreign Relations Press 1998); Terrence Guay, 'Local Government and Global Politics: The Implications of Massachusetts' 'Burma Law'', *Political Science Quarterly* 115/3 (2000) pp.353-?; Henkin (note 49); Heidi H. Hobbs, *City Hall Goes Abroad: The Foreign Policy of Local Politics* (Thousand Oaks, CA: SAGE Publications 1994); Brian Hocking (ed.) *Foreign Relations and Federal States* (London and New York: Leicester University Press 1993); Brian Hocking, *Localizing Foreign Policy: Non-Central Governments and Multilayered Diplomacy* (New York: St. Martin's Press 1993); Peter Howard, 'The Growing Role of States in U.S. Foreign Policy: The Case of the State Partnership Program', *International Studies Perspectives* 5 (2004) pp.179-196; Shuman (note 50) pp.154-174; Kline (note 52); Hans J. Michelmann and Panayotis Soldatos (eds.) *Federalism and International Relations: The Role of Subnational Units* (Oxford: Clarendon Press 1990); Byron A. Miller, *Geography and Social Movements: Comparing Antinuclear Activism in the Boston Area* (Minneapolis: University of Minnesota Press 2000); Michael H. Shuman, 'Dateline Main Street: Courts v. Local Foreign Policies', *Foreign Policy* 86 (Spring 1992) pp.158-177; Spiro (note 49).

Even within this broader context of permissible local foreign policy, the *matrículas consulares* present a novel and compelling case study, as they are the product of direct bilateral discussions between the Mexican federal government and local (city, county, and state) governments in the United States, and thus provide an example of foreign policy formation at the subnational scale. As I discussed above, when discussions of amnesty fell off the table in the post-9/11 environment, the Mexican federal government under President Vicente Fox turned to the *matrículas consulares* as an alternate strategy to partially stabilize the status of its nationals living without authorization in the United States. The city, county, and state governments, as well as businesses (primarily financial institutions) which have decided to accept the consular ID cards have done so in part due to the direct lobbying efforts of Mexican officials stationed throughout the system of 47 consulates in the United States. As I discussed above, most local foreign policy is the result of negotiations between parallel cross-border governments; for instance, a city in the US with a city in Japan, or a state in the US with a province in Canada.<sup>55</sup> However, the acceptance of the Mexican consular ID cards is the outcome, at least in part, of direct negotiations between representatives of the Mexican *federal* government and subnational governments in the United States, which is highly unconventional, even in the already unconventional practice of local foreign policy formation.

*The Matrículas Consulares as "Local Citizenship Policy"*

When a subnational government accepts the consular ID as a valid form of identification, this is by no means a promise of future legalization at the national scale—it doesn't change the federal immigration status of the holder, or hold any promise for future legalization as a legal resident or citizen of the United States—but their acceptance does demonstrate a form of "local citizenship" or membership.

For instance, possessing a *matrícula consular* guarantees, to a greater extent than before, the right to remain in a local community, or more accurately, the right to avoid deportation. At the federal scale, the right to not be deported is one of the central rights of citizenship. Prior to the acceptance of the consular ID as a valid form of identification, an undocumented migrant stopped by a police officer for a routine traffic violation ran the risk of being arrested, and as a consequence, deported. But with a *matrícula consular*, the risk of deportation decreases dramatically.

The *matrícula consular* can also be used to obtain certain public services—importantly, not those which are restricted to citizens and legal permanent residents, such as food stamps or welfare. But in the communities which accept

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5555. Aldecoa and Keating (note 54) p. 129.

them, they can be used for a variety of other purposes such as enrolling children in public school (a right guaranteed by the 1982 US Supreme Court case, *Plyler v. Doe*), checking out books at the local public library, verifying identity for marriage or birth certificates, serving as positive identification at the county coroner, etc.

The *matricula consular* is also accepted by a wide variety of financial institutions, and as such, they are accepted as valid identification in home loan applications, thus extending the opportunity of home ownership to unauthorized residents in the United States and furthering the opportunity to put down roots and become a more permanent member of a local community.

Additionally, a local government's acceptance of the *matricula consular* quite simply acknowledges the physical presence of an unauthorized resident within its jurisdictional territory, as well as within its sociopolitical and cultural community. Accepting the card also acknowledges the reality of the political economic context which has brought unauthorized residents to live in the community at question. And by acknowledging this physical presence and the conditions whereby unauthorized residents have come to live in a community, the locality is acknowledging the *de facto* legitimacy of that person's presence in the community, and upholding his or her "local citizenship" or "membership". After all, formal membership in a city's polity, or "urban citizenship," is established under *jus domicili* standards in the US. Unlike citizenship in the nation-state, which is established under *jus soli* and *jus sanguinis* standards (being born in the territory of the nation-state, and hereditary standards, respectively), there are no immigration policies governing who can move into a city. City officials cannot decide who they will admit for residence and membership in their jurisdiction, and as such, formal membership in the local community (which, for instance, gives citizens the right to vote in local elections) is simply a *de facto* designation. These are *jus domicili* standards: if you live in the city, you're a citizen of that city. Therefore, while unauthorized residents might be "illegal" to the federal government, they are *de facto* members of these local communities, and are thus local "citizens" by *jus domicili* standards. This acknowledgement and recognition provides what political theorist Judith Shklar argues is one of the most central benefits of citizenship: "...to confer a minimum of social dignity."<sup>56</sup>

Finally, one of the hallmarks of liberal democratic citizenship is its universality within the territorial jurisdiction of the nation-state. Laws passed by Congress cannot apply only to certain persons within the nation-state, but must apply to all equally. At least normatively speaking, individuals and/or identifiable groups are

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5656. Judith N. Shklar, *American Citizenship: The Quest for Inclusion* (Cambridge, MA and London: Harvard University Press, 1991) p. 2.

neither discriminated against nor privileged. Drawing parallels with the institution of liberal citizenship, then, the acceptance of the *matriculas consulares* can be thought of as "citizenship policy" at the local scale as the decision to accept the cards is codified in local public policy, applicable to all unauthorized residents in the jurisdiction, and thus, *universal*, at least within the jurisdiction in question.

**Conclusion: The Emergence of "Neoliberal Local Membership"?**

The case study of the *matriculas consulares* informs a deeper understanding of the way in which tensions between local and federal scales are being negotiated and managed in this age of increasing globalization and international migration.

First, this case study provides yet another example of the Constitutional and doctrinal openings which subnational governments can occupy in the formulation of local foreign policy. In elaborating on another case study of local foreign policy formation, one of my goals in this article has been to challenge the "territorial trap" of mainstream foreign policy theory and practice.<sup>57</sup> In other words, while the mainstream international relations literature considers the nation-state the only legitimate actor in foreign affairs and views local foreign policy as an impossibility, this case study demonstrates yet again that local foreign policy formation is alive and well in the US institutional context.

Additionally, there is the more fundamental challenge which this case study presents for the categorization of immigration policy as foreign policy, at a time of globalization and migration. The designation of immigration policy as foreign policy, and immigration, citizenship, and naturalization as under federal jurisdiction makes sense in an idealized situation in which would-be immigrants are located outside of the United States, petitioning to enter and remain in the nation-state from their home countries.<sup>58</sup> In the current context, however, in which capital mobility continues to expand, yet concerns over illegal immigration, drug smuggling, and terrorism place even higher barriers to labor mobility, an increasing number of unauthorized residents are living squarely within the territorial boundaries of the nation-state. What does "foreign" mean in this case, in which the subjects of "foreign policy" are living, working, and raising families *within* the nation-state?

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5757. John Agnew, 'The Territorial Trap: The Geographical Assumptions of International Relations Theory', *Review of International Political Economy* 1/1 (Spring 1994), pp. 53-80.

5858. Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven: Yale University Press 1997) pp.357-369; T. Alexander Aleinikoff, *Semblances of Sovereignty: The Constitution, the State, and American Citizenship* (Cambridge, MA: Harvard University Press 2002).

Pushing this issue even farther, however, I raise the next issue. In his recent book, *Being Political*, Engin Isin makes the argument that rather than being irrelevant to the constitution of citizenship, noncitizens, aliens, and outsiders are actually central to the constitution of citizens and those who belong.<sup>59</sup> And importantly, that outsiders play an important role both when they are "extraterritorial," but also when they are located squarely within the polity's territory. Rather than being some anomaly or evidence of a nation unable to police its borders, the presence of millions of unauthorized migrants, welcomed for their labor but excluded as full human beings, is a contradictory but very functional and integral part of what Matt Sparke has recently called the "neoliberal nexus of securitized nationalism and free market transnationalism".<sup>60</sup> Yes, the presence of unauthorized residents is not explicitly sanctioned, but I would certainly argue that it is implicitly permitted. Undocumented migrants, after all, are the perfect workforce of this "neoliberal nexus": buffeted by seemingly contradictory but actually perfectly articulated forces of, on the one hand, the increasingly militarized nation-state, but on the other hand, by a huge demand for their unregulated labor. Their labor is, generally speaking (though not entirely) unregulated, their wages are market driven, and they are predominantly unorganized. Yes, there are occupational and labor standards, as well as Constitutional protections for undocumented laborers and residents, but the very real threat of deportation which accompanies claims for those rights and protections, make them less of a concrete protection for the residents themselves and more about upholding abstract standards of universality, regardless of the outcomes of those standards.

In this vein, I interpret the increasing acceptance of the *matriculas consulares* by subnational governments and the concomitant development of "local membership policies" as a pathway through what political scientist and immigration theorist, James Hollifield, calls the "liberal paradox".<sup>61</sup> As he discusses, on the one hand, under conditions of contemporary globalization, liberal nation-states increasingly operate within a logic of neoliberal *economic openness*. In this neoliberal environment, the free movement of goods, technologies, currencies, and ideas between nation-states is highly privileged. On the other hand, however, the nation-state is still a membership community, which must necessarily maintain a distinction between insiders and outsiders. Under this *political* logic, the liberal nation-state operates under conditions of *closure*, which demands the careful

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59. Engin Isin, *Being Political: Genealogies of Citizenship* (Minneapolis/London: University of Minnesota Press, 2002).

60. Matthew B. Sparke, 'A Neoliberal Nexus: Economy, Security and the Biopolitics of Citizenship on the Border,' *Political Geography* 25 (2006), p. 153.

61. James F. Hollifield, 'The Emerging Migration State', *International Migration Review* 38/3 (2004), pp. 885-912. James F. Hollifield, 'Migration and International Relations: The Liberal Paradox,' in Han Entzinger, Marco Martiniello, and Catherine Wihtol de Wenden (eds.), *Migration Between Markets and States* (Burlington VT: Ashgate 2004), pp. 3-18.

selection and exclusion of would-be immigrants and regulation of the movement of people. These competing logics lead nation-states into Hollifield's liberal paradox: how can nation-states manage the tensions which emerge between the seemingly contradictory forces of economic openness and political closure, the neoliberal trading state and the national political community?

One possible answer (though not necessarily a politically progressive answer) need not emerge from an "either-or" choice—either choosing economic closure (and a resulting decrease in the movement of people) or political openness (significantly liberalizing access to membership, or citizenship, in the nation-state)—but rather in the nation-state maintaining both economic openness and political closure and allowing the *rescaling of migration and membership policy to subnational scales*. I am not arguing that immigration and citizenship policy *as such* are being formulated at local scales—these are still within the jurisdiction of the federal government. Rather, using the *matriculas consulares* as a case study, I have argued that subnational communities are formulating partial, contingent, and varied forms of "local migration and membership policy". In effect, local communities are collapsing the processes of immigration and naturalization into "local neoliberal membership moments," which enable the presence and residence of undocumented migrants within their communities without giving them firm and permanent purchase in the United States. These local policies, such as the acceptance of the *matriculas consulares*, represent, therefore, the emergence of a "neoliberal membership regime": decentralized, localized, partial, contingent, and non-universal (at least at the scale of the nation-state).

This neoliberal membership has both positive and negative implications for the rights of unauthorized residents. In arguing that the formulation of these local policies enable the federal government of the United States to better negotiate the liberal paradox, I am adding a layer of nuance to a more frequently articulated interpretation of these local policies: that they primarily represent the emergence of the city (or other subnational jurisdiction) as an important political player on the global stage, as well as a potential source of influence on national policy. For instance, Kemp and Rajjman make this argument vis-à-vis Tel Aviv, as they construe Tel Aviv as a "global city" and an important player in the Israeli and international context.<sup>62</sup> Given the symbolic power of Tel Aviv, we can imagine that its government's migrant labor policies might have a ground-up influence on Israeli national immigration policy, or at least highlight deficiencies in national policy. I don't discount the parallel importance of local membership policy formulation in the US context; undoubtedly, the adoption of local policies such as the acceptance of the *matriculas consulares* and the repositioning of cities in the

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62. Kemp and Rajjman (note 5).

US as unconventional actors in bilateral foreign policy has a similar implication as that highlighted by Kemp and Rajjman.

While additional research will be necessary to substantiate this claim, in arguing that the acceptance of the *matriculas consulares* (and other local policies which embrace unauthorized migrants) constitute an emerging form of neoliberal membership and a way for the nation-state to negotiate the liberal paradox, I also offer, however, that the adoption of these policies also has the potential to *disable* change on the federal scale. While the acceptance of the *matricula consular* by municipal governments in Los Angeles and Chicago might send a powerful message to the federal government and reflect the shifting status of these cities in the global economy, it is less likely that the policies of cities such as Omaha, Nebraska and Charlottesville, Virginia have the same potential to influence federal policy, or that they represent the emergence of Omaha and Charlottesville as "global cities". Instead, the widespread acceptance of the *matriculas consulares* might enable an exploitative situation and disable progressive change at the federal scale. While the recent pro-immigrant demonstrations and millions of voices calling for legalization are heartening, these local policies do not represent a broader, national struggle for universal rights, but rather, in conjunction with the increasing militarization and border policing at the federal scale, a perfect solution for maintaining a marginalized, exploitable workforce. The federal government can "be tough on border control and immigration policing" while looking the other way and allowing undocumented people to remain in the US, living under difficult circumstances.

On a positive note, however, the *matriculas consulares* also highlight the importance of rethinking how we define who is or is not permitted to be members of "our" communities, and furthermore, what legitimate membership means. In providing a new measure of stability for unauthorized residents, the consular ID cards can therefore represent a move in a positive direction: the fact that localities are struggling with the reality of undocumented immigration and coming up with solutions to meet the very real challenges it represents. As an increasing number of localities accept the cards, it will be hard to argue that unauthorized migrants do not have some claims to local, if not national, membership.

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**Biographical Note**

Monica Varsanyi is an Assistant Professor in the School of Justice and Social Inquiry at Arizona State University. She is currently working on a book which explores local (city, county, state) policy initiatives re: unauthorized residents, and how these local policies are in tension with the federal government's role in regulating borders, immigration, and citizenship policy.