Constructing Effective Civic Education for Noncitizen Students

Angela M. Banks

Primary and secondary education is essential because it not only provides students with critical literacy and numeracy skills, but also, for many students, it begins their civic education. The goals of civic education vary by country, but a consistent goal is to provide students with the knowledge and skills necessary to be productive members of society. Globally, approximately thirty-six million children are living outside of their country of nationality. With the growing number of migrant children, states are facing two challenges to effective civic education. The first is access to schools, and the second is creating a civic education curriculum that effectively prepares all students to participate in society in ways that align with democratic principles and goals. This essay focuses on unauthorized migrant children's access to public schools and argues for civic education to incorporate the exploration of membership boundaries so that students, citizen and noncitizen alike, can study unauthorized migrants' participation in society within the context of membership status. This exploration offers students the opportunity to consider how to better align unauthorized migrants' lived realities with their legal status – and to better realize democracy's promise.

Globally, thirty-six million children were living outside of their country of nationality in 2020.[1] These children have a variety of immigration statuses, which impact their access to primary and secondary education.[2] Primary and secondary education is critical not only because it provides students with essential literacy and numeracy skills, but also because it serves as a key environment for civic education. The goals of civic education vary by society, but a consistent goal is to provide students with the knowledge and skills necessary to be productive members of society. With the growing number of migrant children, states are facing two challenges to effective civic education. The first is access to primary and secondary schools, and the second is creating a civic education curriculum that effectively prepares all students to participate in society in ways that align with democratic principles and goals. This essay explores one of the most vulnerable populations among migrant children: unauthorized migrants.[3]

To begin, I examine the legal aspects of unauthorized migrant children's access to public primary and secondary schools in Malaysia and the United States.

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Both countries have similar challenges related to unauthorized migration yet have different approaches to public primary and secondary school access. I explore what might account for those differences. I also examine the goals of civic education in Malaysia and the United States, as well as strategies for implementing those goals, and discuss the limitations of the current approaches for achieving them. I maintain that effective civic education needs to incorporate exploring the boundaries of membership. This entails providing students with the knowledge and skills needed to identify the existing boundaries of membership, determine how the current boundaries fit with the normative goals of society, and think creatively about alternative membership regimes when a mismatch is identified.[4]

Within international law, free public education is considered a fundamental right. The Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights require state parties to "make primary education compulsory and available free to all."[5] The International Covenant on Economic, Social and Cultural Rights states that the purpose of this right is to "enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and further the activities of the United Nations for the maintenance of peace."[6] The Convention on the Rights of the Child identifies "the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin," along with "respect for the natural environment" as goals for education.[7] The United States signed this treaty in 1995 but has not ratified it. Malaysia ratified the treaty in 1995 with reservations. In particular, Malaysia stated that the provision governing compulsory free education would only be applicable in Malaysia if it was "in conformity with the Constitution, national laws and national policies of the Government of Malaysia."[8] Malaysia has neither signed nor ratified the International Covenant on Economic, Social and Cultural Rights, while the United States signed this agreement in 1977 but has yet to ratify it.[9] Therefore, the international right to a free public primary education for all is not recognized in Malaysia or in the United States.

Domestic law within the United States and Malaysia differentially recognizes noncitizens' right to a free primary education. In the United States, the Supreme Court held that the Constitution does not include a fundamental right to education.[10] But it also held that unauthorized migrant children cannot be denied a free primary and secondary public school education.[11]

In 1973, in *San Antonio Independent School District v. Rodriguez*, concerned parents challenged the use of property taxes to fund public primary and secondary schools in Texas, arguing that it was a violation of the Equal Protection Clause of the United States Constitution. This provision of the Constitution states that no state shall

"deny to any person within its jurisdiction the equal protection of the laws."[12] The Alamo Heights Independent School District received $26 per student in funding based on property tax revenue while the Englewood Independent School District received $333 per student based on property tax revenue.[13] The Alamo Heights district residents were predominantly Mexican American while the residents of the Englewood district were predominately "Anglo."[14] The Court concluded that education is not a fundamental right "in the sense that it is among the rights and liberties protected by the Constitution."[15]

Despite finding that there is no constitutional right to education, just nine years later, in *Plyler v. Doe*, the Court held that when education *is* offered by the state, it must conform to the Equal Protection Clause of the United States Constitution. In 1977, a school district in the state of Texas refused to enroll unauthorized migrant schoolchildren unless they paid a $1,000 tuition fee annually.[16] The Texas Education Code at the time "authorized local school districts to deny enrollment to children not legally admitted to the United States or to charge such children tuition."[17] The Texas school district's policy was challenged as a violation of the Equal Protection Clause, and the Court agreed: "If the State is to deny a discrete group of innocent children the free public education that it offers to other children residing within its borders, that denial must be justified by a showing that it furthers some substantial state interest. No such showing was made here."[18] Therefore, school districts within the United States must provide free primary and secondary education to students without regard to immigration or citizenship status.

In Malaysia, access to publicly funded primary and secondary schools is dependent on one's ability to produce identity documents.[19] The United Nations special rapporteur on the right to education, Vernor Muñoz Villalobos, noted that "one of the most serious education-related problems in Malaysia is the lack of access to education, at all levels, for children lacking Malaysian citizenship status, including refugee children, asylum-seekers, children of migrant workers, and stateless children, possibly as well street children."[20] The common problem for these children is that they lack identity documentation. Many of these children do not have birth certificates because they are born in "remote areas of the country" and are at risk of "not being registered at birth."[21]

In the 1990s, policy changes regarding school enrollment introduced "more stringent identity document requirements for school entry, making it difficult for undocumented and noncitizen children to enter public schools."[22] Prior to this time, school heads had a significant amount of discretion and could enroll students on a case-by-case basis.[23] Children need a birth certificate to attend school, but birth registration is a significant impediment for the children of low-wage migrant workers because these migrant workers are legally prohibited from bringing their families with them to Malaysia or from forming new families in Malaysia.[24] Migrant workers in low-wage jobs who attempt to register the birth of their chil-

dren in Malaysia risk deportation and other legal penalties. Therefore, a significant number of low-wage migrant workers do not register the births of their children, which precludes the children from accessing public education. Yet even if the children have birth certificates, free access to government-supported primary and secondary schools was limited to citizens in 1995. Noncitizen children could attend but were required to pay an annual fee. In 2019, Malaysia adopted the Zero Reject Policy to enable children lacking identity documents to access public primary and secondary schools, yet only certain children were eligible. [25] The policy limited access to noncitizens adopted by Malaysian citizens, children born out of wedlock to a Malaysian citizen father and non-Malaysian citizen mother, and noncitizen children whose parents are noncitizens lawfully admitted to Malaysia for specific purposes.[26]

In 2002, the Education Act 1996 (Act 550) was amended to make primary education compulsory for all Malaysian citizens between the ages of six and twelve.[27] Malaysia does not grant citizenship based on the *jus soli* principle (that is, people are not automatically granted citizenship because they were born in Malaysia). Instead, citizenship is granted to individuals born within Malaysia who have a parent who is a citizen or permanent resident.[28] Therefore, the majority of the unauthorized migrant children born in Malaysia do not have access to Malaysian citizenship, and thus are not included in the group of children for whom primary education is compulsory.

Due to the legal barriers unauthorized migrant children face in attending public primary and secondary school, they are "reliant on informal education from alternative or community learning centres supported by civil society organisations, faith-based organisations, private donors, and local communities."[29] However, because of financial restraints that limit access to trained teachers, these learning centers are not an adequate substitute for public schools.[30] For example, a 2023 study of educational opportunities for unauthorized migrant children found that many learning centers are not state-endorsed because they are unable to satisfy the licensing requirements.[31] This exposes the learning centers to the risk of incurring significant fines or being shut down by the Ministry of Education. The learning centers generally rely on volunteer teachers and teachers from the community because of funding limitations.[32] The volunteer teachers "were unpaid, unable to commit to regular teaching schedules, nor trained in teaching a fixed syllabus."[33] Additionally, there was a high turnover of the teachers at the learning centers.[34] Because of these constraints, I will focus on the public school system and offer one approach for conceptualizing unauthorized migrants as members that could facilitate their access to public schools.

In Malaysia and in the United States, status as a member or nonmember plays an important role in determining access to education.[35] In both societies, unauthorized migrants are generally viewed as nonmembers, yet the willingness

of the law to recognize their long-term presence within society varies. These differential acknowledgments help to explain the dissimilar access that unauthorized migrant children have to schools in Malaysia and the United States.

Malaysia and the United States face an immigrant labor paradox. Both countries have relied on foreign labor for their own economic growth, yet foreign labor has been viewed as an economic, social, and political threat to mainstream society. In Malaysia, this reliance began during Britain's colonial rule, when labor was imported from China and India for the coffee, coconut, and rubber plantations, the tin mines, and the construction of railways, roads, and buildings.[36] Foreign labor has continued to be an important source of labor and economic growth. The United States has similarly relied on foreign labor in different forms, from "enslaved people of African descent doing agricultural, domestic, and skilled labor in the American South to Chinese laborers building the transcontinental railroad to Southern and Eastern European workers in factories across the country during the second Industrial Revolution to Mexican laborers staffing the agricultural expansion in the American Southwest."[37] In both countries, one of the reasons that foreign labor has been and remains desirable is because of the ability of employers to maximize profits by offering substandard wages and working conditions.

The latest estimates show that there are 11 million unauthorized migrants in the United States and approximately 1.2 million to 3.5 million in Malaysia.[38] In the United States, approximately one million unauthorized migrants are under the age of eighteen, and in Malaysia, approximately 472,000 children are noncitizens.[39] Unauthorized migrants are the subject of several threat narratives that justify positioning them as nonmembers. These threat narratives typically portray unauthorized migrants as: unfair labor competition because of their willingness to work for lower wages and in less desirable working conditions, individuals who take more from society (in the form of social services) than they contribute through taxes, transmitters of contagious diseases, and perpetrators of violent crime and other social harms.[40]

Public opinion is often shaped by these threat narratives, and the United States and Malaysia have responded with legal measures to minimize the size of the unauthorized migrant population. Historically in the United States, this has led to laws that prohibited the entry of certain migrants, like Chinese laborers and unskilled contract laborers, or laws that created more stringent admissions requirements such as literacy tests.[41] During the Trump presidency (2017 to 2021), responding to public concerns that are rooted in the threat narratives, the United States banned migration from specific countries, limited access to asylum, conducted raids, and separated migrant parents and children in ways that prevented reunification.[42] Malaysia has similarly passed laws to increase fines and punishment for unauthorized migration, conducted massive raids, deported unauthorized migrants, and entered into bilateral agreements to restructure the labor re-

cruitment process. For example, the Immigration Act was amended in 2002, and the Malaysian government deported almost four hundred thousand Indonesian workers.[43] This was not the first time the government used forceable repatriation to respond to unauthorized migration, but "it was the largest single repatriation ever undertaken."[44]

Both the United States and Malaysia have experienced significant inflection points in public concern about unauthorized migration. These inflection points have occurred in the midst of increased deportations, which signal an untenable number of unauthorized migrants. During one such pivotal moment in the United States, a period of increased deportations along the U.S. Southern border in the 1970s, the state of Texas attempted to limit unauthorized migrant children's access to public primary and secondary schools. The action was challenged, and the United States Supreme Court concluded that unauthorized migrant children could not be denied a free primary and secondary education. Today, the United States is experiencing another significant inflection point, and the current Texas governor, Greg Abbott, has stated that he thinks Texas "will resurrect that case and challenge this issue again, because the expenses are extraordinary and the times are different."[45] Malaysia experienced a significant inflection point in the early 2000s, an increase in the number of deportations of unauthorized Indonesian workers, that led to the enactment of the 2002 Migration Act, which includes a zero-tolerance policy toward unauthorized migrants.[46] This act provides that unauthorized migrants in Malaysia can be subject to up to five years of imprisonment, fines, or caning. Around the same time, the Education Act 1996 (Act 550) was amended to make primary education compulsory for children ages six to twelve, but only for the children of Malaysian citizens.[47] Entities within the United States and Malaysia have responded to concerns about unauthorized migration by limiting children's access to school. Malaysia has been successful because of documentation requirements for enrollment and a legal mandate for compulsory primary education that does not include noncitizen children. The United States prevented Texas from limiting unauthorized migrant children's access to school. However, Governor Abbott's willingness to test the Supreme Court's decision and limit unauthorized migrant children's access to school presents an ongoing threat.

The United States and Malaysia are both democracies with diverse racial, ethnic, and religious populations. While the United States is a representative democracy and Malaysia is a parliamentary democracy with a constitutional monarchy, both countries contend with building a cohesive and unifying national identity amid significant diversity. Both societies have historically defined national membership based on ethnocultural characteristics, including common racial, ethnic, or religious heritage and culture. Both societies are also formally striving to cement a national identity that is based on shared civic values

and beliefs.[48] Civic education is one tool for socializing students around a specific national identity that entails values, norms, and practices.

Civic education generally refers to educating students about the knowledge and skills needed for participation and engagement in a democratic society. This includes information about the people who make up society: who they are, what they do, why they do it, and how they do it. In a democratic society, participatory values, norms, and practices answer many of these questions. Yet local norms will also shape a society's approach to national identity and what is deemed necessary for appropriate civic engagement.

Education scholar James A. Banks defined four approaches to multicultural curriculum reform, which seeks to prepare students to be responsible participants in a democratic society. The first approach is the contributions approach, which incorporates specific resources into a curriculum that celebrates the holidays, heroes, and significant events from different racial, ethnic, religious, gender identity, and other groups within the society. The second approach, the additive approach, incorporates cultural content, concepts, themes, and perspectives into the curriculum by and about people from diverse groups. For example, incorporating the Native American perspective about Columbus Day when it is studied in the United States. The transformation approach, the third approach, changes the structure of the curriculum to encourage students to view concepts, issues, themes, and problems from multiple perspectives. For example, a unit on Thanksgiving in the United States would explore the events leading to the holiday from the perspective of the Pilgrims and Native Americans, and would include ideas of settler colonialism.[49] Finally, the social action approach enables students to participate in projects and activities to "take personal, social, and civic actions related to the concepts, problems, and issues they have studied."[50] This approach allows students "to know, to care, and to act."[51] The social action approach is the best approach for socializing students to become responsible participants within a democratic society; it is the best way for civic education to effectively achieve its goals.

Democracy values liberty, justice, equality, and the fair treatment of all people, yet the realization of these values for all individuals within a society is often elusive. If students are not given opportunities to explore the gaps between democracy in theory and democracy in action, it will be challenging for them to be responsible participants. Yet the social action approach to civic education is not universally appreciated. As James Baldwin explained in his 1963 essay *A Talk to Teachers*,

> The purpose of education, finally, is to create in a person the ability to look at the world for himself, to make his own decisions, to say to himself this is black or this is white, to decide for himself whether there is a God in heaven or not. To ask questions of the universe, and then learn to live with those questions, is the way he achieves his own identity. But no society is really anxious to have that kind of person around. What so-

> cieties really, ideally, want is a citizenry which will simply obey the rules of society. If a society succeeds in this, that society is about to perish. The obligation of anyone who thinks of himself as responsible is to examine society, and try to change it and to fight it – at no matter what risk. This is the only hope society has. This is the only way societies change.[52]

The social action approach to civic education is an ongoing project in the United States and Malaysia.

Civic education in the United States has significantly transformed since the 1940s and 1950s. The country has striven for a cohesive and unifying national identity. This idea is often conveyed through the phrase *e pluribus unum* (out of many, one), which appears on the currency. Civic education has played a significant role in operationalizing this goal. The earliest efforts, which dominated until the 1970s, used an assimilationist approach, trying to "ensure that one dominant mainstream culture was shared by all."[53] This approach views civic education as a tool for controlling ethnic, cultural, religious, or racial differences. People from minority groups were compelled to forsake their native cultures and languages to achieve complete assimilation. The objective was to foster a society comprising uniform members, in which the presence of migrants and ethnic minorities would not substantially alter the existing cultural framework. During the 1970s, this method largely fell out of favor, primarily because of the ethnic revitalization movements that emerged in the 1960s and 1970s. These movements disputed the concept of a uniform national culture and the notion that it was essential for individuals to distance themselves from their ethnic, racial, or national backgrounds to foster deep national allegiances. To that end, multicultural civic education acknowledged the detrimental effects of the assimilationist strategy and concentrated on assisting students from various groups to fully embrace their citizenship without relinquishing significant elements of their ethnic culture. Through a transformative approach, multicultural civic education teaches students to be "social critics who can make thoughtful decisions and implement their decisions in effective personal, social, and civic actions."[54] The implementation of social action and transformative approaches to civic education is a work in progress.

In the 1960s, when the United States was experiencing significant social changes related to race and gender, Malaysia was experiencing similar significant social changes. Malaysia gained independence from Britain in 1957 and faced the task of creating national unity in a country that had been under colonial rule and operated with a policy to divide and rule. This policy separated the territory and occupations along ethnic lines. Workers were imported from China and India. Chinese workers were concentrated in urban areas while Indian workers were concentrated on plantations, and the native Malay population resided primarily in rural areas. This geographic divide also mapped onto an economic divide. Indi-

viduals of Chinese descent were viewed as "controlling the economy," leaving Malays with fewer opportunities for economic advancement. The immigration of significant numbers of foreign workers during colonialization "transformed the country from a relatively homogeneous society to a plural society with different religions and languages."[55] Post-independence Malaysia has utilized several different approaches to forge a national identity that respects the diverse languages and cultures of the country's long-term residents. For example, the Malaysian Federal Constitution of 1957 grants citizenship to non-Malays, and states that it is the king's responsibility to "safeguard the special position of the Malays and the legitimate interests of other communities."[56]

But on May 13, 1969, it was unmistakable that the goal of national unity had yet to be achieved. After the Alliance Party, the ruling coalition, narrowly won the general election three days earlier, racial tensions exploded. Opposition parties supported by non-Malay communities had significant electoral success and violence ensued. Hundreds of people died, and the violence made national unity an urgent priority.[57] The government responded by introducing a declaration of national unity on Merdeka Day (Independence Day) in 1970. *Rukunegara*, the name of the declaration and policy, expresses a commitment to "the achievement of a united nation in which loyalty and dedication to the nation shall over-ride all other loyalties."[58] It further states the objective as "achieving a greater unity of all Malaysians, maintaining a democratic way of life, creating a just society where the nation's wealth could be equally shared, ensuring a liberal approach to Malaysia's rich and diverse cultural traditions, and building a progressive society."[59] Three major principles guide the operationalization of these goals: 1) "the National Culture must be based on the indigenous culture of the region," 2) "the suitable elements from other cultures can be accepted as part of the National Culture," and 3) "Islam is an important component in the moulding of the National Culture."[60]

National plans introduced in 1971 to address economic development and national unity have described education policy as a strategy "to encourage common values and loyalties among all communities and in all regions."[61] The current approach to civic education was instituted in 2019, and it incorporates civics education in multiple subjects such as English, Malay, moral education, Islamic studies, and history. Civic education has been a tool for achieving national unity through a shared national identity. However, scholars have critiqued the national identity pursued as one that marginalizes the Chinese and Indian communities within Malaysia.[62]

Political scientist Helen Ting has analyzed lower-secondary history textbooks in Malaysia and found that there has been a significant shift in the coverage of "historical themes related to major ethnic groups."[63] There has been a decrease in the coverage of ethnic Chinese and Indians in textbooks.[64] She found that between 1989 and 2020, "the greatly reduced number of pages relating to the histor-

ical role of non-Malays in successive editions during this period means that they are rendered almost invisible and assigned to the margins of these narratives."[65]

Malaysia's prior approach to civic education, "Civics and Citizenship Education," was introduced in 2005 as separate courses for primary and secondary students. The objective of this curriculum was for students to "develop an understanding on the diversity between races, fostering patriotism and national integration among the children."[66] This was done through content that enabled students to learn their respective ethnic history and culture and that of the other major groups in the country. Education scholar Sing Yee Tan's examination of the textbooks used for the civic education curriculum has described them as "celebrat[ing] differences in a pluralistic society," concluding that "students are encouraged to operate successfully in their racial culture and embrace the national identity. . . . The focus of the curriculum is to make students proud of their racial heritage and cultural differences."[67] Tan critiques this approach to civic education because students are not provided the opportunity to examine power and social structure, or gain other knowledge and skills necessary for participating in a plural society. Tan also explains that "students will only recognize the cultural ornaments and festivals of the other races," and not gain a deep enough understanding of various groups to understand concepts, issues, themes, and problems from their perspectives.[68]

The United States and Malaysia have used civic education as a tool for national identity socialization. While both societies are multiracial, multiethnic, and multireligious, the states have taken different approaches to acknowledging that diversity within civic education. Malaysia has focused on developing a cohesive national identity that increasingly prioritizes Malay cultural aspects in certain subjects, and the United States has emphasized civic engagement within democracy. Neither society has widely adopted a social action approach to civic education, which is a missed opportunity.

Civic education plays an important role in socializing children to acquire the values, norms, and practices essential for participation in society. Children without lawful immigration status do not have access to the civic education offered in public schools in Malaysia, but they do in the United States. The differential approaches to school access reflect different conceptions of unauthorized migrants' membership within society. In Malaysia, these children are viewed as nonmembers, and consequently are often legally invisible. In the United States, these children experience partial membership. Their long-term residence in the United States and their lack of culpability in arriving or remaining there without authorization are often pointed to as reasons why they should not be treated as total nonmembers. These reasons supported the Supreme Court's decision in *Plyler*. Yet a federal court judge recently used the term "illegal alien" to

refer to young people in the United States without lawful immigration status and included a lengthy footnote defending his use of the term. The judge explained that *alien* is a term of art to refer to immigrants and that the young people at issue were not in lawful immigration status. He concluded that "*illegal alien* is not an opprobrious epithet: it describes one who is present in a country in violation of the immigration laws (hence 'illegal')."[69] Yet he failed to acknowledge that the term conveys the idea that certain noncitizens (people) are illegal, and people cannot be illegal. Actions can be illegal, but people cannot. His doubling down on calling people illegal dehumanizes the people he is describing and reinforces their status as nonmembers.

When children without lawful immigration status are denied access to civic education in free public primary and secondary schools, they miss out on important socialization opportunities. Even if civic education is not consistently taught from a social action approach, it provides important knowledge about the values, skills, and practices deemed valuable within society. Lack of access to civic education may cause children to incompletely internalize the values, norms, and practices necessary for civic engagement. This may not be problematic if the children deemed nonmembers are transient or remain in the society for short periods of time. Yet, in the United States and Malaysia, individuals deemed nonmembers based on their immigration status are often long-term residents.

In the United States, the unauthorized migrant population is estimated at eleven million individuals.[70] Sixty-two percent of this population have lived in the United States for at least ten years.[71] Twenty-one percent have lived in the United States for at least twenty years.[72] In Malaysia, it is estimated that there are somewhere between 1.2 million and 3.5 million unauthorized migrants.[73] As in the United States, a significant portion of the unauthorized migrants in Malaysia are unauthorized due to overstaying a visitor visa. Many of these individuals are also long-term residents. A report from the International Labour Organization explains that "more than 70 percent of the undocumented workers are from Indonesia" and approximately "half of the Indonesians who entered Sabah [a state within Malaysia] under a tourist visa between 1996 and February 2003 failed to return home upon the expiry of their visa."[74] In both the United States and Malaysia, unauthorized migrants are long-term residents who develop significant familial, community, and economic ties to their country of residence. Children in this category will generally spend the remainder of their lives in their country of residence. Denying unauthorized migrant children access to public education denies them an important source of civic education. When this happens, the state risks having a significant portion of the population lacking the values, norms, and practices required for responsible participation in a democratic society. The U.S. Supreme Court expressed this concern in *Plyler*, stating, "education has a fundamental role in maintaining the fabric of our society. We cannot ignore the signifi-

cant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests."[75] This perspective was influential in the Court holding that denying unauthorized children free access to primary and secondary public schools violated the Equal Protection Clause of the United States Constitution.

Countries confronting the immigrant labor paradox often respond by constructing or reinforcing unauthorized migrant workers' status as nonmembers without significantly limiting employers' access to low-wage foreign workers. This approach is unjust and untenable. Denying long-term residents access to basic resources while depending upon their labor for economic prosperity undermines two fundamental democratic principles: equality and the fair treatment of all people. Shifting this approach to unauthorized migrants requires recognizing these individuals as members based on the *jus nexi* principle, which defines membership based on an individual's connections to society. [76] The focus is on presence within a community and the personal relationships and participation that link a person to the wider society. The *jus nexi* principle provides a framework for recognizing unauthorized migrants as members of the communities in which they reside, and allows society to formally recognize the social fact of membership that so many unauthorized migrants experience. For example, Uriel is one of "21 immigrant youth . . . [who held] sit-ins in congressional offices on Capitol Hill" in 2010 to support the Dream Act.[77] He lacks lawful immigration status in the United States, yet identifies as an American. His American identity is based on his education and socialization in the United States. Access to primary and secondary schools fostered an identity as an American rooted in a commitment to democratic values. Uriel explained that "when we fail to speak up, when we fail to criticize, when we fail to stand up for our ideals, and when we fail to improve the lives of those around us; it is a far greater blow to the freedom, the decency, and to the justice which truly represents this nation we call home."[78] Uriel's statement is the desired outcome of the social action approach to civic education. Unauthorized migrant children's access to this education is necessary to realize the promise of democracy.

Civic education can address this challenge by allowing students to explore the boundaries of membership. Rather than simply presenting the requirements for citizenship, students should be provided with opportunities to "examine who is a citizen, who has access to citizenship, and whether those decisions accurately or fairly reflect the values and norms governing a democratic society."[79] Through such explorations, different approaches to membership can be explored, like the *jus nexi* principle. These types of discussions and activities are valuable (even if only citizens and lawfully present noncitizens are in the classroom) because they lay the foundation for citizens to reexamine who are members of the society and what rights, responsibilities, and benefits should extend to members and non-

members. This approach to civic education also allows citizens to reconsider the rights, responsibilities, and benefits of current citizens and whether they "fairly reflect the values and norms governing a democratic society."[80]

There are two critical components for civic education for noncitizens. The first is access to public schools, where students are exposed to civic education curricula. The second is the content of civic education curricula. To best prepare students for participation within a democratic society, students must have the opportunity to experience transformation and social action approaches to civic education. Both the United States and Malaysia continue to struggle with enacting an inclusive approach to membership. Long-term residents are framed as nonmembers based on their unauthorized immigration status. Legal rights, access to resources, and opportunities to participate in society are all shaped by immigration status. Instituting transformation and social action approaches to civic education would allow students to explore how member/nonmember boundaries are drawn, why they are drawn, and how they are justified. To solidify broader conceptions of membership within a society that actualizes the democratic principles of liberty, justice, equality, and the fair treatment of all people, students need access to transformation- and social action-oriented civic education. This approach would support educators in having students explore issues related to who is in their classrooms and who is not, and would help them begin to uncover why and whether something should be done about it, and if so, what. It is these kinds of explorations that best prepare students to participate in a democratic society in ways that enable that society to realize the promises of democracy more fully.

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ENDNOTES

[1] "Migration," UNICEF Data, April 2021, https://data.unicef.org/topic/child-migration-and-displacement/migration.

[2] The variety of immigration statuses of children living outside of their nationality include refugee status, permanent authorized status, temporary authorized status, and unau-

thorized status. A child's access to public primary and secondary education can vary depending upon their immigration status.

[3] The term "unauthorized migrants" will be used throughout this essay to refer to individuals who are residing within a country without legal authorization. This term is used to focus on the legal status of individuals and how that legal status impacts their access to social resources.

[4] Angela M. Banks, *Civic Education in the Age of Mass Migration: Implications for Theory and Practice* (Teachers College Press, 2021), 18.

[5] United Nations General Assembly, *Convention on the Rights of the Child*, General Assembly Resolution 44/25 November 20, 1989, art. 28; and United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights*, General Assembly Resolution 2200A (XXI), December 16, 1966, art. 13.

[6] United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights*, art. 13.

[7] United Nations General Assembly, *Convention on the Rights of the Child*, art. 29.

[8] Ibid., footnote 43.

[9] United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights*.

[10] *San Antonio Independent School District v. Rodriguez*, 457 U.S. 202 (1973).

[11] *James Plyler, Superintendent, Tyler Independent School District, et al. v. John Doe*, 457 U.S. 202 (1982). I use the phrase "unauthorized migrant children" to refer to children without lawful immigration status. For children in the United States, this is generally the result of entering the United States without inspection or overstaying a nonimmigrant visa. For children in Malaysia, this is generally the result of unauthorized entry into Malaysia, birth within Malaysia to parents who are unauthorized migrants and the birth was not registered in Malaysia, or being a refugee. Adults can be unauthorized migrants based on four circumstances in Malaysia: 1) they entered without authorization or work without authorization in Malaysia; 2) they have authorization to enter but work without authorization; 3) they were authorized to enter and work, but their work authorization has expired, and they continue working; or 4) refugees are unauthorized in Malaysia because Malaysia has not signed the 1951 Convention Relating to the Status of Refugees or the 1967 Protocol Relating to the Status of Refugees. Tharani Loganathan, Zhie X. Chan, Fikri Hassan, et al., "Undocumented: An Examination of Legal Identity and Education Provision for Children in Malaysia," *PLOS ONE* 17 (2) (2022): 2, https://doi.org/10.1371/journal.pone.0263404; and Vijayakumari Kanapathy, "Controlling Irregular Migration: The Malaysian Experience," Working Paper 14 (International Labour Organization, 2008), 3, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_160587.pdf.

[12] U.S. Constitution, Amendment 14.

[13] *San Antonio Independent School District v. Rodriguez*, 457 U.S. 12–13.

[14] Ibid., 12.

[15] Ibid., 29, 37.

[16] Angela M. Banks, "*Plyler v. Doe*," in *Encyclopedia of Diversity in Education*, ed. James A. Banks (SAGE Publishing, 2012), 1668–1669.

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[18] *Plyler v. Doe*, 230.

[19] Maheran Makhtar, Khairun Nisa Asari, and Mohd Lotpi Mohd Yusob, "Right to Education for Irregular Migrant Children in Malaysia: A Comparative Analysis," *Pertanika Journal of Social Sciences & Humanities* 23 (S) (2015): 90.

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[22] Loganathan, Chan, Hassan, et al., "Undocumented," 11.

[23] Ibid.; and Tharani Loganathan, Zhen Ling Ong, Fikri Hassan, et al., "Barriers and Facilitators to Education Access for Marginalised Non-Citizen Children in Malaysia: A Qualitative Study," *PLOS ONE* 18 (6) (2023): 7, https://doi.org/10.1371/journal.pone.0286793.

[24] Loganathan, Chan, Hassan, et al., "Undocumented," 2.

[25] Ibid., 12.

[26] Ibid.

[27] Human Rights Commission of Malaysia (Suhakam), *Report on Access to Education in Malaysia* (Suhakam, 2024), http://www.suhakam.org.my/wp-content/uploads/2013/11/Research-Report.pdf.

[28] Malaysian Constitution (1957), Part II (1); and Makhtar, Asari, and Mohd Yusob, "Right to Education for Irregular Migrant Children in Malaysia," 90.

[29] Loganathan, Ong, Hassan, et al., "Barriers and Facilitators to Education Access for Marginalised Non-Citizen Children in Malaysia," 2.

[30] Makhtar, Asari, and Mohd Yusob, "Right to Education for Irregular Migrant Children in Malaysia," 88.

[31] Loganathan, Ong, Hassan, et al., "Barriers and Facilitators to Education Access for Marginalised Non-Citizen Children in Malaysia."

[32] Ibid., 13.

[33] Ibid.

[34] Ibid.

[35] As mentioned in the introduction, the boundary between member and nonmember is not always consistent across contexts, and an individual may find themselves at times a member and at other times a nonmember. This leads to individuals occupying an in-between membership status.

[36] Peng Nai Tey, "Issues Paper from Malaysia," in *Migration Issues in the Asia Pacific*, ed. Patrick Brownlee and Colleen Mitchell (Asia Pacific Migration Research Network, 1997), 100, https://unesdoc.unesco.org/ark:/48223/pf0000115931.

[37] Banks, *Civic Education in the Age of Mass Migration*, 29.

[38] For the United States, see Bryan Baker, "Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2015–January 2018" (Department of Homeland Security, Office of Immigration Statistics, 2021), https://www.dhs.gov/sites/default/files/publications/immigration-statistics/Pop_Estimate/UnauthImmigrant/unauthorized_immigrant_population_estimates_2015_-_2018.pdf. And for Malaysia, see United Nations International Organization for Migration, "Malaysia," https://www.iom.int/countries/malaysia (accessed June 2023), in particular: "The World Bank estimated that between 2018 and 2020, the nation housed 1.4 to 2 million documented migrants and an additional 1.2 to 3.5 million undocumented migrants (in total a range of 2.6 to 5.5 million migrants)."

[39] Loganathan, Ong, Hassan, et al., "Barriers and Facilitators to Education Access for Marginalised Non-Citizen Children in Malaysia," 2; and Baker, "Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2015–January 2018."

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[41] Banks, *Civic Education in the Age of Mass Migration*, 30.

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[54] James A. Banks, "Civic Education for Noncitizen and Citizen Students: A Conceptual Framework," in *Humanitarianism and Mass Migration: Confronting the World Crisis*, ed. Marcelo Suarez-Orozco (University of California Press, 2019), 247.

[55] Thomas N. Barone, "Civic Education and Citizenship in Malaysian Education," paper presented at the American Educational Research Association Annual Meeting, New Orleans, April 1–5, 2002, 6, https://eric.ed.gov/?id=ED465672.

[56] Malaysian Constitution, Art. 153.

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