

ABSTRACT

Title of Dissertation: Philosophical Arguments of Membership: The Case of Undocumented Immigrants and Financial Aid for Postsecondary Education.

Andre Perry, Doctor of Philosophy, 2004

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Several conceptualizations of membership exist within different proposed policies that limit or expand educational benefits to undocumented students. Two policies in particular, Plyler and IIRIRA, offer juxtaposing moral positions on who should be eligible for instate tuition benefits. Consequently, there are different ideas about what type of membership status (i.e. citizens, residents) should receive financial aid. The primary goal of this study seeks to identify stakeholders' basic beliefs around membership, which can be considered in moral and ethical arguments of whether to allocate undocumented immigrants instate tuition benefits. If we can agree that a political community is generally obligated to distribute resources to its members or that members are inherently obligated to one another, then a framework that captures our expectations for membership can be helpful. The study responds to the primary research question, should undocumented immigrants receive financial aid? However, the thesis

endeavors to achieve this goal by pursuing a conception and framework of membership.

The study aims to answer the sub-question, what does it mean to be a member of society?

Methodologically, the thesis uses Rawls ideas of formulating a conception. The study organizes and collects empirical evidence from stakeholders involved in Texas House Bill 1403, legislation that grants instate tuition to undocumented immigrants, to help me conceptualize membership. To acquire stakeholders' rational beliefs of membership, the study employs case study techniques including semistructured interviewing, document analysis, and literature review. The study found that the principles of *residency, social awareness, reciprocity, investment, identification, patriotism, destiny, and law abidingness* form a philosophical framework of membership that explains what it means to be a member of a political community/nation state (substantive membership). I argue those undocumented immigrants who have developed into substantive members as defined by its eight principles should receive financial aid.

Philosophical Arguments of Membership: The Case of Undocumented Immigrants and
Financial Aid for Postsecondary Education.

By

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The setting of my earliest memories took place on a blue-carpeted staircase in my childhood home. Mom and I gawked at its peak, which was braced by white balusters and a weathered oak handrail. Hand in hand, we counted each step and made our ascent to the top. Mom methodically and patiently counted, "One, two, say two, two, three, four." Despite our raucous laughter and my inexact counting, we were captivated by a perfect blend of movement, progression, learning, love, and most importantly struggle. I hadn't completely mastered walking at that point. My legs could barely hurdle the extreme height of a stair. Completely drunk with inexperience and lost without a guiding hand, I found balance through learning with my best friend.

Eventually, I grew bold enough to contribute to the discussion, "Five, six, six, six." Mom politely got me back on course and reset my position on the stairs. Even with my limited know-how, making it to the top never seemed difficult. No error became a mistake; no slip became a fall; and disciplined thinking wasn't so strict. She was there for me. All we wanted was to calculate the stairs together.

I don't quite remember when I mastered my first math lesson, when I could climb stairs with ease, when the mountain became a staircase, or when my mother passed away, but I will always remember our rise together. Thank you, Mom and Mary.

I can't possibly name all the people who helped me climb this latest staircase. However, I will mention a few. I thank Ken Strike for giving me the intellectual guidance that was needed for this project. He is my mentor, friend and father. Sharon Fries-Britt's press for excellence helped make me a good thinker and a good person. She serves as the model for my future as a professor. When I get closer to the top of my

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Introduction

Catherine Hausman and Victoria Goldman chronicled the educational journey of undocumented immigrant Randolph J. Sealey Jr. in the *New York Times Magazine – Education Life* section (Hausman & Goldman, 2001). Sealey Jr.'s story introduces personal, legal, and political dilemmas faced by undocumented immigrants and policymakers who are involved in legislation concerning undocumented immigrant benefits.

Randy Sealey Sr. emigrated to the U.S. from Panama to join his father who became a naturalized citizen through work as a land surveyor on the Panama Canal. Sealey Jr. soon followed and entered the country on a travel visa. When Sealey Jr.'s short-term visa expired, he became an undocumented resident, susceptible for deportation. Because eight year-old Sealey Jr. moved to America under the auspices of his father, he did not know his or his relative's administrative and legal responsibilities of changing his citizenship status. His grandparents attempted to sponsor Sealey Jr. and start the naturalization process, but death and logistical problems ended their efforts. Still, Sealey Jr.'s father settled in New York City with every intention on staying. Sealey Jr. was enrolled in primary school and began a life similar to legal immigrants trying to adjust to a new country. "Growing up in Brooklyn, Randolph J. Sealey Jr. never felt like anything other than a typical American kid with an immigrant's background" (Hausman & Goldman, 2001).

In the course of Sealey's upbringing in the U.S., he developed goals similar to many kids in Brooklyn. Sealey states in the article, "I was either going to play for the New York Yankees or be a doctor." Eventually he chose the latter and began to take the

necessary academic steps. Through hard work and dedication, Sealey received a scholarship from the prestigious Lawrenceville Boarding School, which is located in southern New Jersey. Sealey Jr. blossomed academically, athletically, and socially at Lawrenceville. He earned high grades in the classroom, and his ball playing attracted the attention of college coaches. The next step towards his goal of becoming a doctor was enrollment into a college or university.

Applying for employment, which requires W-2 forms, and for college financial aid eligibility marks some of the earliest opportunities that young adults must demonstrate their citizenship status. Sealey Jr. applied to many postsecondary schools, which subsequently accepted him. However, Sealey Jr. could not demonstrate that he was a citizen or permanent resident of the United States in order to be eligible for financial aid. Sealey Jr. and his family needed financial support if he was to stay enrolled in college. Therefore, Sealey faced two options: pay out of pocket or not attend. In addition, for the first time in his life, Sealey grappled with the possibility of being deported.

Sealey Jr.'s story illustrates a common journey that many undocumented immigrants take towards their ultimate destination of college degree completion and citizenship. Should students like Sealey Jr. receive financial aid? This study is a response to that question. Sealey Jr.'s personal narrative takes place within a social and political context that requires further elaboration. The introductory chapter of this study lays out that context. The *Significance of the Problem* section details the influx of undocumented immigrants in America and its impact on various social systems. In addition, the section introduces the contentious legal environment, which provides a piece of the story's drama. The *Background of the Study* provides underlying

assumptions behind the general research question, presents previous knowledge on the subject, and identifies gaps in previous research. The *Purpose of the Study* section provides a general overview of my methodological approach to the research question. Together these sections make up an introduction to the question, should undocumented immigrants receive financial aid?

Significance of the Problem

Bodies moving between lands have been a common occurrence throughout world and American history (McNeill, 1984). As Oscar Handlin wrote, “Immigration is the history of the nation” (Chavez, 2001). Voluntary and involuntary immigration created a multiethnic, multinational, multilingual, multicultural space currently known as the United States. Since our country’s adoption of a national model of membership (citizenship), there have been debates regarding what are the conditions or rules for entry into the country, who is a legal and illegal resident, and who is a legitimate benefactor of rights, privileges, and social goods (Borjas, 2000; Brah, Hickman, & Mac an Ghaill, 1999; Castles, 1998; Edmonston & Passel, 1991; Guiraudon, 1998; Hammar, 1986, 1989, 1990; Hanagan & Tilly, 1999; Heater, 1999).

Voluntary and involuntary migration has always initiated a reification or expansion of immigration policy, immigrant rights and citizenship. The demographic shifts associated with the latest wave of immigrants have caused another groundswell of social, economic, and political problems, which evoke questions regarding the just distribution of communal benefits. More specifically, ethical questions arise regarding who are the appropriate benefactors of social benefits. For this study, this question becomes, who should be the benefactors of higher educational benefits.

Sealey's story is certainly not isolated. Millions of undocumented immigrant families settle in the U.S. with no intentions of leaving, reside for long periods of time and become immersed in the country's educational, social, and economic systems. The term *undocumented* characterizes anyone who cannot demonstrate proof of United States citizenship.¹ The Urban Institute reports that Census estimates of 5-7 million undocumented aliens living in the U.S. prior to Census 2000 have increased by approximately between 1-2 million (Passel, 2001). The estimated annual growth rate rose to about 350,000 per year, which is about 75,000 higher than INS' previous annual estimate of 275,000 for the 1990s (BCIS, 2003). A Pew Hispanic Center study reports that 4.5 million unauthorized residents are from Mexico and that 3.8 million are of other nationalities (Bean, Van Hook, & Woodrow-Larfield, 2001; Lowell & Suro, 2002). Mexico accounts for 30 percent of both the total immigrant population and annual immigrant flow making it the single largest source of legal and illegal immigration (Fix, Zimmermann, & Passel, 2001).

Many if not most parents of undocumented students come to the U.S. looking for work, which they subsequently find (Borjas, 2000; Castles, 1998; Joppke, 1998).² As a result, millions of undocumented immigrants are absorbed in the U.S. labor market. Standard sources of immigrant statistics such as census data are unable to disaggregate legal status (refugee, undocumented, illegal) from immigrant or foreign-born groupings. However, census data convey that the overwhelming majority of all immigrants are

¹ Terms such as *illegal alien*, *unauthorized resident* and *non-citizen* are also commonly used. The undocumented includes those who cross the nation's border illegally as well as those who overstay the terms of authorized visas or travel documents.

² In general, illegal immigrants and contract labor are economic migrants; asylum-seekers are refugees or political migrants; and legally admitted residents are both economic and political migrants (Meissner & Trilateral Commission., 1993).

working. Although higher than the native-born population, the immigrant unemployment rate in March of 2002 was 6.9 percent, compared to 6.1 percent of natives (Schmidley, 2003). B. Lindsay Lowell, director of research at the Pew Hispanic Center estimates more than 5 million undocumented workers exist in the U.S. labor market (Lowell & Suro, 2002).

Much of undocumented work is concentrated in specific industries. Lowell's calculations include more than a million undocumented persons in the manufacturing and service industries, more than 600,000 in construction, and more than 700,000 in restaurants. Philip Martin estimates that 1 to 1.4 million undocumented residents are employed as agricultural laborers (Martin, 2002). Studies that examine the impact of national origin on the wage level of immigrants in the United States suggest that immigrants who emigrate from developed countries earn more than immigrants who come from poorer countries (Borjas, 2000). In addition, these studies show significant differences in the rate of wage growth experienced by different national origin groups (Borjas, 2000). The Urban institute reports that poverty has increased among school-aged children. The recent wave of poor immigrants from underdeveloped regions in Mexico may account for the increases of poverty among immigrant children.

Differences in earnings by nationality may account for some of the reasons why the poverty rate of immigrants was more than double of non-Hispanic whites' (Fix et al., 2001). In 1997, the percentages of children living in poverty were 49% African American, 39% foreign born children, 30% all children of immigrants; 13% for White, non-Hispanic (Fix et al., 2001). We can infer from the aforementioned data that many

college eligible undocumented immigrants (particularly those from Mexico and Central America) will be poor and in need of postsecondary financial aid.

Undocumented immigrants' integration in the labor force also impacts other social programs like Social Security. The pervasiveness of undocumented labor on the economy and social programs is a source of immense social and political tension. There is a general fear that unfavorable portions of citizens' taxpaying dollars are being used to cover social programs (health care, education, police enforcement) for undocumented residents (Fix, Passel, Enchautegui, & Zimmermann, 1994). However, many of these fears are premised by the notion that undocumented residents do not contribute to the overall tax pool and that they absorb taxpayer funds through their participation in welfare programs.

Many undocumented immigrants give employers falsified Social Security numbers for identification and tax collection purposes. Because many undocumented workers provide fake Social Security numbers to employers, exact calculations of their contributions cannot be made. However, undocumented immigrants contribute billions to federal and state governments because income taxes are deducted from undocumented workers regular earnings (SSA, 2002)³. These earnings are not posted to individuals' earning records in Social Security Administration's (SAA) Master Earnings File (MEF) because the Social Security numbers are either invalid and/or do not match the workers' name. If there is not a proper match in the system, the wages are placed in the Earnings Suspense File (ESF), a repository for the wages of unmatched names and numbers. "As of July 2002, the ESF contained approximately 236 million wage items totaling about

³ I did not mention other forms of taxation, i.e. sales tax. Undocumented immigrants also contribute significantly to these funding sources.

\$374 billion related to TYs [Tax Years] 1937 through 2000. In TY 2000 alone, 9.6 million items and \$49 billion in wages were posted to the ESF” (SSA, 2002). The SAA reports that nine states accounted for 70 percent of the suspended items (California alone contributed 35 percent). Three industries accounted for 46 percent of the items. Agriculture, fast food, restaurants, and other service industries make up large percentages of the ESF – industries populated by migrant and immigrant work.

“During our review period, 2 employers submitted over 7,000 SSNs that SSA had never issued. Another employer submitted more than 900 duplicate SSNs over the 3-year period. While we recognize there are legitimate reasons why a worker's name and SSN may not match SSA's files-such as name changes-we believe the magnitude of erroneous or incorrect wage reporting is indicative of SSN misuse. SSA senior staff acknowledged the intentional misuse of SSNs by noncitizens not authorized to work is a major contributor to the ESF's growth” (SSA, 2002).

Because many undocumented immigrants find consistent work, pay taxes and establish beachheads in communities, more and more undocumented residents are taking out loans and purchasing homes. “Undocumented immigrants are potentially a “significant portion of the homeownership market” (Aizenman, 2003). While public policy bars undocumented immigrants from purchasing loans that are federally insured or government backed, homebuyers without visas and social security must apply for loans that the lender generally carries on its own books. Instead of visas and social security numbers, lenders often accept *individual taxpayer identification numbers* as traceable identification for home purchases.

Millions of undocumented families work and settle in communities across the U.S. including millions of school-aged children. The presence of unauthorized children forced the country's legal systems to answer questions regarding the education of children who are not legally admitted into the United States. Should undocumented children be admitted into public schools? Who should pay for their education? How will their education be subsidized? These questions and others were addressed in several court cases ultimately leading to a Supreme Court hearing.

The 1982 U.S. Supreme Court decision held in *Plyler v. Doe* prevents public elementary and secondary schools from considering immigration status when a student is seeking to enroll. The Court held in a five-to-four decision that a Texas law, which blocked state funds from being used to educate undocumented citizens, was unconstitutional. The ruling was based on the equal protection provisions of the Fourteenth Amendment. Of particular concern to the Court was the fact that children – rather than their parents – were involved. The Court believed that denying undocumented children access to education punished children for their parents' behavior. Such an action, the Court noted, did not square with basic ideas of justice (Yachnin, 2001; Hunter and Howley, 1990). In addition, the court acknowledged that residency, time spent in the country and the unlikelihood of deportation are factors to be considered in the allocation of education benefits (*Plyler v. Doe*, 1982). The court noted that the children of undocumented parents should be taken as future members of society and granted benefits befitting of such a status. As a result of this act, thousands of undocumented school-aged children attend public primary and secondary institutions. While graduation rates of the population are difficult to assess, The Urban Institute calculates that in 2001 there were

probably about 60,000-80,000 undocumented high school graduates who have lived in the U.S. for at least five years, and that there are an additional 65,000 who appear to be currently enrolled in college (Passel, 2001). However for those who attend college, many do not receive the benefit of instate tuition partly because of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).

Because of a common interpretation of section 505 of IIRIRA, undocumented students are ineligible for instate tuition. IIRIRA amended the Immigration and Nationality Act, which served as the primary law that regulated border control and immigration. The provisions of IIRIRA have five aims: (1) to improve border control and facilitate legal entry; (2) enhance enforcement and penalties against alien smuggling; (3) advance the inspection, apprehension, detention, and removal of inadmissible and deportable aliens; (4) bolster the enforcement of restrictions against alien employment; and (5) place restrictions on benefits for aliens – namely higher education benefits. Section 505 says that if a state offers instate tuition or any other higher education benefit to undocumented students, the state must provide the same benefit to out-of-state U.S. citizens. This ruling is grounded in the belief that if states are going to provide undocumented immigrants with benefits that are typically reserved for citizens, then the same benefit must be provided equally to all members – namely U.S. citizens. Unlike the *Plyler* decision, the act does not take into consideration residency, time spent in the country or the unlikelihood of deportation as factors to be considered in the allocation of education benefits. In other words, IIRIRA does not conceptualize undocumented immigrants as being resident members who are eligible for instate tuition. While the legitimacy of section 505 is questionable – Congress does not have the ability to regulate

state benefits – many states deem this statute as binding (Olivas, 1995, 2002). Because citizens and permanent residents are the only statuses that are eligible for federal financial aid, a state’s adoption of IIRIRA effectively removes all forms of financial aid from undocumented students. Subsequently many undocumented graduates are without financial aid, which can remove financial barriers for college attendance (King, 1999).

Since the legal uncertainty created by the passage of section 505 of IIRIRA, legislators and interest groups have introduced pieces of legislation that aim to clarify a state’s ability to determine tuition benefits. Prior to September 11, proponents of immigrant postsecondary education access made significant, political strides as many state and federal legislators introduced proposals that made undocumented high school graduates eligible for financial aid (Hebel, 2001). Texas, California, Utah, New York, Washington, Oklahoma, and Illinois codified legislation that makes undocumented, college-bound students eligible for in-state tuition rates (Ferg-Cadima, 2003). During the 2003-04 legislative term, at least fifteen states explored legislation that would make college more affordable for undocumented high school graduates.⁴

Some legal analysts and legislators argue that states have the constitutional right to determine benefits for its resident members and that section 505 interferes with that right (Olivas, 1995, 2002). Others believe that a state’s allocation of public benefits should not interfere with the federal government’s responsibility to control borders, encourage legal entry, and limit benefits to non-citizens (FAIR, 2003). Subsequently, many organizations oppose legislation that would grant educational benefits to undocumented students. Conflicting beliefs, political activity, and varying sociopolitical

⁴ 2003-04 Legislative term. For an updated list of states that introduced bills see the Mexican American Legal Defense and Education Fund Report by James A. Ferg-Cadima.

climates around immigration have led to several court cases regarding the allocation of various benefits (educational and other types) to immigrants (Hebel, 2001, 2002).

Nevertheless, the wave of undocumented graduates of American high schools has initiated a new set of questions regarding the just distribution of educational goods. Once again we must answer ethical questions regarding who should receive certain social goods. Who should receive higher education benefits? This question motivates policymakers and analysts to search for compelling moral grounds that support or oppose the distribution of financial for undocumented immigrants. The rhetoric in these searches reflects important philosophical tensions of this moral problem. Chris Cannon (R-UT) stated,

“Each year, tens of thousands of undocumented students who have lived in the U.S. for at least five years graduate from U.S. high schools. Most were brought here at a very young age by their parents, and had no part in the decision to enter the country illegally. Almost all of them speak English and consider themselves Americans. They have grown up here, and they are here to stay, but their lives are filled with uncertainty. They must be able to normalize their immigration status” (Student Adjustment Act of 2001, 2001).

In general, proponents of undocumented immigrant tuition benefits present four general arguments. 1.) Children of illegal immigrants had no part in their decision to come into the country illegally and thus should not be punished for their parents’ behaviors 2.) Most of the children who qualify for postsecondary tuition benefits are educated in American schools, acculturated in American society, and are durable residents. Deportation of these students is unpractical and unrealistic. Therefore, not

providing access to higher education may facilitate an unwanted underclass. 3.)

Countries have a moral responsibility to provide full educational access to their long-term residents regardless of citizenship status. 4.) It is the individual state's right to determine benefits afforded to its residents.

The Federation for American Immigration Reform (FAIR), a D.C. based special-interest group, presents general arguments against immigrant tuition policies on the organization's website (<http://www.fairus.org/>). FAIR counters these points,

“States that offer in-state tuition rates to illegal aliens are actively working against the federal government's effort to combat illegal immigration, harming citizens and legal immigrants, and opening themselves up to substantial costs and criminal liability” (FAIR, 2003).

There are three critical points to FAIR's argument of prohibiting undocumented immigrant access to higher education benefits. 1.) The responsibility of educating undocumented immigrants should fall upon the originating country of the immigrant. 2.) Providing opportunities for undocumented immigrants automatically limits opportunities for member citizens – limited resources argument. 3.) Policies like SAA will actually encourage illegal migration into the country.

Both opponents and proponents of undocumented immigrant higher education benefits offer ethical positions on who should receive educational benefits. Cannon suggests that undocumented immigrants represent an unrecognized membership status partially created by the entrenchment of these students throughout our society and educational systems, and he implies that certain undocumented students should receive financial aid. FAIR offers that citizens should be the exclusive recipients of financial aid.

This study focuses on membership criteria for benefit eligibility. It responds to the primary research question of should undocumented immigrants receive financial aid by asking further questions that examine the conditions and factors one must consider when determining who should receive higher educational benefits. We generally know that it is morally sound to distribute financial aid to citizens. So I am primarily interested in the moral conditions that precipitate the distribution or denial of educational benefits to the children of undocumented immigrants.

I approach the primary research question by investigating the conditions and factors one must consider when determining who should receive higher education benefits through an examination of *membership*. I am interested in membership primarily because whom we deem as members determines with “whom we make those choices, from whom we require obedience and collect taxes, [and] to whom we allocate goods and services” (Walzer, 1985, p. 31). *Membership* and *Members* refer to the group of people in a political community who are “committed to dividing, exchanging, and sharing social goods, first of all among themselves” (Walzer, 1985, p. 31). In general, society is amenable and/or morally obligated to providing resources to those it deems as members. Based on Walzer’s principal definition of membership, I basically approach the primary research question with the belief that we can find morally appropriate units of resource distribution by building a framework for membership, which is built upon the conditions pertinent to this case.

In summary, undocumented families have become entwined within the educational, economic, and social fabric of American society. Many of these families are ethnic minorities and among the working poor. The presence of undocumented

immigrants has led to a series of legal disputes regarding the allocation of social benefits to the population. Among others, education benefits are hotly debated in courtrooms, legislative halls, and media outlets. Juxtaposing normative stands inherent in the *Plyler v. Doe* decision and the Immigration Reform and Immigrant Responsibility act of 1996 (IIRIRA) reflect a philosophical tug of war between differing views of how benefits should be distributed. Different conceptualizations of appropriate membership criteria for resource distribution initiate many debates on the issue. A goal of this study is to find an appropriate framework of membership that policymakers can use to help resolve issues around educational benefits for undocumented immigrants.

Background of the Study

In order to find an appropriate framework or model of membership, the study pulls from literature that examines distributive justice and membership. The background literature for this study comes from political philosophers' work on membership, distributive justice, post-national membership, and political writings on citizenship. This section endeavors to highlight and summarize relevant aspects of this literature, which will be featured in the literature review.

A study on membership should draw upon literature that addresses the topic. Michael Walzer provides the study's central definition – the general sense of the individual and group's commitment to divide, share, and exchange resources firstly among others who have the same commitment (Walzer, 1983). From this definition, we find that membership is a social recognition of belonging and identity. Membership is socially constructed and defined. It provides a basis for members' moral obligations to one another.

Walzer's writings on membership provide varying examples of how differing conceptualizations of political communities create different demands for membership in regards to resource distribution. These examples are important because our conceptualizations of a political community, whether it is a global, national, or family, create specific expectations for resource distribution. For instance, the right to an education differs if you see a country more like a family or club than a nation/state. The view of rights associated with citizenship (America's national membership model) can change if the nation/state is conceptualized more like a global/economic community (Sidgwick, 1996).

Citizenship in the U.S. context is the primary form of membership. It is the acknowledgement of commitment to the community's goals in a country that generally considers citizens as the principal architects. Citizenship is the legal foundation and glue of Western political communities (Oldfield, 1998). Founded on the belief that humans are by nature free and equal as well as political beings, citizenship provides a way towards freedom and a means towards political participation (Hammar, 1986; Heater, 1999; Rawls, 1993; Shafir, 1998; Walzer, 1983). Citizenship grants the legal protection of rights that society considers unalienable. In addition, citizenship enables one to participate in the decision-making processes of the state— the core of democratic decision-making.

Citizens determine the rights and responsibilities of fellow citizens and non-citizens. Citizens settle on the terms in which new members are accepted as a way to protect the goals of that community from being changed by non-members (Oldfield, 1998; Walzer, 1983). There is a general recognition that certain political rights such as

voting and holding political office differ from social rights such as welfare and education. However, U.S. policy lumps many social and political rights into her conceptualization of national membership – citizenship.

T. H. Marshall's classic essay, *Citizenship and Social Class* (T. H. Marshall, 1998), described the evolution of citizenship and how that evolution contributes to a modern understanding of citizenship. Marshall posited that the eighteenth century version, *civil citizenship* emphasized the rights necessary for individual freedom. For instance, rights to property, personal liberty and justice are considered. The nineteenth century brand of *political citizenship* emphasized the right to participate and exercise political power. The twentieth century's contribution of *social citizenship* moved our collective thinking to include rights of economic and social security. Marshall concluded that the arrival of social citizenship marked the end of the history of citizenship and citizenship development.

Post-national theorists believe that this era's contribution to our growing notion of citizenship will deal with questions of inclusion and exclusion and of first- and second-class citizenship. Post-national theorists assert that nation-states are part of the global community, which obligates them to make certain *human* rights more accessible to various immigrant groups. Moreover, the literature on post-national membership discusses the just allocation of rights that are related to broader notions of membership, residency, as well as the expansion of legal designations of citizenship (Castles, 1998, Y. Soysal, 1994, 1998, Hammar, 1986, 1990). Post-national models of political membership examine moral obligations of political communities to its long-term, durable residents. These models assume that living and working within a political community are critical

behaviors that authenticate membership within a political community with economically permeable borders.

As the case with many undocumented immigrants, many people live (with the exception of voting and holding political offices) indistinguishably from their citizen counterparts (Hammar, 1989). The body of post-national citizenship literature claims that immigration, naturalization, and welfare policies in many democratic states do not reflect and incorporate behaviors of authentic membership – the general sense of the individual and group’s commitment to divide, share, and exchange resources firstly among others who have the same commitment. American institutions accept students in schools, employ workers and issue homeownership loans. Why is this class of immigrants denied benefits, which are designed to facilitate overall community wellness (Karabell, 1998)? The reluctance of countries to either expand citizenship or align eligibility for social benefits to other membership models such as residency is partially due to the belief that an expansion will erode the tradition of citizenship (Aleinikoff, 1998).

Historically, the rights and privileges associated with citizenship have expanded with how the national public is conceptualized and defined (Y. Soysal, 1998). In general, U.S. expansions of rights associated with national membership were limited to qualities of gender, race, and ethnicity.⁵ Residency has not been a part of that expansion. The “distinction between resident and citizen is only the beginning of conflicts over membership: female and Black citizens were not allowed to vote, own property, or serve

⁵ The XIV Amendment clarified that all persons born or naturalized in the United States are citizens of the United States, and no state can limit the rights and privileges associated with citizenship. The XV Amendment-Black Suffrage codified that the rights of citizens (voting privileges) shall not be denied based on any account of race, color, or previous condition of servitude. The XIX Amendment-Woman Suffrage clarified that the rights of citizens (voting privileges) can not be abridged on accounts of gender.

on juries, for example and Chinese-American citizens were subject to unique restrictions, such as having to carry proof of citizenship and being subject to deportation” (Stone, 1997).

The expansion of rights is part of the struggle of democratic states’ efforts to secure the basic rights and liberties of *persons* and answer claims of democratic equality when citizens are conceived as free and equal persons (Rawls, 1998). “Persons are anyone who can take part in, or who can play a role in, social life, and hence exercise and respect its various rights and duties. Thus, we say that a person is someone who can be a citizen” (Rawls, 1993, p. 18).

Democratic societies are comprised of persons of varying citizenship statuses. Securing the basic and political rights of citizens and non-citizens is a complicated matter because securing basic rights of persons is often perceived as an infringement on the political rights of citizens. Writings on undocumented immigrant benefits must deal with this basic conflict of justice – rights of persons vs. citizen rights. Many theorists turn to John Rawls’ *Theory of Justice* to help resolve this issue (Rawls, 1971, 1993, 1998).

Rawls’ rethinking of liberalism stimulated and enthused many studies on membership, citizenship, and communally distributed benefits (Shafir, 1998). Rawls sought to develop an alternative system of justice that was superior to utilitarianism’s core principle of utility – maximizing goodness for all people or the greatest good for the greatest number of people. Whether or not this type of large assessment is actually possible is one issue, but another apparent flaw of this philosophy is that minority voices or rights are often passed over for the good of the majority. For instance, granting rights to groups of undocumented workers would be based on a series of calculations

determining the overall good for both citizens and non-citizens. Given the economic and social rewards of immigrant labor for the U.S. economy and welfare system, the good for majority citizens may trump basic liberties of minority immigrants. Having limited immigrant access to citizenship may serve as the best utility for the country as whole from a utilitarian perspective. T. H. Marshall suggests that this type moral philosophy is currently operating.

“...Is it...true that basic equality, when it is enriched in substance and embodied in the formal rights of citizenship, is consistent with the inequalities of social class? I shall suggest that our society today assumes that the two are still compatible, so much so that citizenship has itself become, in certain respects, the architect of legitimate social inequality. Is it still true that basic equality can be created and preserved without invading the freedom of the competitive market”
(T. H. Marshall, 1998, p. 93)?

Rawls developed a system of justice that resolves the problem inherent in basing justice on the principle of utility. Rawls' *Theory of Justice* (1971) recognized justice as *fairness*.

Fairness requires the careful negotiation between individual rights and social cooperation. Rawls explained his theory of justice through discussions on creating a well-ordered society. He argued that fair social, political, and economic institutions may be built on two principles (Rawls, 1993, p. 4):

- a. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.

- b. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair quality of opportunity and second, they are to be to the greatest benefit of the least advantage members of society.

Influenced by Rawls' theory of justice, many philosophical writings on citizenship, membership, and benefits have taken on the multi-faceted task of securing the basic rights of immigrants, evaluating the fair value of political rights for citizens, assessing inequalities created by varying citizenship statuses, and determining the fair distribution of citizenship to non-members. This study is no different, but instead of inserting Rawls' two principles of fairness, the study borrows his ideas around a "veil of ignorance" to help achieve its methodological goals. One such goal is to garner information that gets at stakeholders' most basic beliefs about who is a member of society.

Stakeholders play a significant role in this analysis in that they provide different information than philosophical or theoretical readings. Moral discussions on justice are helpful in that they can reveal the philosophical tensions of a particular issue. However, theoretical and philosophical discussions often run their course, and something must be done with the theory or philosophy in hand (Perry, 1988). Policymakers must be informed and consequently act on the philosophies and theories they receive. "Problems then arise both for those charged with making law and for those asked to obey it" (Perry, 1988, p. 105). These problems provide context and information for the philosophical arguments posed in this study. For this reason, I feel it is important to incorporate policymakers' views as well as the voices of those who are asked to obey and implement policy into this philosophical discussion.

For instance, many stakeholders involved in the passage of Texas House Bill 1403 (entered as Section 54.057 of the Texas Education Code) dealt with the range of philosophical tensions inherent in the issue of undocumented instate tuition benefits. These stakeholders include legislators, higher education officials, those who work in the judicial system, undocumented students, and interest groups. This Texas statute makes undocumented immigrants eligible for instate tuition if they resided in Texas for at least three years, graduated from a Texas high school, sign an affidavit stating that the individual will file an application to become a permanent resident, and register in an institution after the passage of the law. Stakeholders involved in Texas House Bill 1403 can offer insights into the philosophical struggles inherent in the political maneuvering between various political actors. In addition, insights can be drawn from the experiences incurred since the passage of this statute.

As mentioned earlier in the thesis, fifteen states recently explored legislation that involved tuition breaks for undocumented students. Each of these states can illustrate the impact of demographic shifts on immigrant education policy. Some of these states have made undocumented immigrants eligible for financial aid. Other states have denied this population such benefits. Each offers a potential wealth of information. However, selecting one state and/or piece of legislation provides a manageable amount of information for analysis. For this reason, this study selected the state of Texas, House Bill 1403, and those involved with the legislation as a “bounded system” for study (Creswell, 1998; Denzin & Lincoln, 2000).

In summary, the study chiefly draws upon literature on membership, citizenship, and post-national membership. In addition, it incorporates certain ideas from John Rawls

into the methodological goals of the study. Lastly, the study draws upon primary sources from those who work on this policy relevant issue. In all, these sources are used to help reach the methodological goals of the study.

Purpose of the Study

Several conceptualizations of membership exist within different proposed policies that limit or expand educational benefits to undocumented students. Two policies in particular, Plyler and IIRIRA, offer juxtaposing moral positions on who should be eligible for instate tuition benefits. Consequently, there are different ideas about what type of membership status (i.e. citizens, residents) should receive financial aid. The primary goal of this study seeks to identify stakeholders' basic beliefs around membership, which can be considered in moral and ethical arguments of whether to allocate undocumented immigrants instate tuition benefits. If we can agree that a political community is generally obligated to distribute resources to its members or that members are inherently obligated to one another, then a framework that captures our expectations for membership can be helpful. The study responds to the primary research question, should undocumented immigrants receive financial aid? However, the thesis endeavors to achieve this goal by pursuing a conception and framework of membership. The study aims to answer the sub-question, what does it mean to be a member of society?

Walzer defined membership as the general sense of the individual and group's commitment to divide, share, and exchange resources firstly among others who have the same commitment (Walzer, 1983). Using that primary definition, principles sought in this study should construct a theoretical framework that captures essential factors that lead to potential members' (as an individual or as a group) commitment to divide,

share, and exchange among official citizens. From this framework, stakeholders should be better equipped to understand the concept of membership in the moral and ethical disputes of whether or not undocumented immigrants should receive financial aid.

Methodologically, the study is a philosophical analysis that uses empirical evidence from stakeholders of a policy-relevant issue as well as theoretical writings on membership in order to make a logical response to the primary research question. The philosophical analysis entails an examination of stakeholders' intuitive beliefs of membership in the United States. The study seeks to extract factors, which form a conception of membership. These factors or principles are used to form a framework of membership, which can be used to respond to the primary research question.

The analysis incorporates case study techniques to help filter the enormous amount of data from stakeholders and policies connected to the issue. The beliefs and policies of stakeholders involved in Texas House bill 1403 are examined. Texas was selected because of its demographics, political influence on the union, sociopolitical structures, openness to talk about the issue of undocumented immigrant benefits, and legal and ethical considerations in regards to human subject selection.

I interviewed students of parents who entered the country illegally without any formal documentation. In addition, I interviewed national stakeholders who displayed an interest in the Texas case. The human subjects involved included: 21 undocumented students from four-year and community colleges in the Houston area; 17 legislators, policymakers and staff members in Texas state government; and 7 representatives of various interest groups.

Literature Review

The literature review is organized to demonstrate underlying assumptions behind the general research question, present previous knowledge on the subject, and identify gaps in previous research (C. Marshall & Rossman, 1999). The literature review also identifies emerging questions that must be addressed in order to answer the primary research question. I highlight several questions throughout the literature review and revisit those questions in the chapter's summary. The review uses what is already known and critiques previous knowledge to help clarify the research question. To achieve these aims, the literature review is divided into three major sections: *Legal Landscape*, *Differentiating Membership and Citizenship*, and *Justice Framework*. Subdivisions help organize the major sections.

The section, *Legal Landscape*, puts forward court cases that place the research question in its proper legal context. I have three goals for this section. First, I hope to inform the research question about laws that are central in debates regarding undocumented immigrant education. Second, I aim to reveal underlying philosophical and moral principles embedded within the laws. As noted in the introduction, varying conceptualizations of membership (like those held in the *Plyler v. Doe* decision and section 505 of IIRIRA) can lead to conflicting public policy. This leads to my third goal, locating philosophical gaps and inconsistencies between various laws.

The primary research question, *should undocumented immigrants receive instate tuition*, requires a thorough understanding of membership and citizenship in relation to benefit distribution. *Differentiating Citizenship and Membership* offers moral arguments for and against the distribution of goods based on membership and citizenship. In this

section, various examples of membership are explored as well as two competing notions of citizenship. The competing notions are elucidated through a discussion on national and post-national models of citizenship.

The concluding section, *Towards a Theoretical Framework of Membership*, discusses the challenges associated with framing a concept like membership. There are several dangers in trying to encapsulate the seemingly limitless amount of behaviors that lead to a person's commitment to divide, exchange, and share resources with likeminded beings. This section draws from previous literature and policies that made attempts to codify or identify behaviors and virtues that comprise membership.

Legal Landscape

A legal review and analysis inform readers of the history and progression of public policy regarding undocumented immigrant access to financial aid. Readers are introduced to the rules, traditions, philosophies, and politics around immigration, and immigrant education through an analysis of pertinent cases. A legal review also provides boundaries to the expansive philosophical traditions of membership, citizenship, and benefits. The legal review and analysis focus on issues of membership that are relevant to the case of undocumented immigrant access to higher education including: state rights, residency, eligibility for public resources, and notions of justice within and beyond political borders.

I satisfy these aims within three sub-sections of the legal review. First, I hope to inform the research question about laws that are central in debates regarding undocumented immigrant education in *Legal Conflict*. Second, *Important Ethical Principles* reveals underlying philosophical and moral principles embedded within the

laws. Third, I examine the legality of IIRIRA through a brief analysis of relevant legal cases. Fourth, *Questions and Gaps* concludes this section with a review of important questions and/or gaps that emerged in the legal review.

Legal Conflict

Thousands of undocumented students graduate from high schools and in some cases have to pay out-of-state tuition rates if they wish to attend college. Why do undocumented immigrants receive educational subsidies for K-12 schooling but not for postsecondary education? The *Plyler* decision provides undocumented immigrants access to educational subsidies and the adoption of IIRIRA encumbers it. The *legal conflict* sub-section of the legal review details the development of the *Plyler* decision and IIRIRA.

Prior to the *Plyler* decision, a Texas legislature enacted a statute that withheld funding from any local school district that educated children who were not legally admitted into the United States (*Plyler v. Doe*, 1982). The Texas legislature took the position that non-citizens should not be eligible for educational benefits. The architects of the statute believed that educating undocumented students encouraged illegal activity and strained state budgets.

Constitutional challenges were made by several parties including a class action suit that was filed in the District Court for the Eastern District of Texas on behalf of school-aged children who could not prove their citizenship status. The suit was filed against the Board of Trustees of the Tyler Independent School District and the Superintendent. The District Court held the Texas statute violated the Equal Protection Clause and consequently filed an injunction stopping the policy of withholding funds.

Nonetheless, the case waged on to the United States Court of Appeals' Fifth Circuit. The Fifth Circuit upheld the District Court's injunction, which ordered a stoppage of the practice of withholding funds. The Court based the upholding of the injunction on grounds that the Texas statute violated the Equal Protection Clause of the Fourteenth Amendment. That decision was appealed, and the case moved on to the Supreme Court.

On appeal, the Supreme Court affirmed the decisions of the preceding courts, reiterating that denying enrollment in K-12 schools based on nationality or citizenship status is prohibited. The Supreme Court believed that an “*individual’s* [emphasis added] interest in education is fundamental and that a class-based denial of public education is utterly incompatible with the equal protection clause of the Fourteenth Amendment” (*Plyler v. Doe*, 1982, p. 230).⁶

Another factor in the Supreme Court's decision to uphold the injunction sanctioned by the lower courts resided in the legislation's attempt to curb immigration by punishing children of illegal immigrants. The Court made a clear distinction between adults who knowingly cross the national borders illegally and children who arrived via their parents. The Court affirmed that the responsibility of crossing the borders illegally falls squarely upon the shoulders of the parents.

“At the least, those who elect to enter our territory by stealth and in violation of our law should be prepared to bear the consequences, including, but not limited

⁶ Taken from *Plyler v. Doe*: The Fourteenth Amendment's equal protection clause which prohibits states from denying equal protection 'any person within its jurisdiction,' undocumented aliens, despite their immigration status, are person “within the jurisdiction” of a state entitled to the equal protection of its law, use of the phrase ‘within its jurisdiction’ confirming that the protection of the Fourteenth Amendment extends to anyone, citizen or stranger, who is subject to the laws of a state, and reaches into every corner of a state's territory, and that until he leaves the jurisdiction, either voluntarily or involuntarily in accordance with the Constitution and laws of the United States, a person is entitled to the equal protection of the laws that a state may choose to establish.

to, deportation. But the children of those illegal entrants are not comparably situated. Their parents have the ability to conform their conduct to societal norms,' and presumably the ability to remove themselves from the state's jurisdiction; but the children who are plaintiffs in these cases can affect neither their parents' conduct nor their own status...Even if the state found it expedient to control the conduct of adults by acting against their children, legislation directing the onus of a parent's misconduct against his children does not comport with fundamental conceptions of justice" (*Plyler v. Doe*, 1982, p. 242).

Dissenting Justices Burger, White, Rehnquist, and O'Connor expressed the view that Texas was in its relegated powers to determine certain immigration laws and policies, and the Court's ruling trespassed on those rights. While the dissenting Justices agreed in principle for the need to educate all children, they believed the Court usurped states' power to discourage immigrants' illegal entry and their subsequent participation in state funded schools.

"Were it our business to set the nation's social policy, I would agree without hesitation that it is senseless for an enlightened society to deprive any children -- including illegal aliens -- of an elementary education...It does not follow, however, that a state should bear the costs of educating children whose illegal presence in this country results from the default of the political branches of the federal government. A state has no power to prevent unlawful immigration, and no power to deport illegal aliens; those powers are reserved exclusively to congress and the executive. If the federal government, properly chargeable with deporting illegal aliens, fails to do so, it should bear the burdens of their presence

here. Surely if illegal alien children can be identified for purposes of this litigation, their parents can be identified for purposes of prompt deportation (*Plyler v. Doe*, 1982).

Tensions between state rights and national interest are evidenced in many policies on undocumented immigrant benefits. To elaborate on these tensions embedded within the dissenting opinions held in *Plyler v. Doe*, I analyze Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 - public law 104-208 (IIRIRA). In addition, I demonstrate how different conceptualizations of membership lead to different views of who should receive educational benefits.

Section 505 of IIRIRA states,

“Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident.”

Unlike the Supreme Court case transcripts, I did not have the luxury of reading normative or philosophical principles that support the policy. However, I deduce some differences in how membership was conceptualized and how justice or fairness was employed.

First, Section 505 of IIRIRA clearly makes distinctions between citizens, residents, undocumented residents, and out-of-state citizens. The various membership categories are tiered and weighted. In terms of eligibility for instate tuition, the policy considers citizens as the primary benefactors of instate tuition and places residency for

non-citizens on a lower tier. The rationale behind this decision is unclear. However, I assume that authors of Section 505 did not see higher educational benefits as fundamental to persons in general but possibly considered it a lesser benefit not innately awarded to non-citizens. I believe this to be a rational assumption given the fact the measure did not attempt to strike down educational benefits in the primary grades.

Therefore, Section 505 is not in complete conflict with *Plyler*. While the opinions in *Plyler* viewed primary education as fundamental, it did not specifically take into consideration higher education benefits. Moreover, Section 505 does not speak about the role of primary school. Hence, there may be agreement of the role of primary schooling in society, but disagreement on the role and importance of higher education in facilitating the nation's economic, social, and political goals as well as individual equality. Again, Section 505 does not acknowledge residents as possessing the type of social or political standing that warrants postsecondary educational benefits. Nonetheless, there is a policy problem in that undocumented students can graduate from high schools and be left with little to no financial access to college. Moreover, the basis for which policymakers, interest groups and legislators are dealing with this issue are very different.

In *Plyler*, the Court expressed that education plays a major factor in the economic and political goals of the country and for individuals actualizing the democratic ideal of a free and equal person. As noted earlier, a primary education is seen as fundamental to every member (resident, non-citizen or citizen) of society as it facilitates participation in the economic, political, and social offerings of the state; thus, the right to an education is afforded "extraordinary treatment." A factor in determining whether undocumented students should be given access to a primary education was therefore partially based on

democratic principles of equality and practical needs of the state. In Section 505, we see that policymakers explicitly based the ruling on principles of fairness in relation to the allocation of benefits to out-of-state citizens. Undocumented immigrants do not receive financial aid if out-of-state citizens do not get the price break of instate tuition. If membership determines with “whom we make those choices, from whom we require obedience and collect taxes, [and] to whom we allocate goods and services,” then Section 505 of the public law 104-208 apparently carries a very different conceptualization. I believe it to be a significant difference, which places undocumented students, policymakers, and higher education official in limbo.

Important Ethical Principles

The Court partially based its decision to provide undocumented students access to primary and secondary schools on important ethical principles. This sub-section endeavors to highlight principles that are pertinent to the primary research question.

The majority opinion ruled that the Texas statute violated the federal non-discrimination statutes of the Fourteenth Amendment (Title VI and Title IX of the Civil Rights Act of 1964 and Sec. 504), which prohibits discrimination based on race, color, sex, ability, residency, and alien status. In general, state and federal governments can not impose discriminatory laws based on citizenship status. The Court stated,

“[The] Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says ‘Nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protections of the laws.’ These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to

any differences of race, or color, or of nationality; and the protection of the laws is a pledge of the protection of equal laws” (*Plyler v. Doe*, 1982, p. 212).

The *Plyler* decision reaffirmed that discrimination based on residency and alien status is prohibited. The Supreme Court’s opinions in the *Plyler* decision clarified several other important ethical principles. These principles were based upon a belief in unalienable, individual rights inherent in all persons considered free and equal – principles codified in the Fourteenth Amendment. The Court repeatedly noted that the Fourteenth Amendment affirms that certain rights are fundamental, irrespective of citizenship status. “Whatever his status under the immigration laws, an alien is surely a ‘person’ in any ordinary sense of that term” (*Plyler v. Doe*, 1982, p. 210). Justice Marshall clarified that education is not a fundamental *right* that is guaranteed by the Constitution. However, Marshall asserted that education is afforded “extraordinary treatment” because citizens or potential citizens cannot achieve any meaningful degree of individual equality without it (*Plyler v. Doe*, 1982).

Justice Marshall did not believe that it is the states’ responsibility to educate all people within its borders. Indeed, states are not responsible for educating immigrants on travel visas or short-term stays. Rights to an education are afforded to members (irrespective of citizenship status) of the political community. Justice Brennan confirmed this view,

“Unsanctioned entry into the United States is a crime, and those who have entered unlawfully are subject to deportation. But despite the existence of these legal restrictions, a substantial number of persons have succeeded in unlawfully

entering the United States, and now live within various states, including the state of Texas” (*Plyler v. Doe*, 1982, p. 205).

The Court stressed that states must deal with the reality that many undocumented children are not going to be deported and will remain in the United States.

“[T]he illegal alien of today may well be the legal alien of tomorrow, and that without an education, these undocumented children, already disadvantaged as a result of poverty, lack of English-speaking ability, and undeniable racial prejudices...will become permanently locked into the lowest socio-economic class” (*Plyler v. Doe*, 1982, p. 207).

Because of the probability that many students involved in the case were believed at the time to be durable residents of the state, the Court conveyed concerns that not providing an education to this class of residents would create unwanted layers of structural inequality and social stratification. Blackmun opined,

“When a state provides an education to some and denies it to others it immediately and inevitably creates class distinction of a type fundamentally inconsistent the purposes of the equal protection clause, and that whatever the state’s power to classify deportable aliens, the statute at issue swept within it a substantial number of children who would in fact, and who may well be entitled to, remain in the United States”(*Plyler v. Doe*, 1982, p. 234).

The Court used the term “education” so liberally that it is difficult to discern the type of education required for individuals to participate in the political, economic, and social systems of the state as well as to achieve a sense of equality. The case occurred in

a K-12 context so we can assume it is involved in the Court's construction of "education." However, I believe that the court is referring to the type of primary education that is not necessarily confined by the K-12 setting but is crudely characterized by the basic skills needed to participate in the political community, find work, navigate the broader and local social systems, as well as realize one's potential.

One such legal analysis concludes that a postsecondary *Plyler* needs to be established partially based upon the moral precedents established in the case (Roos, 1991). In his study, Roos argues that protection of undocumented children should carryover to higher education. He suggests that the Court probably considered the importance of a K-12 education on overall societal wellness. This consideration is bolstered by the fact that a K-12 education is compulsory. Because postsecondary educational attainment is not compulsory nor at the time considered as strong a correlate with societal wellness as it is today, the Court probably did not foresee the reverberations of its narrow scope.

"[I]t can well be argued that while in simpler times the basic tools for individual success could be obtained through a secondary or even an elementary education, today's complex society compels the receipt of postsecondary training to perform any but the most menial tasks" (Roos, 1991, p. 5).

Roos notes that changing technical and labor needs of society warrant a change in how the populous is educated. Therefore, students whom we already consider an "innocent" class should receive protection at the postsecondary level so they can contribute to society. This study must investigate the claim that access to higher education is critical in the sense that a postsecondary education provides persons with

vital tools for individual success and freedom. In addition, the study must touch upon the role of higher education on societal wellness. Should we begin to think of higher education as *basic*? Still, the primary research question is most concerned with the proper conceptualizations of membership. However, conceptualizing membership must include discussions on the basic rights of persons, particularly rights to an education as well as higher education's role on societal wellness.

Relevant laws germane to the case generally acknowledge that residency is a critical determinant of rights and that education can be distributed to those living within geographic borders based on basic democratic principles of justice. In addition, we know that education (whatever level that may be) is essential for personal, political, and economic reasons. However, the cases presented did not specifically expand upon connection between residency and membership and/or membership and benefits.

The Constitutionality of IIRIRA

IIRIRA deters many states from determining instate rates for undocumented immigrants (Hebel, 2001, 2002). These states take the position that granting instate tuition to non-citizens while imposing out-of-state rates for citizens is a violation of federal law. Michael Olivas, William B. Bates Distinguished Chair of Law and Director of the Institute for Higher Education Law & Governance at the University of Houston, believes that IIRIRA has no jurisdiction in state residency law. In numerous statements, Olivas argues that instate residency is entirely a state-determined benefit and the provisions of IIRIRA do not preclude states' abilities to enact residency statutes for the undocumented (Olivas, 2002).

There are obvious legal issues that need clarification. A brief legal review in this area will address states' legal authority to determine residency and distribute educational benefits based on residency status. The pivotal cases in residency and rights include *Vlandis v. Kline* (1973), *Johns v. Redeker* (1969), *Starn v. Malkerson* (1971), *Toll v. Moreno* (1982), and others.

In *Vlandis v. Kline*, the U.S. Supreme Court said, "We fully recognize that a state has a legitimate interest in protecting and preserving the quality of its colleges and universities and the right of its own bona fide residents to attend such institutions on a preferential tuition basis." However, states' rights to serve its residents were not void of challenges. The Courts decided in *Johns v. Redeker* and *Clarke v. Redeker* (1969) that charging higher tuition rates to out-of-state students was a compelling state interest and constitutionally valid. Furthermore, *Starn v. Malkerson* and *Toll v. Moreno* clarified that states could determine their own residency requirements.

Legal studies in this area may allude to ethical considerations, democratic organization, and resource distribution; however, the primary discussion revolves around arguments of jurisdiction, interpretation or to highlight inconsistencies in policy delivery (Olivas, 1995, Padilla, 1989, Romero, 2002). I do not intend to spend significant time reviewing various interpretations in this area. However, a summary of these cases will help inform policymakers of the legality of IIRIRA. Moreover, it highlights why philosophical discussions on membership are needed.

The aforementioned cases established that states control the allocation of educational benefits based on recipients' resident statuses. The Supreme Court decision in *Takahashi v. Fish & Game Commission* (1948) addressed a state law that "precluded

aliens who were ineligible for citizenship under federal law from obtaining commercial fishing licenses, even though they met all other state requirements and were lawful inhabitants of the state” (*Toll v. Moreno*, 1982). The Court found that states *had the power* to deny state benefits to aliens not eligible for citizenship. The added emphasis connotes authority to determine residency and eligibility for certain benefits. The denial of a fishing license did not interfere with federal immigration laws.

Thus, the “constitutional power of the United States over immigration and naturalization precludes the states from adding to or taking from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states” (*Takahashi v. Fish and Game Commission et. al.*, 1948). In this particular case, Judges Murphy and Rutledge expressed agreement that denial of license did not violate federal law, but thought the statute should also be condemned as being the direct outgrowth of antagonism toward persons of Japanese ancestry and as having no relation to any constitutionally cognizable interest of California (*Takahashi v. Fish and Game Commission et. al.*, 1948). Nonetheless, a critical question that will be examined is, does granting undocumented access to financial aid eligibility encourage illegal immigration and interfere with federal immigration laws?

In *Toll, President, University of Maryland, et al. v. Moreno et al.*, the U.S. Supreme Court affirmed a decision in a lower court that determined it unconstitutional for a state to give tuition and fee preferences to instate residents while charging out-of-state tuition to G-4 aliens – nonimmigrant aliens who are officers, employees of certain international organizations, and residents of the state. Whereas citizens could obtain

instate status upon showing domicile in the Maryland, nonimmigrant G-4 aliens did not qualify for instate tuition according to the state legislation.

G-4 aliens have the legal capacity to claim domicile because of the federally regulated Immigration and Nationality Act, thus, making them eligible for instate tuition. The nature of “instate” status was the point of contention since the courts determined in earlier cases that establishing varying costs based on instate and out-of-state rationales was constitutional if the differing costs served a compelling state interest.

In *Toll v. Moreno*, the U.S. Supreme Court held that dependents of parents who were nonimmigrant aliens holding a G-4 visa could establish domicile. The Court ruled that G-4 aliens were eligible for instate tuition because their parents’ jobs situated them as residents. As stated earlier, state legislation shall not usurp federal policy. Judges Brennan, White, Marshall, Blackmun, and Powell opined that the university’s policy of creating arbitrary residency statuses was invalid because of Congress’ decision to allow G-4 aliens to establish domicile in the United States. In addition, G-4 families have special tax exemptions offered by various treaties, international agreements, and federal statutes. Therefore, charging out-of-state tuition to resident students interfered with federally sanctioned tax exemptions.

One of the rules made clear in the case was that state immigration regulations – not congressionally sanctioned – are impermissible if it imposes additional burdens not contemplated by Congress. Federal government has constitutional authority in immigration issues, and that power will not be usurped. *Toll v. Moreno* rearticulated the division of power regarding immigration and states’ ability to determine their own tuition rates.

Toll v. Moreno as well as the other cases mentioned in this study reaffirm that the federal government has constitutional authority in determining what aliens shall be admitted to the United States, their length of stay, assessment of their conduct before naturalization, and the terms and conditions of their naturalization. Under the Constitution, the states are granted no such powers; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states. In addition, the establishment of residency is very important in regards the fair distribution of educational benefits. This raises an important question in regards to undocumented immigrant higher education. How should agencies determine residency for undocumented students?

The power of states to determine residency and the federal government's conduction of the business of immigration comes to a crossroad regarding student financial aid particularly in regards to the granting of instate tuition benefits to undocumented immigrants. Immigration law gives states room to determine residency for educational and economic purposes but there is an apparent perception or tension that this freedom interferes with the federal government's ability to control borders and monitor immigration. In addition, there are concerns of fairness (made apparent in IIRIRA) that the allocation of benefits to non-citizens is unmerited and unjust to citizens. Although the legality of Section 505 is still up for debate, *Plyler V. Doe* has held throughout the years. Therefore, much of the literature on the case examines the relevancy of *Plyler's* ethical principles in the higher education arena.

Questions and Gaps

Public policy involving education generally acknowledges the importance of the country's investment in education, broadly speaking, for preparing workers for industry, cultivating citizenship, instilling societal values, facilitating community, as well as preserving and advancing art and culture (Dewey, 1966). In the *Plyler* case, the Court emphasized that if laws do not recognize immigrant's current membership standing or potential status and consequently do not grant educational benefits, then the return on the investment in schools may be lost. In regards to postsecondary educational benefits, does the denial of such benefits undercut education's role in facilitating certain goals of the state? How does immigrant participation in higher education factor in the state's general investment in education? Should we begin to think of higher education as *basic*? Is access to higher education needed so that persons considered free and equal can achieve that status?

In addition to problems concerning basic education and individual rights, the legal analysis left many questions regarding the importance of residency on membership. For instance, how does being a resident of a community transfer into membership? While establishing domicile in a state may be a factor in membership, how is it weighed against the other requirements for membership and eligibility? Does the denial of instate tuition punish the children for their parent's behavior? This study assumes that an examination of membership with help policymakers and this study respond to these questions.

Differentiating Citizenship and Membership

Membership is a philosophical notion of belonging that has to do with identity and status. In a distributive community, membership connotes the general sense of the individual and group's commitment to divide, share, and exchange resources firstly

among others who have the same commitment (Walzer, 1983). It is the outcome of real participation towards collective aims. Membership is very much a social good, meaning membership is socially constructed and defined (Hammar, 1986; Selznick, 2002; Y. Soysal, 1998; Walzer, 1983).

People generally know the communities, organizations, or families they are members of because membership is generally forged by our day-to-day activities. Attending church, buying a home, paying taxes, playing cards with the neighbors, and going to school are all examples within the broad range of activities that convey an individual's commitment to divide, share, and exchange.

The ostensible signs of membership manifested as social exchanges between persons are combined with more formal forms of membership. Within the lexicon of membership, there are political and organizational designations like citizenship. How we distribute membership in this regard is not only central to this study; it is societies' most basic distributive issue, "for membership definitions and rules determine who is allowed to participate in community activities, and who is governed by community rules and authority" (Stone, 1997). Thus, distinctions between members and non-members; members and citizens; rationalizes the allocation of resources between people of a political community. Most countries are comprised of people of varying membership statuses – both formal and informal. Nevertheless, membership statuses are not tattooed on foreheads. In many countries, societies have socially recognized members who did not perform legal commitments to citizenship.

Under a broader membership framework, a country's members most often consist of citizens and non-citizens (Martin, 2002; Sassen, 1999; Sidgwick, 1996; Y. Soysal,

1998; Walzer, 1983). A major line of argument in the debate of undocumented immigrant education benefits involves the just allocation of social goods in a society composed of legally recognized citizens and non-citizen residents. In a country where citizenship is the implied and most explicit form of membership, educational resources are often assumed exclusively reserved for official citizens if the framework of membership is grounded in a national model (FAIR, 2003). However, as in the case of primary education, communally determined goods are not solely distributed to those who have the designation of citizen. Still, in arguments regarding whether to give undocumented immigrants financial aid there are disagreements about who is a legitimate beneficiary of societal goods: citizens, members, or persons. It is here where appropriate principles must be developed so that we can come up with rational and just conceptualizations of membership as well as fair means to distribute educational goods. However the primary goal of the chapter is to elaborate upon these disagreements and tensions.

The previous section shows the legal battle involving individual rights versus citizen rights as well as state autonomy versus national aims. The upcoming section provides the philosophical underpinnings of membership and citizenship in legal and political battles involving undocumented immigrant higher education benefits.

Conceptualizing Membership

As noted earlier, people are members of various political, familial, and social organizations. If one of the goals of the study is to identify appropriate principles of membership, then literature on how to conceptualize membership is vital. Michael

Walzer provides a means to conceptualize membership in his oft cited text, *Spheres of Justice* (1983).

For example, Walzer explains how we can conceptualize a world without political boundaries in which everyone is free and equal. Walzer states, “We might opt for a world without particular meaning and without political communities: where no one was a member or where everyone ‘belonged’ to a single global state” (Walzer, 1983 p. 34). In this conceptualization everyone is a stranger⁷. Walzer describes a setting without political boundaries as a global community. A global community argument would force us to ask what moral obligations we owe to others in need. This type of moral consideration is more compelling than it is relevant in the case of undocumented immigrants. However, arguments for post-national citizenship are embedded with notions of a global community (presented later in paper). Because of our political and social arrangements, distributive justice among strangers takes on other considerations that are political in nature. Immigration and naturalization policy involves a world with political boundaries. Therefore, Walzer introduces different ways in which we can conceptualize political communities. Each type of political community creates different demands for membership, and along with it, different conceptualizations for resource distribution.

Political communities can be conceptualized in various ways. Walzer uses three analogues of a) neighborhoods b) clubs and c) families to describe different features of admission and exclusion, which have different consequences for membership.

⁷ The concept of stranger is used liberally in philosophical and anthropological studies. A “stranger” is generally seen as a person who is new to a community and their experiences in the community change them (Park, 1969). Much of this study examines how strangers become members of a community.

- a) Neighborhoods are malleable associations in that there are no legally enforceable admissions policies, but strangers can be welcomed or not welcomed, admitted or excluded.

Walzer appropriately notes that not welcoming strangers can be as effective as excluding members. Nonetheless, the important aspect of the neighborhood analogy is that members essentially go and come as they please. Walzer notes, “They choose but are not chosen” (Walzer, 1983, p. 36). Excluding incidences of discrimination, people enter and exit based upon, but not limited to, preference, economic solvency, cultural considerations, and other factors. Walzer points out that support for this conceptualization of political community comes out of classical political economy. Political economy has made arguments to shape national territories like neighborhoods. Theorists within this school of thought claim that national territories should be “indifferent” – movement without political restraint. Using the global perspective, political economy theorists claim “natural advantages (like markets) are open to all comers, within the limits of private property rights; and if they are used up or devalued by overcrowding, people presumable will move on” (Walzer, 1983, p. 37). This economic model of political community sees membership as a matter of choice.

While Sidgwick thought the neighborhood model of political community would be the future political community, he offered three arguments against it in the present (Sidgwick, 1996). First, the relatively high mobility would not facilitate patriotism and discourage internal cohesion. A lack of cohesion means that members would be strangers. Second, high movement might obstruct efforts to improve living standards for lower social classes because other competitive markets or neighborhoods in other

countries may not pursue such efforts. Third, the advancement of a moral or intellectual culture or community may be thwarted because of competing communities, a lack of cohesion, and/or movement.

Walzer counters Sidgwick's stance. Walzer properly noted that culture is not necessarily deposed with mobility. Nor is there evidence that the standard of living would decrease with high levels of mobility. However, Walzer did acknowledge that a certain amount of cohesion between members is dependent upon stability.

Even though I use Walzer to highlight how different conceptualizations of political communities pose different demands on the distribution of membership, this example raises questions relevant to the topic. For instance, are policies that grant or deny tuition benefits facilitating or deterring national values like patriotism, diversity, and national solidarity?

According to Walzer, human beings are inclined to stay in a certain place until life becomes difficult. If life in that place becomes too onerous, then one is more likely to move. If the conception of the good life is generally realized and members stay, then those members are more likely to formalize political boundaries. Community members will subsequently protect their values/community by resisting foreign values and beliefs. Conflict arises when strangers who have probably fled their specific arrangements enter a space where their presence is perceived as a threat to the social and cultural practices of the community. Walzer points out that in open, metropolitan communities, neighborhoods will turn into closed or parochial communities. Neighborhoods can remain open if the host country remains relatively closed. Walzer states, "Only if the state makes a selection among would-be members and guarantees the loyalty, security,

and welfare of individuals it selects, can local communities take shape as ‘indifferent’ associations” (Walzer, 1983, p. 39). This is not an argument for exclusion. Walzer is pointing out that a completely open country may create very rigid and segregated communities.

The argument against completely open societies is a large component of the argument for a post-national conceptualization of political community (will elaborate later). If we believe that some border control is necessary for internal cohesion, then political communities look more like clubs than neighborhoods. Again, Walzer raises questions relevant to the study. Are students who attend colleges and universities likely to stay in the U.S.? What impact, if any will this have on our national goals and interests?

- b) Like clubs, countries have selection committees that establish general qualification categories for admission and exclusion, and numerical quotas.

The club conceptualization is defensible with certain caveats. Again, broader notions of justice still apply and prohibit immoral qualifications or categories for admission or exclusion. Walzer notes that arguments can be made about admissions standards by appealing to the shared understandings of citizens. However, these arguments must be judged on moral grounds. “The claim of American advocates of restricted immigration (in 1920, say) that they were defending a homogenous White and Protestant country can plausibly be called unjust and inaccurate” (Walzer, 1983, p. 40). Given the historical discrimination that has marked the U.S., policies around admission and exclusion must not serve as cover for immoral or discriminatory means of forming

internal cohesion. Clubs' selection committees select members based on the type of club they want to promote and create.

When speaking of countries, it is important that immigration or naturalization offices do not create xenophobic, racist, or discriminatory states. These forms of communities would break our first notion of justice as fairness.⁸ The breaking of Rawls first principle violated core democratic values. Therefore, basic analytic questions for this study may be, does denying or awarding educational benefits to undocumented immigrants promote or discourage democratic values like unity. Likewise does it promote or discourage practices like discrimination and social stratification, which are harmful to democracies.

- c) Family conceptualizations of political community rest on the notion that citizens are obligated to open doors of their country to a particular assembly of strangers – a recognized group of ethnic “relatives.”

History provides several examples of this type of political community. Walzer cited numerous examples of family political communities including how English country families took in London children during the Blitz; Turks driven from Greece returning to Turkey, Greeks driven from Turkey returning to Greece, Germans from Poland and others. Walzer grudgingly acknowledged this type of conceptualization. He states, “I am inclined to say that such expectations are legitimate” (Walzer, 1983, p. 42). Walzer returns to the notion that countries express shared political interests that may have

⁸ Rawls' notion of justice as fairness is comprised of two principles (Rawls, 1993, p. 4): First, each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value. Second, social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair quality of opportunity and second, they are to be to the greatest benefit of the least advantage members of society. Considering the principles that comprise Rawls theory, the first takes precedent over the second.

specific cultural underpinnings. However, there is an inappropriate assumption that ethnic lineage translates into shared ideas of the good life across territories. In the example provided, the “guest” populations did maintain the cultural identity of their originating country. However, examples from immigrant states like America are more difficult to use.

While Americans have English ties, I am hesitant to say that we have transferable conceptualizations of the good life that should be privileged over other ethnic conceptualizations in regards to immigration policy. A moral argument for accepting refugees or populations who are cast from their countries for political reasons seems more compelling. In the absence of political unrest, are host countries obligated to accept certain countries over others? Rawls’ first principle would say no. A question that emerges from the discussion on family community models is, are we more likely to grant or deny educational benefits to some populations than to others?

Walzer uses the analogies of neighborhoods, clubs, and families to highlight the different implications on membership. However, he points that we can think of countries as territories. Territories are distinct from the other conceptualizations mentioned in that they can control the inclusion and exclusion of aliens. For instance, territories have to deal with undocumented or illegal residents. Club and families do not have such issues, for the concept of aliens is a non sequitur. Because territories are entitled to citizens and their claim to space, territories reserve the right to relocate non-members.

One of the strongest arguments for the right of the state to control its borders is that justice can be best distributed within constrained geographic boundaries. In a global community with no political borders distributing justice becomes more difficult. For

instance, financial aid is best distributed within the boundaries of the U.S. The organization of a global financial aid system would require extensive coercion and suffer from pragmatic problems around funding and accountability. In other words, the rest of the world would probably not agree to requirements that we determine. In addition, who would pay for such an open system, how could we control it?

Walzer points out that territories are social goods in two ways. First, territories are living spaces with food, water and potential wealth. They are also a resource for those without resources. If borders are open, how can territories protect, living spaces and its resources if there are no members obligated to certain territorial goals? Would advancing benefits to undocumented immigrants create a system too open for us to control, administer, or pay for?

Walzer lays out various ways to conceptualize communities in regards to the inclusion or exclusion for new members. Each metaphor carries different implications for membership and benefits. In order to develop appropriate principles of membership and benefit distribution, one can take the approach of creating a metaphor for the political communities dealing with the issue. What metaphors can best describe the U.S., and what implications do they have on fair distribution of educational benefits? This leads to the issue of the “fair” distribution of benefits. The literature on distributive justice is helpful here.

“Principles of distributive justice are normative principles designed to allocate goods in limited supply relative to demand. The principles vary in numerous dimensions. They vary in what goods are subject to distribution (income, wealth, opportunities, etc.); on the nature of the subjects of the distribution (natural

persons, groups of persons, reference classes, etc.); and on what basis the goods should be distributed (equality, according to individual characteristics, according to free market transactions, etc.)” (Lamont, 2003) .

Michael Walzer and other communitarians remind us that in discussions regarding distributive justice, we tend conceptualize nation-states as homogeneous and as capable of arranging their own patterns of division and exchange (Walzer, 1983). “We assume a fixed population, and so we miss the first and most important distributive question: How is that group constituted” (Walzer, 1983 p. 31)? Walzer is stressing the fact that political communities are constituted with members and non-members, citizens and undocumented residents. There is not a pure population to consider when we are discussing distribution of social goods or the just distribution of those goods.

Distributive justice is not solely concerned with the just distribution of goods between a homogeneous group of members or citizens. Distributive justice is also concerned with ethical considerations on how membership is distributed within a political community. This study is not only interested in the just distribution of educational benefits. It is also about the just distribution of who receives these benefits. Distributive justice is concerned with both the *what* and the *who*. Whom we deem as members determines with “whom we make those choices, from whom we require obedience and collect taxes, to whom we allocate goods and services” (Walzer, 1983 p. 31). Therefore, we must be especially careful determining membership status.

Walzer notes that those who are not members are “stateless,” vulnerable, and unprotected within the community unit. While non-members can participate in the community, they are “cut off” from communal provisions of security and welfare.

Political communities are created primarily for reasons of security and welfare. Societies produce structures that deliver communal provisions and other goods that help sustain communities. Survival of the persons within the community and the community itself is dependent upon the distribution of communal provisions. I believe that Walzer includes education as a communal provision. Walzer states,

“Communal provision is both general and particular. It is general whenever public funds are spent so as to benefit all or most of the members without any distribution to individuals. It is particular whenever goods are actually handed over to all or any of the members. Water, for example, is one of ‘the bare requirements of civil life,’ and the building of reservoirs is a form of general provision. But the delivery of water to one rather than to another neighborhood (where, say, the wealthier citizens live is particular)” (Walzer, 1983, p. 66).

Obviously, water is more basic than higher education. Still, “the social health of the society, that is to say its common good, can be aided or degraded by the requirements of education which are determined in the society” (Raskin, 1986, p. 115). Raskin’s use of the phrase “social health” is related to Walzer’s security and welfare. In this regard, Walzer may join Raskin in his belief that higher education helps provide security and welfare to members of the political community towards the general health of community. If citizenship is the sole mechanism to provide security and welfare to members, then those without it will be denied access basic and essential goods. A goal of this paper is to determine whether the denial of financial aid eligibility makes a class of persons stateless and vulnerable to essential goods needed in order to thrive in society and for society to

thrive. Will providing benefits to non-citizens weaken or strengthen the country's ability to provide for its official members?

The Changing Nature of Citizenship

The previous section illustrated different conceptualizations of community and its consequences on membership. Whereas membership connotes a general sense of commitment, belonging, and entitlement, citizenship carries more specific meanings within boundaries of political communities. For this study, I analyze membership so that I may be better able to determine how the U.S.'s notion of citizenship is capturing membership. Does the nature of the community facilitate a type of membership that is not acknowledged by the U.S. construction of citizenship? Does the nature of the community facilitate a type of membership that is not acknowledged by its laws involving higher education benefits? Still, citizenship serves special functions in the U.S. that may or may not limit the country's ability to allocate educational benefits to non-citizens. In order to approach these questions, I must first look at the aims and goals of citizenship.

The following definition of citizenship primarily comes out of the liberal tradition (elaboration forthcoming). I use this paradigm or tradition for two reasons. First, it is the tradition that primarily shapes our current civic style (Heater, 1999; Locke & Goldie, 1993). Second, the paradigm for this study comes out of liberal political philosophy, which encompasses writers such as Locke, Rawls, and Walzer.

Citizenship in Western countries (including the U.S.) is "intimately linked to ideas of individual entitlement on the one hand and of attachment to a particular community on the other" (Kymlicka & Norman, 1994). Citizenship connotes full

membership in a society affording all the individual rights and responsibility of a particular nation state (Guiraudon, 1998). I will not, nor could I possibly, list all the formal and informal rights and duties associated with citizenship in this thesis, but I will need to expand upon the notions of rights and responsibilities.

In Western states the concept of rights includes both political and natural rights. For instance, citizens have the right to vote or hold elected office – political rights. In addition, we believe that every person should have the right to life, liberty, and the pursuit of happiness – natural rights (Locke & Goldie, 1993). “These rights are God-given; but it is the function of the state to ensure their protection” (Heater, 1999, p. 5). “Citizens have the odd duty to perform, it is true – mainly the payment of taxes – in return for the protection of their rights by the state...Citizenship largely means the pursuit of one’s private life and interests is more comfortable because that private life is insured by state protected rights” (Heater, 1999, p. 6). Therefore in Western states, citizenship entails a series of rights and some responsibilities (albeit small) that help government protect and assure those rights and responsibilities. I hope readers can see from this broad definition that citizenship and the rights, benefits and responsibilities aligned to it should help the state protect the individual rights of its members. Understanding this concept is critical because a vital sub-question that must be addressed is, does granting or denying benefits hinder government’s ability to protect individual rights of its members or does it interfere with citizens’ individual rights? Many of these concerns are addressed by limited resource arguments put forth by opponents of anti-immigrant instate tuition policies.

Understanding citizenship is also important because the health and stability of a country is dependent upon the qualities and commitments of its citizens (Dauenhauer, 1996). For instance, the right to vote is one afforded exclusively to all citizens. If voting was extended to non-citizens, then members of the political community could not exclusively shape the political community in which they reside. In this regard, citizenship encompasses many rights and responsibilities that help societies sustain themselves. The authority to admit and exclude are at the core of communal independence or sovereignty (Walzer, 1983). Therefore, countries must have the right to establish admissions criteria, admit, excommunicate, as well as limit the rights of and deport non-members. Joppke (1999), Walzer (1983), Soysal (1994) and others express the connection that immigration and immigrant policy, sovereignty and self-determination has with various conceptualizations of the nation-state community. These authors point out that immigration and immigrant policy is a significant component of self-determinism; and that the distribution of membership is not pervasively subject to the constraints of justice. Without control, there could not be communities of character, historically stable, ongoing association of men and women with some special commitment to one another and some special sense of their common life (Walzer, 1983, 61). These authors do not debate certain normative or subjective qualities of immigration. They accept the practical realities that controlling immigration is a national/community interest in regards to conceptualizations of sovereignty and the nation-state.

Specific rights (i.e., voting and the right to determine citizenship) should then be inextricably linked to citizens. In other words, non-citizens should not have the power to

determine their own citizenship status or vote in elections. However does higher education fall within this category of rights? Certainly, not all rights are exclusively aligned to citizens. The right to walk in a public park generally transcends geopolitical, national and ethnic barriers; most citizens and non-citizens can enjoy this right. At the K-12 level, undocumented immigrants are not prohibited from attending public schools. This is an obvious social benefit made available to non-citizens. As in the *Plyler v. Doe* case, we have extended benefits to non-citizens based on our beliefs that all persons regardless of citizenship status possess certain rights. Again, as in the case of *Plyler v. Doe*, the country's laws also reflect a need to acknowledge residency – not necessarily citizenship status – when considering the distribution of educational benefits.

Literature on post national membership analyzes relationships between a nation, its citizens and their rights (Y. N. Soysal, 1994). Post national theorists – most notably Yasmin Nuhoglu Soysal – critique national membership models, which assume that rights and privileges are to be strictly allocated between compatriots. In addition, the literature attempts to examine how membership should be constructed in a world of intense migration and immigration. Works in this area of research examine notions of *human* rights and benefits (as opposed to rights couched in a traditional, national membership model); immigrants' impact on nation-states; the subsequent devaluation of citizenship as a result of the socialization of immigrants; and the responsibility of nation-states to provide security and welfare to human beings regardless of status.

Post-National Citizenship

Citizenship based on principles of national sovereignty is being transformed into new conceptualizations (Castles, 1998). Theorists recognize issues of international

migration on citizenship, but are unclear about how those issues will impact our common understandings of citizenship (Castles, 1998). Some say that citizenship based on a nation-state model will endure. Others state that the prevalence of migration around the world will force a transformation in our conceptualizations of citizenship. In her widely cited work on guestworkers and citizenship, Yasmin Nuhoglu Soysal analyzes the changing structure and meaning of citizenship in the contemporary world (Y. Soysal, 1998; Y. N. Soysal, 1994). Soysal examines the incorporation of non-citizens into various legal and organizational structures of host societies and introduces a new model of membership, which is referred to as *post-national*.

Soysal describes a transition from an old model of citizenship that is defined by a particular nation-state to one that is universal. “The post war era is characterized by a reconfiguration of citizenship from a more particularistic one based on nationhood to a more universalistic one based on personhood” (Y. Soysal, 1998). The literature claims that rights of men, women, and children were historically defined in respect to their membership status in a nation-state. Rights differed between citizens and aliens (T. H. Marshall, 1998). Because rights differed, attitudes towards non-citizens were relative to their legal standing or designation as opposed to their membership standing. Marshall suggests that “citizenship has itself become, in certain respects, the architect of legitimate social inequality” (T. H. Marshall, 1998). However, in the post-war era, “an intensified discourse of personhood and human rights has bent the bounded universality of national citizenship, generating contiguities beyond the limits of national citizenry” (Soysal, 1998, p. 191). The human rights discourse that occurred globally forced countries to provide basic security and welfare to all residents.

“Accordingly, contemporary membership formations have superseded the dichotomy that opposes the national citizen and the alien, by including populations that were previously defined as outside the national polity. Human rights are extended to non-citizens, which dissolves the notion of national citizenship” (Y. Soysal, 1998).

Soysal notes that citizenship has always expanded to reflect the entry of a new segment of the United States’ population. In the case of undocumented immigrants, they are certainly not a “new” segment of the population (Borjas, 2000; Castles, 1998; Chavez, 2001; Loveless, 1996; Mindiola, 2002). Undocumented immigrants of recent years reflect the growing influence of Mexican, Central Americans, as well as a host of ethnic groups primarily consisting of Hispanics and Latinos. However, there is growth in both legal and illegal immigration from all parts of the world including Africa, Europe, and Asia. Nonetheless, immigrants (voluntary and involuntary) have populated and worked in the U.S. since its inception. Undocumented immigrants have managed to reside in the U.S. for multiple generations. While the various undocumented immigrant groups may not be “new,” Soysal has found that the expansion of citizenship in numerous Western countries reflect a change in the nation’s attitude in regards to race, culture, class, and other features (Soysal, 1998).

Soysal’s model for post-national membership provides a framework that delineates the membership criteria countries should consider when considering resource allocation. There are seven dimensions to Soysal’s model including: time period, territorial, congruence between membership and territory, rights/privileges, basis of

membership, source of legitimacy, and organizational membership (Y. Soysal, 1998; Y. N. Soysal, 1994).

The dimension of *time period* reflects the period in which the new model began to take shape. The end of the Second World War marked the end of the national citizenship model and the beginning of the post-national model. The *territorial dimension* entails the territorial relationship between the nation and the state and its citizens or members.

Under a nation-state model, there is strict *congruence between membership and territory*: French nationals are exclusively entitled to the rights and privileges the state affords. “In the post-national model, the boundaries of membership are fluid; a Turkish guestworker can become a member of the French polity without French citizenship” (p. 192). Soysal clarifies that the fluid boundaries of membership do not necessarily mean the nation-state boundaries are fluid. In other words, the concept of territory is not destroyed. Embedded in Soysal’s model are factors that Sidgwick predicted to be in future market/choice communities. Sidgwick warned of the dangers in creating a global community (see above). Nation-states have a significant interest in deciding who comes in and out of the country. Nonetheless, nation-states have not slowed down immigration into countries (Joppke, 1998).

Under national citizenship models, *rights and privileges* were allocated uniformly amongst citizens. “Citizenship assumes a single status; all citizens are entitled to the same rights and privileges” (Soysal, 1998, p. 193). The post-national model assumes a degree of heterogeneity amongst different types of membership statutes and the distribution of rights and privileges among those different groups. The *basis of membership* involves how members are framed in relation to the distribution of goods.

Source of legitimacy is rational for that basis. In the classic national-citizen model, shared nationality is the primary source of equal treatment among members.

Accordingly, citizenship endows individual members with equal rights and obligations on the grounds of shared nationhood. Individual rights are couched within the boundaries of the nation-state. The sources of post-national models are legitimated by human rights as opposed to national rights. In the post-national model, universal personhood replaces nationhood; and universal human rights replace national rights. A nation-state's obligation to non-citizens is legitimated through global community standards, international codes, human laws, and civil rights.

The *organization of membership* does not change between the national-citizen model and the post-national model. The responsibility of providing and implementing individual rights lies with nation-states. In other words, certain citizens of nation-states are responsible for administering rights among its resident members. "The state is the immediate guarantor and provider, though now for 'every person' living within its borders, non-citizen as well as citizen" (Soysal, 1998, p. 195).

Many studies call for a new category of citizenship that incorporates long-term residents who receive citizen benefits (Hammar, 1986, 1989, 1990). Many of these studies see residency as the primary determinant of rights. This stance is reminiscent of what Walzer describes as a neighborhood conceptualization of community. There are several problems associated with this type of conceptualization. They are the same problems posed by Sidgwick more than one hundred years ago (global economic models will discourage internal cohesion and patriotism, hinder efforts to improve living standards, lose culture). Moreover, there is a vision of a type of borderless , global,

political community. While Dewey, Frerie, Green and others encourage this type of community development, all of these philosophers note the importance of less abstract, local communities on social and intellectual development (Dewey, 1954, 1966; Freire, 1993; Green, 1992). Post-national conceptualizations prompted Delanty to ask, “How can the idea of community be made relevant to post-national citizenship” (Delanty, 1998)?

Delanty notes that many discussions on post-national citizenship lack accuracy in their conceptualizations of citizenship and benefit distribution. Delanty suggests the rights and responsibilities that are tied to citizenship are also bound to membership, which is developed more locally and substantively. Again, membership is developed through real exchanges with people. In this sense, rights and responsibilities are situated in the context of actual community spaces. Recommending a universal system of benefits implicitly suggests that nation-states are not distributing benefits based on human rights, nor do they acknowledge other membership statuses. As we have seen, K-12 benefits are granted to various residents in the U.S. partially based on human rights. In addition, community and citizenship matters. Joppke writes,

“[P]ostnational membership argument is premised on a colossus of ‘national citizenship’ that never was. Yasemin Soysal thinks that in the old nation-states ‘national belonging constitutes the source of rights and duties of individual’. This is a fiction...civil and social rights have never been dependent on citizenship. Instead, modern constitutions...have conceived of civil and social rights as rights of the person residing in the territory of the state, irrespective of her citizenship status” (Joppke, 1998, p. 271).

Joppke goes on to say,

“Later on, when states took on welfare functions, civil rights were accompanied by social rights, which were likewise not premised on citizenship, but on residence and labour-market participation...[T]here are two civil rights generally not extended to persons, but reserved to citizens: residence and free movement in the state’s territory. The dramatic moment in the evolution of migrant rights was the decoupling of resident and free-movement rights from citizenship...[T]his was not a postnational moment driven by abstract human-rights considerations. Instead, it was a crypto-national movement that equated long-term residency with de facto membership in the national community” (Joppke, 1998, p. 272).

Delanty adds,

“The idea of membership of a political community suggests the salience of identity and participation. But the question of community, which suggests proximity, unity and place, is a complex one and can undermine as much as support citizenship (Delanty, 1998, p. 34).

Delanty encourages theorists to get out of dichotomous discussions around global and national ideas of citizenship.

“A crucial challenge today is to overcome this dualism of community versus society, tradition versus modernity. This is particularly urgent since we are witnessing today the return of community in the context of postmodern political culture in order to understand the implication of this development we shall have to rethink radically our understanding of community in order to resist the fragmentation of the social” (Delanty, 1998, p. 34).

I believe that Joppke and Delanty would say that the distribution of rights based upon membership status is a complex issue that must be dealt with in specific geopolitical contexts. While some broad human standards may be established, societies have and will struggle to incorporate human rights in the expansion of citizenship. This study pulls contextual factors by examining what stakeholders believe membership should entail in regards to the distribution of educational benefits.

While the current section addressed the opposing conceptualizations of membership, a discussion on the *fair* distribution of membership is still in order. In addition, larger questions of fairness brought forth in this section include: What fundamental rights do people carry regardless of citizenship status? How are countries responsible for distributing social goods? And, how should membership be distributed? The following sub-section will respond to these important ethical questions and inform readers of the paradigm or tradition that informs this study.

Justice Framework

On what basis should principles be made on the just distribution of membership and educational benefits? What will inform this study of what is fair and unjust? In order to examine the just distribution of goods – namely membership and educational benefits – a system of justice must be explicated. This dissertation uses John Rawls' ideas of justice as the theoretical framework to arbitrate issues of fairness throughout the study.

No philosophical system of justice is perfect. Making reference to the political philosophy community, Rawls proclaims that political thought has not erected a group of preeminent ideas on how democracies should assemble its institutions and distribute its

goods (Rawls, 1993). Philosophers on democratic thought are divided on how values of liberty and equality should manifest themselves in the basic rights of citizens so that those citizens can realize both liberty and equality. Rawls did not bring complete accord; however, his ideas are far reaching and considered the most comprehensive (Blocker & Smith, 1980). Rawls' *justice as fairness* attempts to provide a framework that institutions within a democracy can use to actualize the values of liberty and equality. These ideas are prominently featured in his works *A Theory of Justice* (1972) and *Political Liberalism* (1993).

The Liberal Paradigm

As the title, *Political Liberalism*, suggests, Rawls' ideas fall within political and philosophical traditions of liberalism under which the value of liberty serves as the nucleus for this spectrum of political and philosophical ideas. The liberal tradition provides this study with a "basic set of beliefs that guide its actions" (Denzin & Lincoln, 2000, p. 157).⁹ This study does not spend a great deal of attention on liberalism as a mode of thought. However, a basic understanding of liberalism helps illuminate central assumptions embedded within Rawlsian theory and this study. Generally, liberalism can be understood as both a political theory and philosophy (G. Gaus & Courtland, 2003). The following subsection provides a brief description of both.

Liberalism can be understood as a political theory that primarily deals with political authority, law, and governance. This family of ideas can be traced to philosophers Kant and Rousseau. However, Mills, Dworkin, Rawls, and Raz are also influential in shaping this mode of thought (G. Gaus & Courtland, 2003). These

⁹ In this regard it can be seen as the study's paradigm as defined by Denzin and Lincoln (Denzin & Lincoln, 2000, p. 157).

theorists examined the role of governance structures in relation to the natural human condition. Within the body of work, there are certain assumptions about liberty and equality and the role of government in regards to the natural human condition or humans in their perfect state.

Liberal political theory assumes that individuals in their perfect state will act “freely” in the absence of dependence and coercion. Individuals are also considered equals; there are no natural hierarchies or aristocracies. There are also natural rights afforded to all persons; everyone has the right to their own conceptualization of the good life. Therefore, systems of governance must facilitate equality and the human penchant for freedom. Gaus identified the *Fundamental Liberal Principle* which presupposes individual freedom as basic and essential; therefore, burdens of any rationalization that limits individual freedom must fall squarely upon those who wish to sanction those freedoms (G. F. Gaus, 1996, p. 162). Under a liberal political framework, the primary task of governments is to protect the equal liberties of its members.

Liberalism is also a philosophy in that it “attempts to think speculatively, reflectively, and systematically about the universe and the human relationship to that universe” (Guttek, 1997, p. 2). Philosophy deals with metaphysics, the study of the nature of ultimate reality; epistemology, the theory of knowing and knowledge; axiology, value theory that prescribes what is good and right conduct; ethics, the study of moral values and conduct; aesthetics, the study of values in the realm of beauty and art; and logic, the study of rules or patterns of correct and valid thinking. Liberalism is also a political philosophy steeped in axiology, ethics, and logic.

“This is not just a theory about politics: it is a substantive, perfectionist, moral theory about the good. And, on this view, the right thing to do is to promote development, and only a regime securing each individual extensive liberty can accomplish this. This moral ideal of human perfection and development dominated liberal thinking in the latter part of the nineteenth, and for most of the twentieth century: not only Mill, but T.H. Green, L.T. Hobhouse, Bernard Bosanquet, John Dewey and even John Rawls show allegiance to variants of this perfectionist ethic and the claim that it provides the foundation for a regime of liberal rights” (G. Gaus & Courtland, 2003).

Many people shy away from treating liberalism as a comprehensive philosophy and would rather view it as a political doctrine (G. Gaus & Courtland, 2003; G. F. Gaus, 1996). One such author, John Rawls, organizes a ‘certain family of ideas,’ which forms a full political theory for constitutional democracies. Rawls’ *Theory of Justice* provides a philosophical foundation for the construction of a fair system of social cooperation between and among free and equal persons with distinct conceptions of the good life. Rawls’ proposes a theoretical system in which rational and reasonable people with conflicting values can coexist by way of shared beliefs of justice. In other words, Rawls developed a theory on how free and equal citizens of irreconcilable constitutions can live cooperatively through commonly held beliefs about justice as a freestanding arbiter. Rawls can help this study by providing a framework to examine the just distribution of membership and benefits.

To come to his theory, Rawls addressed two questions, which led to the formation of his *theory of justice*. First, Rawls asked, “[W]hat is the most appropriate conception of

justice for specifying the fair terms of social cooperation between citizens regarded as free and equal, and as fully cooperating members of society over a complete life, from one generation to the next?” (Rawls, 1993, p. 3). Realizing the conflicts that naturally occur as a result of diversity with a democracy, Rawls developed a set of ideas that unravel how cooperation can exist. Based on the diversity of individuals’ conceptualization of what is good and the irreconcilability of their constitutions, Rawls asked the second question of “[W]hat are the grounds of toleration so understood and given the fact of reasonable pluralism as the inevitable outcome of free institutions?” (Rawls, 1993, p. 4).

In the tradition of Hobbes, Lock, and Rousseau, Rawls conducts a “device of representation” (something more known as a thought experiment) as a means to get to a social agreement or overarching consensus of what the basis for social order should be. Rawls posits that the only way people can be fair in creating this foundation for justice in society is to place them in the “original position” behind a “veil of ignorance.” He argues that if people are unaware of their potential position in society that they will choose rational principles of justice.

Rawls argues that rational persons in the original position behind a veil of ignorance will include two principles that can serve as foundation for democratic institutions. Rawls’ notion of justice as fairness is comprised of two principles (Rawls, 1993, p. 4):

- a. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all;

and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.

- b. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair quality of opportunity and second, they are to be to the greatest benefit of the least advantage members of society.

Considering the principles that comprise Rawls theory, the first takes precedent over the second. However, liberal notions of basic rights and responsibilities provide a backdrop for the two principles. Rawls states that the two principles may be “preceded by a lexically prior principle requiring that citizens’ basic needs be met” (Rawls, 1993, p. 7). Rawls is referring to the basic tenets of liberalism, which espouses that every *citizen* understands and be able to exercise their natural rights and abilities.

Rawls developed his conception of justice for citizens and not necessarily for non-citizens. Walzer critiqued Rawls for only naming citizens as the subject of his theory. In regards to Rawls use of the term “citizen” throughout his theory, Walzer states, “We assume a fixed population, and so we miss the first and most important distributive question: How is that group constituted”” (Walzer, 1983 p. 31). In other words, justice should not only consider citizens, it must consider people in general. However, many of the “equal, basic rights and liberties” that Rawls identifies are conceived as basic human rights. Rawls states,

Since we start within the tradition of democratic thought, we also think of citizens as free and equal persons. The basic idea is that in virtue of their two moral powers (a capacity for a sense of justice and for a conception of the good) and the

powers of reason (of judgment, thought, and inference connected with these powers), persons are free. Their having these powers to the requisite minimum degree to be fully cooperative *members* [emphasis added] of society makes persons equal” (Rawls, 1993, p. 19).

While Rawls named citizens in his theory, he also connoted a broader idea of citizens, which probably includes free and equal beings and members of varying citizenship statuses. A major motivation for studying membership comes from the uncertainty of undocumented immigrants as members. Under these premises, one can begin to see how Rawls theory of justice can serve as a framework for examining whether or not undocumented immigrants should receive financial aid. Under Rawls’ framework, the study is forced to consider citizenship and educational benefits as social goods that free and equal *people* can claim if offered by the political community. At least two problems may exist on this front. First, do undocumented immigrants have a legitimate claim for citizenship? In other words, are certain undocumented immigrant wrongly denied their equal claim for citizenship. Second, if certain higher education benefits are exclusively reserved for citizens, is a denial of citizenship disabling undocumented immigrants’ ability to obtain certain basic rights? In *Plyler*, the Court clarified that a right to an education can be considered basic because it enables one to pursue life, liberty and happiness.

So it is under the Rawlsian sky that this study takes place. While it is not an aim of the study to ask, what would Rawls do; his theory of justice serves as the backdrop for resolving issues of distributive justice. In addition, I borrow and adapt many of the ideas

and virtues encompassed in Rawls' theory, particularly the ideas of the original position and the veil of ignorance.

Rawls knew that so many of our conceptualizations of justice are tinted with culture, politics, religion, and other doctrines that often are irreconcilable in the same political space. Therefore, Rawls' attempted to disarm these sociopolitical/cultural biases in trying to come up with a rational conceptualization of justice. Methodologically speaking, Rawls sought to get at peoples' rational, intuitive beliefs about what is a just means of distributing communally determined goods. Rawls' *original position* and *veil of ignorance* was the methodological device used to achieve his aims.

“Rawls' original position is a hypothetical situation in which rational calculators, acting as agents or trustees for the interests of concrete individuals, are pictured as choosing those principles of social relations under which their principles would do best. Crudely, the rational calculators do not know facts about their principles which would be morally irrelevant to the choice of principles of justice.”(D'Agostino, 2003).

Rawls conceptualized that if people were hypothetically placed in a situation of otherness (original position) in which they could not have access to their personal sociopolitical, cultural, and economic backgrounds (behind a veil of ignorance), they would make rational choices about justice.

Similarly, I am burdened by ideology, political and economic agendas, as well as personal biases. In a community filled with members and non-members, republicans and democrats, rich and poor, etc., how can a study get at peoples' basic ideas about membership? The methodological and analytic goals of this study differ significantly

from Rawls in that I hope to garner information from actual stakeholders on the issue of membership. Rawls' thought experiment was just that. Using my case as an example, one could ask a stakeholder a Rawlsian original position question like, what type of law would you create if you were an immigrant? While I could ask this question in an interview session, I don't think I would get an unbiased response in the same sense Rawls sought. However, I can learn from his thinking around getting at basic beliefs and attitudes about membership. For instance, as an attempt to get fair and intuitive beliefs about membership, I asked two of the same questions to the range of stakeholders involved in my case: *Do you feel like you're a part of an American community? Why do you think that?* I ask this question because I believe it gets at what people feel membership is without removing one's moral doctrine of that belief. Also, it attempts to minimize contentious belief systems that are inherent in the interviewee. Affirmative and negative responses to the question identified people's basic ideas around membership. From these responses I lifted basic ideas on membership as well as other information that can that be used to generate a framework for membership. I elaborate on my methods in the following *Research Approach* Chapter.

Towards a Theoretical Framework of Membership

This study seeks to investigate factors of membership for purposes of constructing a framework, which can be used in moral and ethical debates of undocumented immigrant instate tuition benefits. It is hoped that the concepts that construct this framework will bring to order an appropriate conceptualization of membership. A comprehensive framework of any sort must go through a series of tests and/or be informed by a sufficient number of cases that can substantiate the phenomenon (Denzin

& Lincoln, 2000). In other words, a framework developed from just one case may be short-sided or naïve. Still, the principles or constructs created by this study can serve as a foundation for a future framework of membership.

The dangers of creating a theoretical framework parallel those of creating a theory of citizenship. Kymlicka and Norman state,

“First, the scope of a ‘theory of citizenship’ is potentially limitless-almost every problem in political philosophy involves relations among citizens or between citizens and the state...The second danger for a theory of citizenship arises because there are two different concepts which are sometimes conflated in these discussions: citizenship-as-legal-status, that is, full membership in a particular political community; and citizenship-as-desirable-activity, where the extent and quality of one’s citizenship is a function of one’s participation in that community” (Kymlicka & Norman, 1994).

Arriving to a set of questions that can measure membership is riddled with the same dangers. First, membership encompasses a seemingly limitless array of behaviors that entail persons’ commitment to divide, exchange and share resources for the benefit of the community. However, the second issue of legal versus desirable activity is less complicated because this dissertation is looking at the extent of one’s participation in a community and its relationship to membership. The proposed framework should respond to the question, what comprises membership?

Prior examples that examine the composition of membership provide a general sense of the type of behaviors that guides my investigation. While feedback from stakeholders is important, it is not the only thinking around membership.

Communitarians have asked similar questions that search for virtues of citizenship (Galston, 1991). If citizenship is the ultimate form of membership in the U.S., then virtues that make a person a good citizen may inform us of what it generally means to be a good member of society (Stone, 1997).¹⁰

Galston places membership virtues into four categories: (1) general virtues: courage, law-abidingness, loyalty; (2) social virtues: independence, open-mindedness; (3) economic virtues: work ethic, capacity to delay self gratification, adaptability to economic and technological change; and (4) political virtues: capacity to discern and respect the rights of others, willingness to demand only what can be paid for, ability to evaluate the performance of those in office, willingness to engage in public discourse (Galston, 1991).

Galston's work is limited in that he categorized virtues as opposed to behaviors. One might say he is categorizing qualities of excellence rather than basic behaviors of membership. However, I do believe that Galston would agree that a study that examines membership behavior should at least include questions that get at social behavior, loyalty, economic investment, work ethic, adaptability, and general knowledge of political processes. Galston's categories seem to coincide with the requirements the Bureau of Immigration and Naturalization places on potential citizens.

The Bureau has four requirements of citizenship that can be used as markers or indicators of behaviors that comprise membership. U.S. naturalization requirements that are published in Immigration and Naturalization Service's "A Guide to Naturalization"

¹⁰ I use Robert Holmes definition of virtue, "Qualities that make for excellence we call virtues. These may include natural qualities such as strength, speed, or intelligence; acquired qualities such as expertise at chess or accomplishment at playing the trombone; qualities of temperament such as a good disposition or a sense of humor; religious qualities such as faith or piety; or qualities of character such as benevolence, kindness, perseverance, courage, or wisdom" (Holmes, 1998, p. 33).

may be too specific in that they are precise rules that one must accomplish to become a citizen of the United States (U. S. D. o. J. I. a. N. Service, 2000). While we can garner important behaviors that the U.S. government considers as facilitating citizenship, relying solely on these behaviors may miss actions that stakeholders deem as important but are not codified into law. Still, using examples provide a general sense of the type of behaviors and beliefs a framework on membership may entail. I consequently adapted many of my interview questions from the Guide to Naturalization.

Categories in “A Guide to Naturalization” include: physical presence in the United States, good moral character, knowledge of English and civics, as well as an attachment to the Constitution. In addition, the naturalization process in the U.S. inquires about permanent residents’ employment and service activity while present in the country. The criteria codified by Galston and the Bureau points to six general areas: time or physical presence in the U.S., allegiance to the country, belief in core community values (Constitution), economic and social investments, moral character, and cultural awareness (language, culture). Galston, the Bureau of Immigration and Naturalization, and the aforementioned literature provide a range of issues and questions that one should consider when constructing a framework for membership and a series of interview questions. To summarize, I will highlight some of the issues and questions this study must deal with in order pose a membership argument to the question, should undocumented immigrants receive financial aid.

Summary of Literature Review

Many different themes and questions emerged from the literature review. Again, the review revealed underlying assumptions behind the research question, presented

previous knowledge on the subject, and identified gaps in the literature. For instance, the struggle between states' rights to issue educational benefits are currently at odds with a federal policy that seeks to limit those rights. Arguments for or against undocumented immigrant benefits should deal with this tension. In all, I categorized five contentious areas that I believe hinge upon society's expectations of membership. The five areas include the *distribution of individual and citizen rights, membership development, limited resources, discrimination, and state rights versus national goals*. I believe that conceptualizing and building a framework membership will help deal with many of the questions that were brought forth in the literature review.

I believe questions about the distribution of individual rights to non-citizens and its impact upon citizen rights can be more easily dealt with if we know what it means to be a member of society. Questions around individual versus citizen rights include: What fundamental rights do people carry regardless of citizenship status? What is the responsibility for countries to issue social (higher educational) goods? How should membership be distributed? There are many ways to react to these questions, but this study responds from the perspective of membership.

Questions involving *membership development* include: Does the nature of the community facilitate a type of membership that is not acknowledged by the United States? construction of citizenship? Does the nature of the community facilitate a type of membership that is not acknowledged by its laws involving higher education benefits?

Limited resource arguments constantly surfaced. Questions in this area need to be addressed. The membership framework should be able to deal with questions raised in this review, which include: Does the denial of financial aid eligibility make a class of

persons stateless and vulnerable to essential goods needed in order to thrive in society and for society to thrive? Will providing benefits to non-citizens weaken or strengthen the country's ability to provide for its official members? Would advancing benefits to undocumented immigrants create a system too open for us to control, administer, or pay for?

Issues of *discrimination* arose in the review. The study must deal with the questions of: Are we more likely to grant or deny educational benefits to some populations than to others? Does denying or awarding educational benefits to undocumented immigrants promote or discourage democratic values like unity? Likewise, does it promote or discourage practices like discrimination and social stratification, which are harmful to democracies?

The issue of *state rights versus national goals* also emerged as a consistent tension. Questions in this area include: Does the denial of such benefits undercut or support the role of education's in facilitating certain goals of the state? How does immigrant participation in higher education factor in the state's general investment in education?

In addition, I must investigate membership behaviors identified by Galston and the Bureau of Citizenship and Immigration Services: time or physical presence in the U.S., allegiance to the country, belief in core community values (Constitution), economic and social investments, moral character, and cultural awareness (language, culture). All of the aforementioned literature and questions provide a range of issues that one should consider when constructing a framework for membership and a response to the research question, should the children of undocumented immigrants receive instate tuition?

Research Approach

There are multiple methodological approaches that can be used to collect information about our intuitions and beliefs with the aim of forming a conception and framework of membership. These approaches run the range of qualitative and quantitative analyses. I enclose the policy issue regarding undocumented immigrants as a philosophical and moral problem (We have inconsistent conceptualizations of membership in two important education policies). Theorists examine concepts of philosophy, ethics and morality using both linear and non-linear approaches (Daly, Cobb, & Cobb, 1989; Etzioni, 1995b, 1996; Meeker-Lowry, 1995; Soltan & Elkin, 1996). These include methods commonly used in theology, cultural studies, philosophy, economics, environmental studies and politics.

Ethical, political and economic models generally shape epistemological approaches in examining moral problems in political philosophy (Daly et al., 1989; Soltan & Elkin, 1996). Political models generally examine deliberative processes or the allocation of virtues within a society (Soltan & Elkin, 1996). Economic models typically deal with the optimization of resources and interests or the market feasibility of decisions (Daly et al., 1989). Ethical models generally examine virtues of either liberty and order, or they focus on broad conceptualizations of justice (Etzioni, 1995a, 1995b, 1996; Walzer, 1983). These models typically are qualitative in scope in that they are primarily concerned with logics, induction, deduction and ethics. This dissertation casts the primary research question as a philosophical or moral issue. Many theorists use qualitative/interpretative approaches to answer philosophical and moral questions and

feel that these methods are the most appropriate means to do so (Denzin & Lincoln, 2000; Etzioni, 1995a, 1995b, 1996; Stake, 1995; Walzer, 1983).

Philosophical methods have much to do with clarifying meaning, developing concepts, establishing frames of reference and in general providing the intellectual tools for the thought and observation involved in answering substantive questions (Beck, 1974). These activities are intuitive in nature and demand rational argument and evidence. They require a deep understanding of the subject at hand and an organized system of logic that is explicated by the researcher. This study aims to accomplish all of the aforementioned goals. Its completion should provide readers with a “road map” for understanding membership.

“Mapping” the logic of discourse, constructs, ideas and beliefs is a primary means of clarification and classification. Philosophical analyses should help make plain what the fundamental issues are through the arguments and propositions presented (Gribble, 1969). Therefore, assessments of philosophical analyses place premiums on the quality of the researcher’s logic.

Philosophical methods are also concerned with intellectual puzzles or thought experiments as in the case of John Rawls. These puzzles help achieve the goals of clarifying meaning and developing concepts. Another feature associated with philosophical methods is the preoccupation with the study of language – terms, sentences, speech etc. For instance, the research goals are in part a clarification of language. What does it mean to be a *member*? This research is more concerned with the substantive meaning of membership rather than its linguistic properties.

In addition, philosophy is considered a helping discipline. Not only do other disciplines use philosophy to help answer various questions, philosophy uses data from other disciplines in its efforts to clarify meaning and develop concepts. Again, philosophical analyses demand a great deal of evidence. This study incorporates empirical data from sociology, demography, and education in order to substantiate and bolster philosophical claims that are made. Outside data help make clear the elements of a certain problem and implications of a particular theory. Outside data can also reveal observations that must be made in order to establish a particular proposition (Beck, 1974). This thesis integrates methods of qualitative inquiry to garner and generate empirical data that can be used to meet the study's goals.

The goal of this analysis is not to discover new fact. I do not create “membership” per se, but I arrange what is known about membership in a way that is appropriate to the case. The purpose of the thesis is to formulate a conception of membership and apply it to the case of tuition assistance for undocumented students in higher education. More specifically, it can be said that I am conceptualizing membership so that policymaker will be better equipped to deal with the five tensions of *distribution of individual and citizen rights, membership development, limited resources, discrimination, and state rights versus national goals*.

Moral Philosophy Meets Case Study

Rawls had a practical goal of achieving “reasonably reliable agreement in judgment to provide a common conception of justice” (Rawls, 1971, p. 44). Similarly, a major methodological goal of this study is to provide a conception of membership. As I claimed in the preceding chapters, policymakers and legislatures seem to conceptualize

membership in different ways. Rawls in *Theory of Justice* sees that differing conceptualizations of a supposedly comparable idea make it difficult to adjudicate claims of distributive justice. If people are operating with different premises for allegedly the same concept, then disagreements are to be expected. If people generally agree that *members* of a political community should receive benefits but some incorporate only citizenship into their construction while others include time spent in a state, then we are likely to see disagreements. These disagreements seemingly manifest in policy. Rawls clarified the nature of these differences in his search for a theory of justice. People will differ correspondingly to the conflicting principles, “which account for their convictions” (Rawls, 1971, p. 45). In other words, when we look closer at underlying meanings of our constructions of membership, we may see differences, similarities, and everything in between.

What are the principles that make up our constructions of membership? As I came to understand the conditions that surrounded the primary research question, I found a need to identify principles that make up our conception(s) of membership. I was motivated to test how we conceive membership for two reasons. First, it helps clarify our moral intuitions about who is and who isn’t a member. By interviewing the range of stakeholders in the case, I can see if divergent notions of membership exist along lines of citizenship status, political ideology, or other sociopolitical markers. The first phase of the study is aimed at identifying principles that construct our notions of membership. After these basic principles of membership are identified we can make determinations as to whether undocumented students meet our expectations of membership. Moreover, once a conception is developed I can see if our conceptions of membership are consistent

with the principles of a liberal democracy. In other words, are conceptions of membership just according to our basic principles of equality and fairness?

Some Remarks About Moral Theory

In developing his theory of justice, Rawls provides background information as to how people conceptualize various ideas. He shows how people come to make meaning of moral conceptions like justice. He states that all persons of requisite intellectual capacity develop a sense of justice. However, he notes that we often need to formulate crude concepts like justice (in this study - membership) with principles that comprise our beliefs. Rawls makes the claim that different social doctrines can produce different conceptualizations of justice. These conceptualizations are constructed by a set of principles that are uniquely situated according to one's social doctrine. Rawls explains that we are better equipped to make reasonable judgments or determinations if our everyday understandings of the concept are in alignment with its corresponding principles. He also suggests that the application of various concepts are often inconsistent with the very principles we believe they support.

Likewise this study is about locating principles of membership so that we can make better decisions in regards to the distribution of higher education benefits. This particular section analyzes Rawls' "Remarks about Moral Theory" to explicate his rationale and method of distilling principles of moral concepts (Rawls, 1971). His work is used as a methodological model for a major component of this project.

Rawls states that "one may think of moral philosophy as the attempt to describe our moral capacity; or in the present case, one may regard a theory of justice as describing our sense of justice" (Rawls, 1971, p. 46). Rawls is saying that one function

of moral philosophy is to identify how we come to learn a moral concept or how we develop a sense of justice. He notes, “There is no reason to assume that our sense of justice can be adequately characterized by familiar common sense precepts, or derived from the more obvious learning principles” (Rawls, 1971, p. 47). He comments that describing our sense is further complicated if one is to formulate a conception with a set of principles that comprise our most basic notions of justice. For Rawls, a conception of justice characterizes our moral sensibilities (of justice), which are in alignment with our shared understandings of its basic principles. Rawls goes on to say that we do not know our sense of justice until “we know in some systematic way covering a wide range of cases what these principles are” (Rawls, 1971, p. 46). For this study, I have made a case that we need a better understanding of membership. Instead of justice, this study seeks to conceptualize membership by its principles.

Rawls notes that moral philosophy espouses that a change in a current condition can occur once our basic principles are brought to light. This study assumes that policy and social conflicts in the debate of undocumented immigrant higher education benefits can change, and an illumination of membership principles can be an impetus for corrective action. How do we get at our basic principles? By basic I mean how do we get at our “unbiased,” “rational” beliefs of membership. I don’t think achieving a completely unbiased belief is possible. Indeed, this can be considered a limitation. However, I do think attempts can and must be made to minimize the influence of one’s personal, political, and social doctrines on the generation of rational principles of membership. Earlier in the paper, I described how Rawls used thought experiments of the original position and the veil of ignorance as a way to deal with the biases that

prevent us from revealing rational beliefs about justice. This study uses two interview questions as a way to distill basic principles of membership and deal with bias.

- Do you feel like you're a part of an American community?
- Why do you think that?

Rawls applies a hypothetical situation or thought experiment to deal with issues of bias. He uses devices of the "original position" and "veil of ignorance" to explain how people would come to the rational principles that comprise his theory of justice.

Imaginary devices create interesting ways in which we can think about a particular idea.

Rawls' classic thought experiment taught us how a hypothetical person would come to

Rawls' principles of justice. This study employs case study techniques to generate

stakeholders' rational beliefs of membership. As noted earlier, Rawls is not totally

transferable. I must deal with methodological concerns of working with human beings.

This study organizes empirical evidence from human subjects to help me conceptualize

membership. However, how do the primary interview questions minimize biases that are

inherent in socialpolitical beings?

The issue of undocumented immigrant benefits is politically charged. Therefore,

I wanted to minimize how respondents' sociopolitical identities answer questions about

someone else's membership standing. I chose the aforementioned questions because I

thought responses would reflect respondents' perspectives of their own membership. An

affirmative or negative response to the first question and follow up of the second suggest

factors that individuals consider as requirements for their own membership.

How does one filter the enormous amounts of information, which constitutes the knowledge needed to properly analyze, clarify, and organize principles of justice?

“If the analytic philosopher is not engaged in systematic inquiry, how is he qualified to act as a critic, clarifier, and intellectual therapist? Surely native skill alone will not do; he must have a body of knowledge on the basis of which he criticizes and clarifies” (Beck, 1974, p. 280).

Fortunately, philosophy can be used in conjunction with other philosophical and empirically based methods of inquiry. Because of the research question’s focus and apparent concern for information deluge, I needed to find a technique that helped concentrate my philosophical analysis. As a result, I borrowed a technique that helped me get the body of knowledge I needed, and at the same time, kept the philosophical aims of the study in tact. By definition, case study is a perfect fit.

Defining Case Study

The study intends develop conceptual categories to illustrate, support, or challenge theoretical assumption held prior to data gathering (Merriam, 1998, p. 38). Again, my research interests stem from conceptual conflicts of membership inherent in divergent educational policies. Robert Stake’s approach to case study is built particularly for aims similar to this study. First, Stake believes that qualitative casework is observational like other quantitative and qualitative approaches but is primarily reflective or interpretive. By interpretive, Stake believes that the researcher is “committed to pondering the impressions, deliberating recollections and records – but not necessarily following the conceptualizations of theorists, actors, or audiences” (Stake, 1998, p. 99). Under Stake’s model the researcher’s primary role is to interpret meaning locally (at the level of the subject) as well as to find and pull together overarching constructs that catalog the behaviors being studied.

Case study is an exploration of units within a “bounded system” (Creswell, 1998). Often researchers refer to case study as a methodology (Creswell, 1998, Yin, find year). However, considering case study as a method is somewhat deceiving. Robert Stake (2000) reminds qualitative researchers that case study is not a methodological choice. It is a “choice of what is to be studied” (Denzin & Lincoln, 2000). Researchers can incorporate a number of methods to study the case or cases. I use techniques affiliated with case study – interviewing, literature review, and document analysis – to garner stakeholders basic, intuitive beliefs of membership. Legislators, government officials, and higher education administrators will be able to use these principles developed from the analysis when considering questions regarding undocumented immigrant access to financial aid. Moreover, solving for membership will help deal with the identified five areas of tension in the case including the *distribution of individual and citizen rights, membership development, limited resources, discrimination, and state rights versus national goals*.

I am primarily interested in using case study techniques to limit the immeasurable amount of information on the issue and to gain insight into our conceptualizations of membership. So what is the bounded system of my philosophical analysis? Because of its demographics, political influence in the union, laws and openness to talk about the issue of undocumented immigrant benefits, Texas makes for an ideal place to bind my study. In addition, there are pressing legal and ethical considerations in regards to student selection that contributed to the decision to conceptualize membership in the context of Texas. This study focuses on policies and actors affiliated with the passage of

Texas House bill 1403, a state law that makes undocumented residents eligible for financial aid.

“Notwithstanding any other provision of this subchapter, an individual shall be classified as a Texas resident until the individual establishes a residence outside this state; if the individual resided with the individual’s parent, guardian, or conservator while attending a public or private high school in this state and”(House Bill 1403, 2001):

- 1) Graduated from a public or private high school and received the equivalent of a high school diploma.
- 2) Resided in Texas for at least three years from the date the person received the equivalent of a high school diploma.
- 3) Matriculates in a institution of higher learning not earlier than the 2001 fall semester.
- 4) Provides to the institution an affidavit stating that the individual will file an application to become a permanent resident at the earliest opportunity.

Students who meet these requirements are considered residents of the state of Texas and can become eligible for instate tuition.

The student subjects in question in this study are susceptible to deportation. Therefore, the identities of the respondents must be held with the highest confidence (see ethical considerations). To help reduce the risks involved in locating undocumented students, I narrowed my case selection to states that have current legislation that permits some level of aid to undocumented student. Texas makes undocumented students who

are residents of their respective states eligible for instate tuition through House Bill 1403. In Texas, students who attend college and receive some form of aid are already located and identified by state. These students acknowledge their statuses, and their acknowledgements are recognized by respective state agencies. These undocumented students do not have deportation immunity. State legislation does not supercede federal immigration laws. However, I am not putting students in further jeopardy by locating undocumented students currently in postsecondary institutions.

Data Collection and Sampling

This study's data is gathered from both non-human and human sources. It draws upon philosophical works on membership and benefits through literature review and document analysis. The study seeks other forms of information pertinent to Texas House Bill 1403 such as legislative and legal policies as well as quantitative and qualitative studies from demography, sociology, survey research, economics, political science, and education. In addition, memos, legislative briefs, and various correspondences are obtained. If observations could not be direct, then I obtained interpretive data through interviewing.

Because of access issues and immeasurable ways to explore the topic, only legislators, higher education officials, undocumented students, and the other stakeholders involved in Texas House Bill 1403 were considered. Many of my non-student interviewees were named on the legislation at various stages of its progression. I also reviewed local newspapers and legislative newsletters to obtain names of interviewees.

Of the many types of undocumented students, I interviewed students of parents who entered the country illegally without any formal documentation. I did not consider

children of those parents whose documentation expired. I developed a pool of students from various public agencies that interact with undocumented immigrants. I made verbal contacts with these organizations, presented my human subjects approval form, and the organizations subsequently proceeded to direct students to contact me by phone or email. I relied upon staff members within these organizations for subject recruitment. I did not think undocumented students would have been receptive to attend a research interview session through communication with a stranger. Because of the sensitive nature of the topic, I purposefully omitted the names of organizations that placed me in contact with students.

I also interviewed national stakeholders who displayed an interest in the Texas case. All of the national stakeholders work as staff members at various associations or think tanks in the D.C. metropolitan area. These interest groups have produced position papers on the topic, which were acquired on the world wide web. I interviewed those individuals who are working on the subject of undocumented immigrant benefit distribution.

The human subjects involved in this study included: 21 undocumented students from four-year and community colleges in the Houston area; 17 legislators, policymakers and staff members in Texas state government including state house representatives and staff members, members of the Texas Higher Education Coordinating Board, as well as a former judiciary officer and principal; 7 representatives of various interest groups including the Federation of American Immigration Reform; National Center for Immigration Studies, The Urban Institute, Immigration Lawyers Association, Migration Policy Institute, Bureau of Citizenship and Immigration Services (See Appendices A).

I placed interviewees in the three broad categories of *Students*, *Legislative Stakeholders*, and *Interest Groups* to retain the anonymity of the subjects and for organizational purposes. Most student subjects were Mexican nationals (18). Two student subjects emigrated from Guatemala. One came from Honduras. Most of the student respondents reported they were Democrats (15). Some were undecided (5). All students stated their ethnicity was Hispanic, Chicano or Latino. Although the students reported one of the above mentioned ethnic categories on the pre-interview demographic form, most used the terms interchangeably in interview sessions.

The grouping of legislative stakeholders represented three major ethnic groups (Black, Hispanic/Latino, White), reported membership in both parties (10 Democrats and 6 Republicans), and expressed various levels of postsecondary exposure (Bachelors, Jurist Doctorate, Masters). Most are male (12). Their ages ranged from 25 through 59. All legislative stakeholders reported that they are citizens.

I interviewed seven people who worked in various interest groups in the D.C. metropolitan area. Most of the people I interviewed are White males (5). I did not interview any females in this category. Four interest group respondents claimed membership in the Republican Party. All are citizens of the United States. All had some type of postsecondary graduate degree (Jurist Doctorate, Masters, Ph.D.).

Semistructured Interviews

Again, I use data from human subjects to meet the study's aims. Stake posits that researchers' narratives provide readers an opportunity for vicarious experiences (Stake, 1998). The readers are then able to extend their particular position on an issue or subject. Stake's approach to case study is built on the premise that naturalistic, ethnographic case

materials parallels actual experiences, which feeds into the most basic processes of awareness and understanding (Stake, 1998). Stake writes,

“Case study can also be a disciplined force in public policy setting and reflection on human experience. Vicarious experience is an important basis for refining action options and expectations. Formal epistemology needs further development, but somehow people draw from the description of an individual case implications for other cases, not always correctly, but with a confidence shared by people of dissimilar views” (Stake, 1998, p. 104).

Interviews are conducted to collect information that is not necessarily observable (Merriam, 1998). For this study, legislators, policymakers, higher education officials, students and other stakeholders provide types of inside information that theories and policies cannot. Merriam list three types of interviews: highly structured/standardized, semistructured, and unstructured/informal. Highly structured interviews are characterized with predetermined questions and order. Semistructured interviews are guided by a predetermined set of questions but follow-up questions or deviations can occur. Unstructured/informal interviews ask open-ended questions without a predetermined order. While I have a set of predetermined questions (See Appendices B), these questions will help guide a conversation on membership behavior and undocumented immigrant education. Therefore, the semistructured category is the most appropriate.

Two primary questions were asked universally to all the stakeholders in the case. These root questions seek to generate information that gets at people’s rational, intuitive beliefs about who is a member of society or what makes a person a member. Many

follow up questions became a regular part of the interview protocol after some tendencies were established. I explicate these follow-up questions throughout the *findings* chapter.

I also asked questions to various stakeholders related to the five areas of tension, which were identified in the literature review. I catered questions in the interview protocol to meet the standpoint of the stakeholder. Additional questions focused on points of the debate of whether undocumented immigrants should receive financial aid. The interview protocols are split between undocumented students and non-students (see Appendices B). Not all questions in the protocols were asked. The questions were pre-tested with two undocumented students and one administrator in the Migrant Education Program of Pennsylvania. Three one hour-long focus groups were applied to the undocumented students. Individual follow-up interviews were conducted with 17 of the twenty-one students. The interviews for non-student stakeholders were approximately one hour in length. Interview data are audio-taped and transcribed into text.

There are certain associated risks in any study that requires some form of interaction with live subjects. Many risks and ethical considerations immediately come to mind in a study that interviews undocumented immigrants. This study takes all the necessary protections that are highlighted in Merriam (1998), Denzin and Lincoln (2000), and Stake (1995). These protections include: issues of confidentiality, physical safety, proper consent, and proper notification.

Ethical Considerations

Data collection still involves asking sensitive questions around their entry into the country and behaviors while a resident. “A question is sensitive if it raises concerns about disapproval or other consequences (such as legal sanction) for reporting truthfully

or if the question itself is seen as an invasion of privacy” (Tourangeau & Smith, 1996, p. 276). Students may be reluctant to share their experiences because of potential embarrassment emanating from reporting a non-citizen status. In addition, non-response or falsified data could result from perceived legal consequences associated with divulging information that is understood to implicate themselves and/or their families. This study must minimize potential threats to accurate data that are associated with collecting sensitive information. The first threat to accurate data is nonresponse (Tourangeau & Smith, 1996, p. 276). Subjects may not want to answer specific questions or may not want to participate at all. The second potential threat involves reporting error. Subjects may provide false information because of perceived legal consequences associated with participating in the study.

While adherence to professional and academic codes of ethics is always important, the nature of this study makes obedience especially critical. Following the four general principles of ethics precedes any particular techniques that can minimize the threat of nonresponse and inaccurate data. These principles help protect subjects from potentially dangerous practices of the researcher. In addition, these principles guide the researcher away from placing himself or herself in any precarious situations.

First, the principle of *informed consent* states, “that subjects have the right to be informed about the nature and consequences of experiments in which they are involved” (Christians, 2000, p. 138). Only when subjects are fully aware of the potential harms and agree to the conditions of the study can the researcher continue with the investigation. Related to informed consent is the issue of *deception*. “Deliberate misrepresentation is

forbidden (Christians, 2000, p. 139). For this study in particular, deception is neither “ethically justified nor practically necessary” (Christians, 2000, p. 139).

Assurances of *Privacy and confidentiality* protect people’s identities and research locations. While the participants will come primarily from Texas, no specific location will be released. Personal information must be secured and concealed. Information that is made public is protected behind a screen of anonymity. Pseudonyms and disguised locations will be used to depersonalize any data. The use of fake names and places does not corrupt the data. *Accuracy* ensures that the substantive information is reliable and trustworthy. “Fabrications, fraudulent materials, omissions, and contrivances are both nonscientific and unethical” (Christians, 2000, p. 140).

Analyzing Case Study Data

How can I make meaning out of the sums of information generated by the semi-structured interviews, literature review and document analysis? Renata Tesch (1990) categorized the many approaches of case study analysis and placed them into three categories: Interpretational analysis, structural analysis, and reflective analysis. Structural analysis is the practice of analyzing cases for the purpose of categorizing patterns inherent in discourse, text, events, or other phenomenon (Gall, Borg, and Gall, 1996). Inferences are not made from the data. Identifiable tendencies are recorded and coded but no deductions are based on those patterns. Reflective analysis is unique in that the researcher depends principally on intuition and judgment. While the other types of case study rely on systematic or prescriptive methods to analyzing data, reflective approaches are introspective, imaginative, and artistic (Gall, Borg, and Gall, 1996).

The range and scope of this dissertation falls into the interpretational analysis category. “Interpretational analysis is the process of examining case study data closely in order to find constructs, themes, and patterns that can be used to describe and explain the phenomenon being studied” (Gall, Borg, and Gall, 1996). Researchers can use cases to locate abstract constructs, which can lead to theory building, or the researcher can use cases in order to test theoretical constructs.

Specifically for data collection, I use coding strategies of case study analysis described by Stake. Coding is the systematic recording of data so that various correspondences can emerge. This includes the direct interpretation of the individual instance and aggregation of instances until something can be said about them as a class (Stake, 1995, p. 74). Direct interpretation involves pulling an idea or instance apart and putting it together again more meaningfully (p. 75). The collection of instances should generate issue-relevant meanings. In both instances, I am concerned with the emergence of meaning. I am searching for patterns or consistencies within certain conditions. Stake calls this consistency correspondence.

For this analysis, I use preexisting categories, which were identified by Galston and the Bureau of Citizenship and Immigration Services: time or physical presence in the U.S. (Residency), allegiance to the country (Allegiance), belief in core community values (Constitution), economic and social investments (Investments), moral character (Law Abidingness) and cultural awareness (Cultural Awareness). I analyze interview transcripts with the intent of extracting instances pertinent to the preexisting categories. From these instances, I look for patterns or consistencies that emerge within the

categories and formed new ones if dominant themes surfaced. I call these dominant themes principles. Together the principles form a construction of membership.

Trustworthiness

Again, the primary purpose of this philosophical analysis is to move towards a conception and framework of membership for policymakers, legislators and higher education officials who are concerned with immigrant education policy. Interpretations from the analysis should produce a logical grouping of theoretical postulates that provide a comprehensive set of conditions that stakeholders should consider when creating policy around undocumented immigrant education. After constructs are constructed and categorized, how will I know they are correct? In general, how do researchers know the interpretations are appropriate? Interpreting data and reporting the findings do not conclude the study. A system of substantiation should be employed to help authenticate the data.

Triangulation is the substantiation of interpretations through tertiary sources (Stake, 1995). This study incorporates a system employed by Denzin (1984, 1989), which demands validation of data sources and the researcher's interpretations of those data sources. When possible, alternative accounts of data source information will be sought. For instance, interviews of teachers, parents, lawyers, school officials, and politicians associated with the case as well as meetings with my research team will help verify data sources and interpretations.

Denzin's system insists that checks be placed on the investigation at various levels. A check that is critical to this study is at the level of interpretation. How would other researchers interpret the data? This type of validation is particularly important

because this dissertation incorporates theories that do not come out of higher education or education literatures. Therefore, concepts and postulates from political philosophy may not translate into a well-ordered system of ideas that answer questions regarding undocumented student education. Subsequently, alternative validation sources may fill certain “holes” that result from bad translation or interpretation. Upon completion, I will take the framework to philosophers in the fields of membership, community, citizenship and immigration to help check the clarity of the membership framework.

In summary, this study frames the primary research question as a philosophical or moral issue and subsequently employs a philosophical approach to answer it. I borrow Rawls’ ideas regarding the aims of moral philosophy. More specifically, the study seeks to conceptualize membership by identify principles that construct it. I used human subjects as well as other sources of data to locate these principles using case study techniques. Philosophical methods have much to do with clarifying meaning, developing concepts, establishing frames of reference, and in general providing the intellectual tools for the thought and observation involved in answering substantive questions. The findings of this analysis should achieve these general aims and provide readers with a map that illustrates the logic used in route to my conceptualization of membership.

Findings

What are the principles that make up our conceptualizations of membership? The chief goal of the *findings* section is to identify and analyze principles that make up stakeholders' conceptions of membership. Rawls suggested that differing conceptualizations of a supposedly comparable idea make it difficult to adjudicate claims of distributive justice. Therefore, an imperative of this section is to examine the heterogeneity of stakeholders' intuitions about membership – the extent to which beliefs of membership are shared. I sought to look at the heterogeneity of stakeholders' intuitions by analyzing differences in their moral intuitions. The section organizes the identified principles in a manner that enables stakeholders and me to respond to the primary research question, should undocumented immigrants receive instate tuition?

The two primary questions of the semistructured interview protocol aimed to get at stakeholders' basic beliefs about membership. Prior to coding the data, I knew some principles were very likely to emerge. This study built upon ideas already identified by the literature (i.e., Galston, U.S. Department of Justice). After completing a few interviews, I developed codes based upon themes that came to view from repeated occurrences in the data analysis. Subsequently, I located new themes and organized them in a framework that could be used to understand the various components of membership. Hereafter, I will refer to these components as principles.

Principles that emerge from the analysis are organized to form a theoretical framework. The study grounds its search for principles based upon Walzer's basic definition of membership. Walzer defined membership as the general sense of the individual and group's commitment to divide, share, and exchange resources firstly

among others who have the same commitment (Walzer, 1983). Principles put forth in this study are organized to provide a theoretical framework that encapsulates members' (as an individual or a group) commitment to divide, share, and exchange resources among official citizens. From this framework, stakeholders should be better equipped to understand the concept of membership in moral and ethical arguments of undocumented immigrant financial aid eligibility. Again, this aim came out of the theoretical tug of war between those who generally base benefit allocation on national models of membership and those who claim that distribution should be based on some other model (residency, human rights). This philosophical analysis takes a few steps back and asks the basic question of what does it mean to be a member of a political community.

In addition to the root questions, I asked supplementary ones to various stakeholders in the case – student and non-student. The additional questions aimed to make clear remarks made as well as to investigate various points of tension, which were identified in the literature review. Some of these data are used in this section to help create a conversation around the principles I identified in the framework. For example, I facilitate a conversation around the first principle of *residency*. The nature of this conversation expresses the tensions of whether or not benefits can be solely based on residency, which helps resolve aspects of the five areas of tension. I do not explicate all of the data used in the dialogue. However, I use it intuitively to help explain why and how the identified principles matter.

As readers will see, the *Findings* section partially addresses the five areas of tension in this debate. *Conclusions* will further address the five areas. My definitive response to the question of should undocumented immigrants receive instate tuition will

appear in the *Conclusions* chapter. Again, this section's primary goal is to locate principles of membership so I may be better equipped to deal with tensions involved in the case. While much can be drawn from this section, *Conclusions* will summarize and outline a response to the primary research question based upon this study's findings and previous literature.

General Findings

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

The general finding that stakeholders embrace common principles of membership has implications in terms of my conclusive statements. Empirically, the study posits a moral based upon stakeholders' common intuitions of membership. In other words, the study generally establishes an evidence-driven account of what we believe membership *should* be. If we believe benefits should broadly be distributed to members, having a common understanding of their definition will make it easier to adjudicate quarrels of distributive justice. I will not have to spend time discussing how to resolve disputes stemming from irreconcilable beliefs of membership. Nor will I have to locate factors that lead to differing conceptualizations or find factors that differing belief systems may not have considered.

The general findings of the shared intuitions lead me to ask if policy conflict (Plyler v. IIRIRA) is a result of stakeholders' inability to act reasonably or rationally in regards to the case. If differing conceptualizations of membership is not the problem, then what is? Future studies may warrant political analyses if the pursuit of power can account for the differences in policy. The conclusion of this study will focus on outlining a rational response to the primary research question that is grounded in a common belief of membership. A framework that outlines our common understanding of membership is necessary if I am to demonstrate a rational response.

Presentation and Organization

The *Findings* chapter of this study is organized by the principles that emerged from the philosophical analysis/case study. The study found the principles of *residency*, *social awareness*, *reciprocation*, *investment*, *identification*, *patriotism*, *destiny*, and *law abidingness* form a philosophical framework of membership that explains what it means to be a member of a political community/nation-state (See Appendices C). The membership principles are not ordered to suggest that fulfillment of one is dependent upon completion of another. A linear or staged conception of membership would require greater structural consistency between the principles than I have proposed. This leads me to believe that membership is a concept that is developed non-linearly. However, later principles of destiny, patriotism and identification are less likely to be realized without a reciprocation, residency, social awareness, and investment. Still, readers will see that it is hard to determine (especially in the case of immigrants) if social awareness precedes destiny. Nonetheless, not one principle can stand alone as a sole criterion for membership. In concert, these principles offer a framework of membership, which can

be used in the case of undocumented immigrant education policy. One can make better sense of the relationships between principles as I explain each in depth.

The principles are also presented in such a way that puts forth an argument for membership. As mentioned earlier, a goal of this philosophical analysis is to put forth a logical explanation of what membership is. Magee describes this as mapping. Again, Magee defines mapping as laying it [logic] out, so to speak, so that a person can make his way about it [the issue] successfully” (Magee, 1971, p. 45). Therefore, the framework is presented in language that ultimately explains what it means to be a member of a political community through conversation about the connections between principles.

Illustrative quotes that were transcribed from the interviews immediately follow each principle heading. The quotes simply help illustrate how some of the principles emerged from the range of data sources. I did not intend for the quotes’ prominent presence at the beginning of each principle to suggest that principles emerged strictly from the interviews.¹¹ However, I attempted to explain how themes emerged from the data immediately after the illustrative quotes. The text also includes other sources that help inform the creation of each principle. Even though I use quotes, the goal of this study is not to highlight the lived experiences of undocumented immigrants or other stakeholders. Readers do however get a glimpse of their lives from the data. Rather, the goal is to provide a framework of membership that will help policymakers understand what it means to be a member of society from the range of players and information involved with the issue.

¹¹ Some principles relied more heavily on interview data than others. I explain the problems associated with data collection in the limitations sections, but many important questions regarding membership cannot be answered because of the inability to quantify aspects of being undocumented.

This section does not solely present abstract concepts or theoretical discussions. I recommend tangible ways to assess behaviors that are associated with each principle at the end of its sub-section. These are policy recommendations. Placing these recommendations at the end of each sub-section seemed to enhance the continuity of the thesis. Legislators, education administrators, and other relevant stakeholders can use these policy recommendations in to enhance existing policies regarding undocumented immigrants.

Principles of Membership

Residency.

Leticia, 19, undocumented student: *I lived here [America] all my life... We represent the colors [Mexican flag], but this is the only place I know...Most of my friends can't remember the last time they were in Mexico.*

Todd, 45, Immigration Lawyer: *It depends on what you're talking about, but this [America] is my home. My great grandfather emigrated from Germany...my family has been here [America] ever since...I've lived in [the same city] all my life.*

In response to the two primary questions, all but two of the respondents reported residency as a reason why they feel or do not feel part of the American community (See Appendices D). More specifically, the range of subjects made statements such as: “I lived here all my life;” “I’m a Texas resident;” “I live here;” “This is my home;” “I live in America;” and “My family has been here since about the depression.” Terms involving residency were the most consistently reported factor among the range of

stakeholders. I did not find any differences along the basis of race/ethnicity, place of birth, citizenship status, education, or political affiliation. Respondents specifically repeatedly used the term “live” without further prodding. The term “resident” was also uttered frequently. Because so many subjects saw living or not living in a space as a rationale for feeling part of the American community, I organized a principle based upon that finding.

Residency is born out of the data, which suggested that stakeholders believe that sustained time in a particular space is a relevant factor in defining membership. Many participants stated that they feel part of the American community because they *live* in the country. This led me to postulate that residing within the borders of a political community or nation-state contributes to one’s sense of membership. More specifically, sustained living in a particular space provides opportunities for cultural and material exchanges, which impact how individuals and groups develop their sense of belonging to a community. In addition, residency facilitates cultural and material exchanges, which in turn, fosters real community recognition of membership. By “real” I do not mean legal acknowledgements of membership, i.e., designations of permanent resident or citizen. Real community recognition of membership is acknowledged *by* social exchange. Exchanges that make for membership are characterized by the next principle of reciprocity, which is explored later in the paper. I believe that residency precedes reciprocity because living within a community makes it possible for the host community to develop a relationship (acknowledged or not) of social exchanges, which contribute to the individual or group’s commitment to divide, share, and exchange resources firstly among others who have the same commitment.

Each principle of membership cannot stand alone as the sole criterion for membership. In the popular media and in policy circles, residency is often argued to be a just rationale for benefit distribution. However, residing in a community does not immediately translate into general membership. In response to the follow-up question, you've lived here all your life and you don't feel part of the American community, can you elaborate, one legislative stakeholder stated, "Living in a place is not enough." To highlight this issue, we can draw upon examples of countries that establish temporary worker agreements of which the host country offers work but grants limited economic, social, and political rights (Hailbronner, Martin, & Motomura, 1997). These arrangements are contractual relationships in which the worker and employer agree to sever the relationship after a specific period of time or after the work has been completed. In these arrangements, guest or temporary workers agree to live in a country for a specific period of time strictly for employment. Employers see the guests as residents but not necessarily as members of the community. At best guest workers are seen as temporary members of society who serve specific roles in that community. Workers maintain their political membership with their originating country and also see themselves as guests.

In general, guestworker relationships are relatively uncontroversial when short term contracts are involved (Rogers, 1997). If both parties honor conditions of the contract, there is no confusion regarding membership. Workers, employers, and host countries literally agree that residence will not translate into membership. Shorter stays inhibit the likelihood that other principles of membership are evoked. In Western Europe for example, a rotational system of migrant labor has been used to harvest crops. Guest

workers come in, perform the assigned duties, are compensated, and return to their country of origin (Rogers, 1997).

While solid in principle, many of these contractual relationships prove to be very difficult to maintain. Employees and employers maintain relationships well beyond what is designated in the contractual agreement. This study theorizes that the more time guest workers spend in a country, the more likely they become aware of social and political structures of the host community, see their work for the community as an investment in membership, adopt the political identities of the host community, and/or more likely to share a sense of destiny with citizens (I will explain these principles later in the paper). Therefore, if interested parties are to remain clear about the nature of guest worker relationships, countries and employers must see that time in a country is positively correlated to other membership principles. Countries that have guest worker relationships must see to the safe return of temporary workers only to offer another contract after workers have returned home for a certain period of time (Rogers, 1997).

As an example, the German government started recruiting foreign workers in the late 1950s (Castles, 1998). The Federal Labour Office (Bundesanstalt für Arbeit, or BfA) recruited within various Mediterranean countries. Employers that acquired foreign labor were required to pay a fee to the BfA, which selected workers, assessed technical skills, provided medical examinations, and conducted background checks. Benefits, recruitment and working conditions were regulated by bilateral agreements between Germany and participating countries. The BfA required workers to have a residence and labor permit. If either of these articles expired or guests breached the terms of the permits, then the BfA deported the workers.

From 1956 to 1973 the number of foreign workers participating in various BfA programs rose from 95,000 to 2.6 million. The swelling of foreign labor rose because of rapid industrial expansion and an increased need for low-skilled labor. The original German policies “conceived migrant workers as temporary labour units, which could be recruited, utilized and sent away again as employers required” (Castles, 1998, p. 71). Even though the BfA discouraged the entry of dependents, it was impossible to prevent family reunion and settlement. This also contributed to a growth in foreign residents. Legally sanctioned workers were often able to convince employers to allow families to enter the country. Soon, employers used family unification as a recruitment incentive. Competition for workers from other countries led to the relaxation of BfA family restrictions. Eventually families stayed beyond the terms of the BfA agreements. Foreign labor lost its mobility and social costs of housing, education and health care could not be avoided.

The case of Bfa highlights how residing in a particular space can lead to sustained living in a community. This is to say that one cannot live a relatively secure life without the host community’s cooperation. Durable residents are durable primarily because they can find work, shelter and education within the borders of the host country. Walzer posits that stranger communities will have a difficult time surviving if they are cut off from communal provisions that are typically reserved for citizens (Walzer, 1983).

In January of 2000, approximately 4.5 of the 7 million undocumented immigrants in the U.S. lived in 5 states: California, Texas, New York, Illinois, and Florida (BCIS, 2003). Texas was second to California in having the largest numerical increases in undocumented immigrants during the 1990s (MPI, 2003). Texas is one of two states to

have an unauthorized immigrant population exceeding 1 million (BCIS, 2003). In Texas, approximately three-fourths (74.1%) of all foreign-born residents come from Latin America (CPPP, 2002). Spanish is the most likely language to be spoken by the majority of immigrants in Texas. In terms of socioeconomic status, the poverty rate of all immigrants in 1997 was more than double of non-Hispanic whites (Fix et al., 2001). However, foreign born residents who have become naturalized have the same poverty rate as native born U.S. citizens (CPPP, 2002). The Center of Public Policy Priorities suggests that this may be due to the fact that many undocumented immigrants find jobs and navigate their way through the naturalization process. The CPPP also suggests that immigrants with greater resources may find it easier to become naturalized.

There is no consistent data that examine the average length of stay of undocumented residents. Because many undocumented immigrants enter America without knowledge of the various immigration agencies or because of immigrant evasiveness, we have been unable to monitor and calculate such behavior. In addition, there are many variables that contribute to how long an undocumented person stays in the U.S. including: intent, work availability, sponsorship, and detection. The principles in this study can be seen as predictors of length of stay. In other words, the degree to which immigrants carry out the various principles can forecast how entrenched a person is in a political community (barring detection and deportation of immigration services). The students interviewed for the study all lived in the state of Texas for more than five years.¹² They all attended and graduated from high schools in the Houston area. With

¹² Because of ethical considerations, I could not interview students who resided in the U.S. less than three years. See methods section.

the exception of one student, all of the students' parents came to the country to find work, and stayed in the U.S. throughout their children's educational tenure.

Some of the respondents did claim cultural or genetic memberships to a country, tribe or geographic region. These claims highlight the importance of residency on membership. These claims may argue that living in a specific space for a certain amount of time is not a requirement for membership and that ancestry is the primary criterion for membership and benefit distribution. However, this type of claim has more to do with identity than with political membership. With the exception of rights and privileges that are granted through birth, it becomes increasingly more difficult to make substantive claims for benefits if one is not present in the space. For instance, a native, American resident of *Mexican ancestry* can claim (and often does) a Mexican identity. Still that person cannot make a legitimate claim for voting, educational, health or other benefits afforded to native Mexican residents primarily because the *American* is not physically present in the country and because national membership matters. Being a non-resident descendant does not make you a member primarily because you are not an on-the ground part of the political community. A physical presence in a political community provides opportunities for social, political and economic exchanges, which legitimate a person's just claim for benefits.

How can policymakers assess how long a person has been living in the United States? For the children of undocumented immigrants, school records can be a rich source of information. Since primary and secondary schools do not consider immigration status for enrollment, attendance records provide detailed accounts of students' presence within a community. Most bills that would or do permit undocumented residents to

obtain resident tuition rates require a certain amount of time attending a state school (between 1 and 5 years depending on the bill) and high school graduation. There are advantages to this approach. School data may be the only institution that takes a daily account of a child's presence in a community making school data much more reliable than other sources. For instance, employment history can provide evidence of residency. However, children may not work until their adolescent years. If used independently, actors may miss years that a student was ineligible for employment. In addition, some undocumented immigrants may not work at all or take "under the table" jobs. Other possible forms of verification may include library and church records as well as driving history. In all, officials must look for creative way of calculating how long a person has lived in the country.

Determining an appropriate length of stay is more difficult. The time required before one becomes a member is dependent upon acquisition or development of other membership principles. If a person lives in the country but is not linked to critical institutions that facilitate membership, then that person may take a longer time to develop a sense of commitment to exchange with likeminded beings. Many of the proposed state and federal bills require between 1 and 5 years of residency. To come up with an appropriate number, policymakers must weigh and make provisions for other components of membership.

Social Awareness

Carla 19, undocumented immigrant: *I had a cousin in my school that helped me when I first came. She was born here so she was bilingual. I never left her.*

She was like my Siamese twin...She helped me learn English and find my way around.

Luis, 19, undocumented immigrant: *I feel like I'm in the American community now, but when I was young I didn't...When I first came, the hardest part of being here was understanding everything. It was hard you know? See, I didn't understand anything. I couldn't speak English but that wasn't the hard part. It took me a couple weeks to get home...[laughing] I kept getting lost. I went to a White school...She [Carla] had somebody to help her [learn]. All the immigrants went to [Johnson High]. Nobody helped me [learn]. I just went to class and went home everyday...I just waited for my family to get home [from work].*

Brad, 53, teacher: *If I skydived in Russia right now, I wouldn't know where to go. I wouldn't even know how to ask for help.*

Arlene, age unknown, state representative staff member: *I know this place...It's my home...I mean that I know how to get around here.*

Greg, 46, immigration lawyer: *The hardest part about being American is knowing when it's ok for you to make fun of your friend's mother.*

In response to the primary interview questions, many respondents mentioned specific types of knowledge that engenders a feeling of membership in the American community (See Appendices E). Some of the responses were broad and ambiguous. For instance, some of the student subjects stated, "I know America more than I know Mexico;" "You have to understand everything." A subject of the legislative stakeholders category reported, "I should feel a part of the community because this is all I know. You

are what you know...I only know American stuff.” An interest group respondent stated, “I’m American because I know how to be one.”

Some of the respondents reported specific types of knowledge that made them feel part of the American community. Information around language, history and civic awareness were mentioned frequently. A student respondent stated, “You have to know English.” A legislative stakeholder reported, “I know the language. I participate in American traditions.”

For those respondents who did not feel part of the American community, I asked follow-up questions of what community do you feel a part of and why? Many of the responses to this question were similar to those who felt a part of the American community. For instance, one such interest group respondent reported, “I’m a part of a Black American community...you need to know our sense of struggle...history.” In general, most respondents suggested a need for broad as well as specific types of knowledge that come along with feeling part of a community.

Stakeholders’ comments suggested that knowledge of a political community’s values, norms, rules, and constitution is a factor in how a stranger comes to commit to exchanging and sharing resources with likeminded members.¹³ More specifically, I define social awareness as the degree to which a person has acquired the basic knowledge that enables them to communicate with members and participate in the sociopolitical, cultural and legal environments of the political community. The principle of social awareness simply states that individuals are more likely to commit to sharing and exchanging resources with members of a political community if they are familiar with the sociopolitical, cultural and economic environment in which members reside. The

¹³ By constitution, I mean the moral, legal and political doctrine of the political community.

connection between social awareness and residency should be apparent. The longer someone resides in a political space, the more likely that person will know about it.

Social awareness is a prerequisite and rudimentary component of the membership model. It is prerequisite in that a certain amount of information is needed in order for individuals to keep jobs or be retained in schools (reciprocation), make social and economic investments (investment), identify as a member (identification), incorporate one's local community into the national community (patriotism), and to share a sense of destiny with the nation-state (destiny). Many of the students who arrived to the country during high school stressed the importance of this principle through their responses about language acquisition.

Mati, 21, undocumented immigrant: *I was here for six years before me and my mother went back to Mexico so I knew English OK. When I came back when I was twelve, I learned English very fast. Most people who come here when they are teenagers have a hard time learning English...But you have to learn.*

Erica, 19, undocumented immigrant: *Even when I thought I knew English, I couldn't tell when somebody was joking with me...I started getting good grades in school when I could understand people's jokes.*

Carlos 21, undocumented immigrant: *I hated school when I first came. People don't know how hard it is learning another culture...When I started to learn English, I started to like school. I always tell my cousins that you'll hate school at first but then you get the hang of it you'll like being here...I'm going to graduate in May, and I might go to law school...I laugh when I think how much I*

hated school...It wasn't that I hated school. I just hated going to school when I didn't know anything.

Zack, 19, undocumented immigrant: *The first thing I learned was how to get a job. I worked all the way through high school...I learned more about America at my jobs than I did in school.*

There is no one grouping of skills a person needs in order to be 'socially aware.' However, a few abilities were frequently noted by respondents. Most made the point that language, history, civic practices, and street-level knowledge enabled people to communicate with members and participate in institutions that are critical in membership development. All of the aforementioned students stated they felt American when they learned English.

Controversy typically emerges when policymakers and educators bring up the issue of English as an official language. The United States does not have an official language per se but a basic working of it is required for the naturalization process. Therefore, while we do not have an official language, immigrants are required to know it if they are to become citizens. What justification can be given for such a requirement? Responses to this question help inform the question.

Most respondents saw language (in this case English) as the most basic communication device that enables people to understand the full range of social and political benefits, offerings, and rights offered by the state. While people can live within smaller communities, find work and receive access to information speaking languages other than English, much of the sociopolitical, cultural, and economic knowledge and privileges of the United States is communicated through English. For instance, while a

person can thrive in some majors at a college or university without strong English speaking skills (math, French literature), a person will have a difficult time in America accessing the broad range of privileges that are associated with knowing the history, traditions, faculty, staff, and administration that are communicated through English. In addition, students may be limited in the way they exchange their degrees for jobs and status. On the college campuses I visited, I did not know of any college administrators, faculty members, or endowed chairs who did not speak English. But, I did meet grounds, house keeping, and dining staff members who did not speak English fluently. This is not to suggest that knowing English is good or a value worth maintaining in itself.¹⁴ It does suggest that communication skills in a political community are important in regards to access, socioeconomic status, and ultimately membership.

In an article bearing the same name, Frank Stricker asks the question, why history? As a general response he answers, “We assert that history teaches us lessons without which people would have learned nothing from their mistakes and triumphs, and we are sure our discipline contributes skill development, civic awareness, and cultural improvement” (Stricker, 1992, p. 293).¹⁵ While I will not entertain arguments of historical truth or historian objectivity and bias, most of the stakeholders other than undocumented students expressed that knowledge of a community’s history teaches potential members the community’s past and it gives some parameters for the country’s future.

¹⁴ I generally believe that the creation of a national language will create more access issues than have a unifying effect. I agree with the ACLU that the creation of a national language, which will make all Federal documents accessible in English only, will create more access problems, disregard the country’s rich cultural heritages, create health and public safety problems, and is not necessary. Most immigrants encourage English language acquisition and the overwhelming majority of residents speak English (ACLU, 2003).

¹⁵ Stricker borrows part of his quote from Walter Nugent’s *Creative History* (Nugent, 1967, p. 27).

Miles, government official, 59: *Where do I begin? Yes, I feel American...I also feel American because I know our rich cultural heritage...I do have a problem when people come over here and don't know our great, American heroes...How do you know where you're headed if you don't know where you've been?*

In addition to history, many non-student stakeholders stated that knowledge of countries' civic practices is needed in order to become a member. As the next membership principle of reciprocity will illustrate, participation in a community is vital to membership. Knowledge of U.S. political systems and civic life enables participation. Without such knowledge people are unable to deliberate in the sociopolitical systems that sustain (or limit) them (Gutmann, 1987). Such knowledge and subsequent participation play significant roles in elections, law enactment, and community development. Political scholars like Walzer, Sandel and Putnam posited that the virtue of civic involvement is vital to the livelihood of democratic states (Putnam, Leonardi, & Nanetti, 1993; Sandel, 1984; Walzer, 1980). Putnam categorized behaviors that make up what he calls a "civic citizen." One of those components is civic involvement. Putnam sees civic involvement as the extent to which persons are interested in public affairs and active in politics for the greater good of the community (Putnam et al., 1993).

While undocumented immigrants cannot vote or hold elected office, which makes evaluation of this area difficult to assess, we can still examine knowledge and participation in neighborhood associations, clubs, churches, school activities, and other organizations that display the virtue of civic engagement. For instance, many of the students that were interviewed stated they were very active in clubs and organizations that demonstrated an interest in public affairs and politics.

Gloria, 23, undocumented immigrant: *Two years ago the [civic club] went to Washington D.C. to a immigrant rally. We spoke with senators and representatives about getting instate tuition...That was my third trip to D.C.*

How can policymakers assess if a person has the basic skills required to communicate with citizens? We have always looked to primary and secondary schools for providing persons with a basic education.

“American people have always regarded education and the acquisition of knowledge as matters of supreme importance. We have recognized the public schools as a most vital civic institution for the preservation of a democratic system of government and as the primary vehicle for transmitting the values on which our society rests...In addition, education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society (*Plyler v. Doe*, 1982, p. 221)”

Although our schools have been maligned for their inability to provide all children with this basic education, we generally consider the successful completion of high school as an important indicator of its acquisition. (No Child Left Behind, 2002). Therefore, an accessible standard for assessing if a person has the basic skills required to communicate with others is the award of a high school diploma or its equivalent. We can assume awardees have at least the basic skills involved in verbal communication, quantitative literacy, civic matters, history, and culture. This study recommends that we look towards a high school diploma or its equivalent as a sign of the obtainment of basic skills. As

supplemental information, we can look at driving records (depending on the nature of the test) and employment history.

Reciprocation

CeCe, 23, undocumented immigrant: *My father loves to work. He won employee of the month so many times that its funny...[laughing] I used to think he loved work more than home...All of his friends are at work.*

Mark, 33, government staff member: *Of all the places we want undocumented folks it's our schools. We know what they're getting in schools.*

Tom, 42, employer: *I know that we have illegals here. What can you do? We know the truth down here [Texas]...They going to do the work that citizens won't...We tried to hire folks, but it just doesn't happen.*

As the principle of social awareness quickly emerged from the interviews, I began to search for the places and mechanisms where citizens or potential members gained membership information. In other words, I asked follow-up questions such as, where did you learn English? How did you learn about your American community? How did you learn to communicate with other Americans? In response to the follow-up as well as primary research questions, many respondents described behaviors within specific institutions. Subjects frequently mentioned participation in school, places of employment, and family as being significant factors in feeling part of an American community (See Appendices F).

Leticia stated, "I learned English in school." Another student said, "The reason why I know English and my family don't is because we have to speak English in school...They don't have to speak English on the farm." Luis said, "I learned it [how to

understand American culture] in school. I watched TV and then I would see how it was said in school.” Students commonly reported school as the primary institution in which they acquired needed information about the community. Students also mentioned specific American family members that helped acculturate them into society. Joseph stated, “I have a cousin who helps us come in...They took care of us...They showed us how to get along.”

Similarly, many legislative and interest group respondents mentioned school and family as significant institutions that provided information about the community. Arlene commented, “My family taught me everything.” Dorian said, “I learned being an American through my family.” Anton stated, “College is the place where you can learn about your specific community.” Other citizen respondents located places of business as contributing knowledge about the American community. Frank said, “I spend so much time at work...This is where I learn.” In general, citizen respondents mentioned work more often than students in regards to learning knowledge that leads to a feeling of membership in the American community.

Many interviewees included within their responses a description of a mutual relationship that facilitated their membership. Tom the employer stated, “They going to do the work that citizens won’t...We tried to hire folks, but it just doesn’t happen.” Students often reported how they attended school in order to find a job or to help others in need. Erica stated, “I want to go to grad school after I graduate...I want to be a Professor like my favorite teacher Dr. [Smith]...I would like to teach at a school like [State U.]...I can’t wait till its over [being naturalized].” Zack stated, “Why do you think I’m going to college...I want to take care of my family...here in America.” Brad,

legislative stakeholder stated, “My father sent me to college so that I could get a job.” I found that many of the respondents participated in institutions that benefited themselves and society.

Reciprocation is born out of the realization that social exchanges between residents and various institutions help shape one’s commitment and sense of belonging to a community. It is premised with the belief that social, economic and political exchanges solidify linkages between individuals and communities. The concept is more expansive than the employee/worker relationship illustrated by the BfA case. Reciprocation involves a broad social network that acknowledges membership through exchange. Reciprocation is both the process and product of social, political and economic exchange between people and community. As process, reciprocation strengthens bonds between people and communities. As product, it is prima facie evidence of a community’s acknowledgement of a resident as member – the institutions that are sustained through the exchange of communal provisions.

Reciprocation is the most complex of the membership principles because it involves economic, social and political development that occurs at the individual, group, and societal levels. In general, membership in a political community is facilitated when individuals are linked into a network of institutions and those institutions maintain and enable those linkages.¹⁶ Many institutions need to maintain these linkages for their own survival. Likewise, people need various institutions of the community to survive. The reported mutual relationships between individuals and institutions describe part of a process that helps develop membership. To help explain how I came to define this

¹⁶ By institution, I mean an organization or society founded for a particular purpose or an established law, practice, or custom (Urdang, 1996).

principle, I examined the possible logic behind the stakeholders' sentiments and searched for theoretical underpinnings, which support the proposed principle.

As noted by Dewey, the terms *community*, *communication*, and *common* have similar etymological roots and that it is no surprise that being sustained within a political space involves these concepts (Dewey, 1966). First, it is unlikely that strangers will thrive in a political space if no community exists. Political communities, like America, have institutions created for the security and safety of its members and the people within it (Walzer, 1983). These institutions can provide for people in general, but communities exist first and foremost for their members.

If the political community does not have anything in common with the strangers in a community, then communication is unlikely and strangers will have a difficult time living in a political space for any substantive period of time. Further, if institutions do not communicate or make social and economic exchanges with non-members then it is unlikely that non-members can survive. In other words, if undocumented immigrants cannot find work, provide tolerable homes for their families, access education, understand the customs and laws, then it will be much harder for them to live durably within the borders of the political community. Walzer states that non-members can not survive if they do not have access to communal provisions that provide security and welfare (Walzer, 1983).

This examination posits that communal provisions are not limited to material necessities of food, water, and shelter as Walzer indicates. Information, values, culture, and other non-material goods must be accessible if stranger communities are to endure. Reciprocation is in part the process that opens access to communal provisions in

exchange for goods that are beneficial for community sustainability. Undocumented immigrants can live lastingly in a city, state or country because social systems support their existence and benefit from their stay. In essence, *reciprocation is the exchange of communal provisions between individuals and institutions that lead to an inextricable relationship between the two.*

As the definition and moniker suggest, reciprocation generally involves a mutual relationship between two entities, the institutions of the political community and the stranger. However, as noted in the following *labor market* section, other entities can benefit. It has become clear, especially in Western, capitalist states, that political communities often need immigrant or stranger communities to help sustain the community itself. With the exception of refugees who are fleeing a country because of economic or political hardship, immigrants typically move to fulfill certain individual and societal needs. Overwhelmingly, people emigrate to the U.S. primarily for work (Borjas, 2000; Castles, 1998; Keely, 1979; Massey & Espinosa, 1997). “Undocumented immigrants tend to concentrate in states where labor markets for these marginal groups are most favorable” (Winegarden & Khor, 1991, abstract). The data that emerged from this study supports this notion. The employer interviewed in this study stated, “I don’t think we’d survive without immigrants...I don’t think we’d stay in business.” Statements made in this study and in immigration literature suggest that membership is more likely to occur if there is a reciprocal relationship between the host and the stranger. However, how does reciprocation contribute to membership development?

The process of reciprocation answers the question, how do people gain material goods and knowledge about the values, customs, traditions, language, laws, and goals of

a political community? In other words it answers the question, how do strangers gain the basic knowledge (social awareness) and communal provisions needed to become members of a community? In answering these questions it identifies structures and mechanisms that communicate basic communal provisions, values, traditions, roles, etc. The previous paragraph mentioned how the labor market is instrumental in providing undocumented immigrants with the money to buy food, clothing, and shelter. I discuss the labor market in greater detail later in the paper. However, how are values, customs, traditions, etc. exchanged?

The reciprocation principle assumes that communication between people and institutions leads to the acquisition of socially constructed beliefs. Steeped in identity theory and social identity theory, the theoretical basis underpinning reciprocation is that the “dynamic self mediates the relationship between social structure and individual behavior” (Hogg, Terry, & White, 1995). In other words, social behavior and identity are products of a series of reciprocal relationships between self and society. In the communication process, society is not a neutral entity. Institutions and people within a political community influence behaviors. Identity theorists claim that the negotiation produces *role identities* or self-conceptions, self-referent cognitions, or self-definitions (Hogg et al., 1995). Identity is thus a function of societal influence and individual cogitation.

Social identity theory’s basic idea is that a “social category (e.g., nationality, political affiliation, sports team) into which one falls, and to which one feels one belongs, provides a definition of who one is in terms of the defining characteristics of the category – a self-definition that is a part of the self concept” (Hogg et al., 1995, p. 259). In

general, people take on characteristics of social groups he or she belongs to.

Undocumented immigrants are not citizens of the country. However, they are participants of various institutions within the American context. I will discuss identity and social identity theory in greater depth in the identification principle. However, reciprocity supports the notion that interfacing with a political community's local and national social institutions influences how one sees themselves. Reciprocity is a concept that acknowledges that economic, social, and cultural exchanges between people, institutions, and other social entities impact how members and non-members see themselves as members.

The principle of reciprocity does not say that potential members are linked to institutions in the same way as citizens. Nor does it connote that potential members are not coercively maintained within an oppressive system for the benefit of a ruling class. Reciprocity simply is the recognition that institutions and people can be linked in such a way that sustains community and forges membership. The strength of those linkages is forged by reciprocal relationships. Living in a place (residency) gives strangers the temporal opportunity to cultivate reciprocal relationships and to become socially aware. This makes the point that reciprocity is not an event or occurrence. It is a process that cultivates membership.

Earlier I mentioned that reciprocity is both a process and a product of the exchange of communal provisions. Since that mention, I primarily discussed the process of reciprocity. Now I hope to identify some of its products and share how they influence membership. I explore the institutions of the labor market, schools, and

families to highlight how these institutions help shape membership in a political community.

The Labor Market.

The labor market is an institution that reciprocates communal provisions and consequently facilitates membership among working strangers. The mutual benefits that are indicative of reciprocation are not accrued exclusively between employers and employees. There seems to be a triangular relationship between strangers, employers, and country. This section endeavors to shed light onto how all three entities are impacted by the exchange of communal provisions between them.

Most scholarship on immigration typically addresses economic factors involved with immigrant assimilation or incorporation into a community. There are two major strands in this area. The first examines migration as supplying labor needs to various economies (Borjas, 2000; Brah et al., 1999; Castles, 1998; Friedberg & Hunt, 1995; Griswold, 2002; Guiraudon, 1998). The second major strand studies costs affiliated with immigrants' presence in a political community (Brubaker & German Marshall Fund of the United States., 1989; Delanty, 1998; Espada, 1996; Fix et al., 1994; Friedberg & Hunt, 1995; Griswold, 2002; Hammar, 1990; Shafir, 1995). This discussion of the labor market is informed by both of these strands. Economic institutions (employers) that comprise the labor market serve as major conduits in the social network that enables immigrants to be retained in political communities. Undocumented immigrants' labor subsequently helps employers and societies meet their economic goals.

The United State's history of temporary worker programs serves as precursors for the latest wave of illegal laborers.

“The origins of Mexican illegal immigration lie in (a) the contiguity of two countries with among the highest income differentials of any neighboring countries in the world; and (b) a history of labor recruitment in Mexico, especially for U.S. agriculture, that culminated in a guestworker program for farm workers, known as the Bracero program, from 1941 to 1964” (Meissner & Trilateral Commission., 1993, p. 29).

The recruitment of Mexicans primarily for agricultural needs established a bilateral relationship between Mexico and America as well as among laborers and employers. The economic opportunities that American businesses offered solidified this relationship. However, the recruitment of Mexican labor precipitated our current influx. The idea that U.S. policy may have laid the foundation for or actually encouraged migration contradicts popular images of Mexicans crossing borders illegally in order to drain American resources. The negative action is often placed solely on Mexican immigrants.

Describing one such depiction on a *Newsweek* magazine cover, Leo Chavez writes,

“The movement of the people [immigrants] in the image is not lateral, nor away from the eye of the viewer, but is directed toward the observer’s eye. The directionality of movement suggests that the people in the image are coming at the reader, metaphorically at us, the consumers. The movement is not random; it is a linear movement that carries the message that people (Mexicans) are crossing water (the border) and moving toward us (the United States)” (Chavez, 2001, p. 54).

Negative portrayals (and apparently inaccurate) tend to place action on immigrants and not U.S. policy or employers. The metaphor of the immigrant simply

crossing the border illegally lacks insight of the economic pull of employers and U.S. policy.

All but one of the undocumented immigrant respondents stated their parents came to the U.S. for jobs. Lolita stated, “My parents worked so I could have a future.” Judith said, “My mother does everything for us...She worked three jobs once...She is going to cry when I graduate.” Their parents worked in jobs that typically have high percentages of immigrant labor. Some of the students’ parents worked in agriculture including: meatpacking, poultry, fruit and vegetable picking, and similar jobs. Some of the students that were interviewed stated that one or both members of the family worked in the restaurant industry. A few stated their parents worked in construction. With the exception of one student, all the students’ parents worked within Texas borders.

Immigrants (voluntary or involuntary) have always had a relationship to the country’s labor force (Borjas, 2000; Brubaker & German Marshall Fund of the United States., 1989; Delanty, 1998; Griswold, 2002; Hailbronner et al., 1997; Martin, 2002; Y. Soysal, 1998; Y. N. Soysal, 1994). According to classic liberalism, one could make the argument that “the labor market itself will determine the numbers and categories of immigrants by way of employment possibilities and wage levels” (Hailbronner et al., 1997, p. 61). So what aspects of the labor market help instill a commitment to exchange within potential members? I found that work is one of the vessels in which material and immaterial communal provisions are transferred.

CeCe, 23, undocumented immigrant: *My father loves to work...He [father] learned English at work. He’s not very good, but he knows what he knows through his job.*

Jaber, 46, immigration lawyer: *This is the place [Texas/America] where I work and live... Working is important. I learned more about the Constitution and the law at work than at law school... I'm ashamed to say I spend more time at work than at home.*

There seems to be a connection between working and developing a sense of commitment to an employer or place of business. In general, employees commit to the mission and goals of their employer because of their standing in the organization and through their labor. Employment can be conceptualized as a type of membership within a private organization (Selznick, 1992, 2002).¹⁷ The labor performed at a place of business can be seen as *prima facie* evidence of a person's commitment to the mission of the organization. However, a claim can be made that laborers sell their work strictly for money and that they do not share any commitments beyond that relationship; thus, workers are not impacted socially by their presence at work. This study assumes that the nature of working relationships cannot be deconstructed as a simple economic *quid pro quo* relationship.

Again, reciprocity assumes that all institutions carry abilities to impact individuals' belief systems, self-concepts, and group identity. Identity development encompasses the transfer of values, beliefs and traditions that are inherent to the company or business. Under this framework, all employees are affected by the influence of the institution. Places of employment and work function as cable for the transmission of communal provisions. Exchanging money, values and beliefs influences how one sees himself or herself in relation to the local and broader community. Labor is one conduit in

¹⁷ Not all organizations are communities if we adopt a conceptualization of community that is ideal. Selznick (1992) makes a distinction between communities and special-purpose organizations. "The 'pure organization' is an instrument for mobilizing human energies in disciplined, goal-directed ways. A community, by contrast, has generic functions but no special purpose" p. 359-360.

which information about the immediate employer, community, and larger political community is transmitted. Dewey writes,

“Men live in a community in virtue of the things which they have in common’ and communication is the way in which they come to possess things in common. What they must have in common in order to form a community or society are aims, beliefs, aspirations, knowledge – a common understanding – like-mindedness as the sociologists say” (Dewey, 1966, p. 4).

In this regard, work and working environments facilitate communication, which can lead to a sense of commonness. Common goals of a working environment produces a common vocabulary and interpretations of events that facilitate work-related communication (Allen & Cohen, 1969; Zenger & Lawrence, 1989). Again, communication of ideas, values and goals are not limited to work related matters. Working helps transmit the broader political aims, beliefs, aspirations, and knowledge of the community in which the job resides (Roche, 1987).

Employer and employee relationships also impact society. In this regard a reciprocal relationship exists between employers, the labor market and society. Services provided by employees help organizations and society fulfill economic aims. Immigrants and immigration provide a responsive labor force that is ready and able to meet the demands of industry. This is especially true of immigrant labor, which is heavily populated in service jobs, agriculture and manufacturing. In general, immigrants benefit the U.S. economy by “providing workers to fill gaps in the labor market” (Griswold, 2002). The *segmentation hypothesis* claims that immigrants move where there is a demand for work. Work is provided to members of the society, corporations’ labor needs

are met, and the capitalistic democratic community in theory is better able to provide communal provisions to its members. In sum, employers and employees' work indirectly influences the political society's broader philosophical and political aims.

However, the influence of corporations is so great that Bowen prescribes a "doctrine of social responsibility" (Bowen, 1953). He writes, "the obligations of businessmen to pursue those policies, to make those decisions, and to follow those lines of action that are desirable in terms of the objectives and values of our society" (Bowen, 1953, p. 6). Bowen's wish for a social doctrine suggests that "business operations will have diverse, and often unexpected, impacts on the larger society" (Preston, 1975, p. 3). Work or corporations made up of workers impact societal goals. If illegal entry into the U.S. has grown beyond government control, Bowen may point to industry as an accomplice. However, businesses may see public policy as limiting its ability to provide goods and services to the state. At any rate, business and societal aims may be in conflict.

While undocumented immigrants make wide-ranging, beneficial economic commitments through labor, some may see that the presence of undocumented immigrants in the labor market places employers at odds with immigration policy. In this study, some respondents argue that businesses are merely helping themselves and are straying away from the societal goals of controlling immigration. Some opponents of undocumented immigrant benefits argue that industry merely exploits unauthorized residents, which is antithetical to America's goals.

In general, we know that during the 1990s immigrants earned about 15 percent less than natives and were more inclined to take low-skill jobs (Borjas, 2000). This also

suggests that undocumented immigrants may compete with native-born workers by displacing them or bidding down wages primarily because undocumented immigrants obtain lower-skilled jobs (Friedberg & Hunt, 1995). However, there is not an adverse impact on wages and employment opportunities of the native-born population.

“Empirical analyses reveal that a 10 percent increase in the fraction of immigrants in the population reduces native wages by at most 1 percent” (Friedberg & Hunt, 1995).

Increases in the demand for low-skilled labor paired with declines in the domestic supply can account for the small effects (Griswold, 2002). I think it is safe to say the employers do seek to maximize profits by hiring workers at lower wages. Still, a need for this labor seems to be the primary factor, which encourages employers to hire and train undocumented workers. The interdependence between work and society is clear from an economic perspective, but what is the social connection?

Early political philosophers and sociologists speculated that work and society were highly interrelated (Near, Rice, & Hunt, 1980). Marx wrote that capitalistic work environments construct hierarchical structures that causes a sense of alienation (no pun intended) among workers, which later spills into other domains of the worker’s life (Marx, Engels, Pascal, Lough, & Magill, 1938). Durkheim believed divisions of labor could create a type of interdependence among various institutions that could help integrate various members of society. Durkheim concurred with Marx in that if divisions were too excessive, then alienation, fragmentation, and stratification could occur (Durkheim, 1964). Weber believed that the social environment influenced work domains. He noted the influence of the Protestant work ethic on capitalism (Weber, Henderson, & Parsons, 1947). All of these theorists believed in a social interconnection that occurred

between work and other arenas. The interconnection that the above-mentioned theorists claim supports the notion that people learn immaterial communal provisions in the workplace. Moreover, the workplace and society are impacted by the presence of undocumented immigrants.

Family.

Kate, 44, higher education administrator: *I feel American because my parents are American.*

Carla, 19, undocumented student: *My cousin [American] helped me learn English... We lived with them [American family] until my mother got her papers.*

Family in its many forms is an institution that reciprocates communal provisions and consequently facilitates membership among related strangers. Many of the study's respondents noted that undocumented immigrants settle and become integrated into the country with the help of relatives. In addition, many of the citizen respondents noted that family was an important institution that facilitated their feelings of membership. Not surprisingly, concepts of family have significant relevance in terms of U.S. immigration policy and naturalization processes (Meissner & Trilateral Commission., 1993). Family is a critical institution that can develop a sense of commitment to divide and share resources with others who have the same commitment.¹⁸ This study found family to be a major source of reciprocation in the membership framework. In this section, I explain how U.S. immigration policy acknowledges family as a location for reciprocation. I highlight the pervasiveness of mixed-status families on the transference of communal provisions. Then I will bring to light examples from this study's investigation.

¹⁸ Family is defined as a group of individuals living under one roof and under one head; a group of persons of common ancestry; a group of things having common characteristics; and a social unit usually consisting of one or two parents and their children (Merriam-Webster Inc., 1997).

Prior to 1965, immigration policy was based on a national-origins quota system. This restrictive policy argued for racial and national selectivity based on family notions of membership (Walzer, 1983). Samuel Hobbs (D-AL) stated,

“We can contribute to people who are in dire need of our financial aid, but we can not conveniently give up to those people our homes and the homes that we and our forefathers have built for the future generations of this country, and we should not be expected to” (Hobbs, 1950; Shanks, 2002, p. 68).

The Hobbs quote highlights that the transfer of communal goods can occur (perhaps should occur according to Hobbs) among people of a common ancestry. First, Hobbs suggests if an obligation exists to provide resources for needy strangers, then those goods are reserved primarily for family members. The suggested obligation requires members to provide for related-strangers. Second, the obligation passes from one generation to the next. There is an implicit trust among family members that immaterial communal provision will transfer to related-strangers. Or, there is an assumption that family members already carry similar values, customs, and beliefs making it easier for related strangers to assimilate into a country. Subsequently, adoption of a national-origins quota system resulted in a large representation of European immigrants prior to 1965 (Borjas, 2000; Castles, 1998; Meissner & Trilateral Commission., 1993). Over two-thirds of the legal immigrants who entered the country legally prior to 1965 originated from Europe or Canada (Borjas, 2000).

In 1965, significant changes in policy shifted the demographics of immigrants coming into the U.S. Amendments to the Immigration and Nationality Act canceled the national-origins system, increased the total number of visas, and made family

reunification a priority in U.S. immigration policy (Borjas, 2000; Keely, 1979; Meissner & Trilateral Commission., 1993). This change in policy marked a shift from adopting a national family model to a local, under-one-roof, conceptualization of family. These changes significantly impacted the U.S. immigration policy and subsequently the complexion of new entrants. Family reunification is now a major component of United States immigration policy and a major reason why people migrate and stay in the U.S.

“U.S. immigration is disproportionately dominated by family reunion admissions. This leads to a phenomenon known as ‘chain migration,’ wherein the admission of one person can, through the legitimate entry of relatives, generate a significant number of additional immigrants” (Meissner & Trilateral Commission., 1993, p. 10).

Approximately 68 percent of all legal entrants come through family connections (15 percent are refugees; 17 percent because of skills they bring) (Meissner & Trilateral Commission., 1993). The aforementioned reference on family reunification policy obviously is focused on legal immigration. However, family reunification is an apparent reason why people illegally enter and assimilate into the country. A study conducted by the Urban Institute found that 1 in 10 U.S. families with children is a mixed-status family – a family in which one or more parents is a non-citizen and one or more children is a citizen (Fix & Zimmermann, 1999). Mixed status families can vary in composition. They can consist of any combination of legal immigrants, undocumented residents and naturalized citizens. The combination changes as individual family members change status. The idea here is that related-strangers use family to receive communal provisions in their transformation from stranger to member. In sum, the history of immigration

policy reflects how government embraced and relied upon various formal and informal family constructions to facilitate membership.

Education.

The study interviewed students who successfully completed high school in the U.S. I will not surprise readers when I make the statement that schools were very influential in undocumented students' decision to go to college, learn English (for those who could not speak), customs, values and laws. Carla stated, "I always knew I wanted to go to college...I am in accounting...I want to work in the country." Students interviewed in this study repeatedly stated that they wanted to go to college and find work in the United States. Readers should not be stunned because that is precisely what schools are supposed to do. Dewey writes, "Beliefs and aspirations cannot be physically extracted and inserted. How then are they communicated?" (Dewey, 1966, p. 11). This quote is taken from Dewey's classic, *Democracy and Education*. Dewey saw schools as a critical institution in promoting democratic and other values, knowledge and membership.

"[A]s soon as a community depends to any considerable extent upon what lies beyond its own territory and its own immediate generation, it must rely upon the set agency of schools to insure adequate transmission of all its resources...[O]ur daily associations cannot be trusted to make clear to the young the part played in our activities by remote physical energies, and by invisible structures. Hence a special mode of social intercourse is instituted, the school, to care for such matters" (Dewey, 1966, p. 19).

The social intercourse that Dewey is talking about is premised with the belief that social institutions have played and do play a role in instilling knowledge, beliefs, and goals. Dewey obviously believed that societies must create structures that see to the facilitation or installation of beliefs, attitudes, skills that are needed to support a democratic state. I will not entertain questions regarding the type of education that schools should emphasize as it pertains to the reproduction of culture, history, religion, or values and other societal goods. The point is that schools are a product of exchanging communal provision, and they also shape persons' commitment to sharing among other members through the process of exchanging communal provisions.

As unearthed by the interview data, I believe that primary and secondary schools serve as positive naturalizing agents for attendees. In other words, schools generally create members among those who successfully complete the requirements of a high school diploma. The students interviewed represent successful completers and seem to meet U.S. government's naturalization requirements. I will speak to the significance of primary and secondary schools in the paper's conclusion, but I want to call attention to the fact that schools are a major reciprocal force for membership. The *Plyler v. Doe* decision recognized the connection between membership and schools. This decision was in the K-12 context where basic education has been connected to social wellness. What about higher education? What role does higher education play in developing membership and social health?

Our institutions of higher learning play a major role in the overall welfare and defense of our country. Washington D.C.'s sponsorship of higher education comes appreciably from the belief that economic competitiveness and college education are

somehow connected (Karabell, 1998). Thus, prompting President Clinton's pledge "to make the thirteenth and fourteenth years of education – at least two years of college – just as universal in America by the twenty-first century as a high school education is today" (Karabell, 1998, p. 13). The statement highlights the connection our policies make between education and individual/national economic prosperity. While relationships between national economic solvency and the country's investment in higher education are far from conclusive, federal policy initiatives to fund education are based on the assumption of a positive correlation between education allocation and national economic output (Sanders, 1992). Anthony Carnevale estimates that nearly \$230 billion would be added to the gross domestic product; 80 billion would be added to tax treasuries if we narrowed the gap in postsecondary attendance between the highest- and lowest-income Americans (Carnevale & Fry, 2001). This data encouraged the National Governors Association to state,

"Given changing demographics in most states, improvement in the postsecondary attainment of low-income, minority, disabled, and *immigrant youth* [emphasis added] will be needed to promote and sustain strong economic growth and to avoid potentially costly social conflict" (Kazis, Pennington, & Conklin, 2003, p. 5).

Researchers typically do not incorporate non-citizen education in their correlations. Given the economic and social entrenchment of undocumented immigrants in America, how should we include this population (if we should include) in our educational plans to fuel an American economy becoming increasingly dependent upon a highly educated citizenry? What returns should America seek from states' educational

investments of primary and secondary schools? Educational investments are just one category of the many that came about in this study. I will elaborate on the importance of investment in the next section. Still, schools have a strong influence on membership formation, and are one of several institutions that play a role in creating a sense of commitment to share and exchange among other likeminded beings.

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

Investment

Sharon, 59, Principal: *I put my time in. I'm damn near 60...I worked this school district for 27 years... I'm more American than anybody in here.*

Lolita, 19, undocumented immigrant: *My parents worked so I could have a future.*

Frank, 50, interest group: *My grandparents sacrificed everything so that I could live a comfortable life here in the country...But they did it the right way [Came on Visa].*

Especially among the citizen respondents, people said they felt a part of the community because they paid taxes (See Appendices G). Legislative stakeholder Todd stated, “I pay taxes.” Greg reported, “I pay taxes, vote, and everything else that’s required of me.” William states, “I vote...pay taxes.” Likewise, undocumented immigrants frequently mention taxes when asked the primary interview questions. When asked the follow-up question, so you paid taxes, undocumented student Luis mentioned, “Yeah, they took taxes out of my check.” Carlos reported, “When they took taxes out of my check I was like cool...I thought everything was OK...I thought I was finally good...with government.” In general, undocumented students and citizen responses suggested that paying taxes contributed to a sense of membership. However, other “investments” were mentioned.

Students frequently mentioned how they went to school to gain future employment. Citizen respondents also reported an outlay of a resource for a future return of sorts. Interest group respondent Frank stated, “My grandparents sacrificed everything so that I could live a comfortable life here in the country...But they did it the right way.” In response to the follow-up question, how does paying taxes make you feel like you’re a member of the American community, interest group respondent Anton stated, “I give a lot of myself for this country...I deserve everything I get.”

Stemming primarily from interview data, the membership principle of investment supposes that membership is more likely to occur if the potential member or stranger invests toward his or her inclusion in the political community. The principle of investment is defined similarly to our everyday understanding. However, I borrow Amitai Etzioni’s definition, which he used in the essay, “Communitarian Note on

Stakeholder Theory” (Etzioni, 1998). Etzioni defines investment as “the outlay of money, time, or other resources, in something that offers (promises) a profitable return.” (Etzioni, 1998, p. 682). Resources are anything that can be seen as being exchanged for some type of gain or benefit. Just like any investment the returns can be uncertain; “rise or fall, or even be wholly lost, depending on the ways the investment is used” (Etzioni, 1998, p. 682).

In general, data suggest that membership involves some type of investment in communities of which the investors reside. The interviews revealed that undocumented students and their parents invested for membership within the country as well as for the prosperity of the country. The students interviewed for this study generally view their education as investments toward their future in the country. Students also see their parents’ relocation in the United States as investments in their children’s futures.

Erica, 21, undocumented student: I want to go to grad school after I graduate...I want to be a Professor like my favorite teacher Dr. [Smith]...I would like to teach at a school like [State University]...I can’t wait till its over [being naturalized].

Then I can just let my worries go.

Erica clarified that she wanted to invest in graduate school for a future return of becoming a professor in the United States. Similarly, Zack saw his education as an investment in membership.

Zack, 19, undocumented student: *Yeah, I want to stay here. Why do you think I’m going to college...I want to take care of my family...here in America.*

Leticia, 19, undocumented student: *I want to be an immigration lawyer so I can work on policy [American public policy].*

Allana, 22, undocumented student: *My parents brought us here so we could start a new life. My mother walked from Guatemala with me...It makes me mad when I hear people say we just use up taxes...I'm going to school here because I'm gonna live here.*

Some responses indicated investments with the expectations of personal returns i.e. membership, jobs. Others reveal their investment may have returns for the community. An investment in both senses yields uncertain returns that may or may not lead towards membership. Universally, respondents described a wide variety of investments that went along with being a member. The investments of money (taxes), time, community service, education, work (employment), family, and holding political office were all mentioned.

There are a number of arguments that are related to the concept of investment that are evoked in this discussion. Many of these arguments examine financial contributions and expected returns. While they may be considered investments, not all financial outlays are intended to profit membership. However, the points of the debate are worth exploring in this section because they have implication on membership formation.

While undocumented immigrants noted they invest in their education and future stay in America, what financial contributions should states' require for the receipt of instate tuition subsidy? Are undocumented immigrants' financial investments contributing to the tax base that subsidizes the cost of postsecondary education? Should we require proof of this investment? These questions are raised consistently in the debate of whether undocumented immigrants should receive financial aid. Earlier in the document I mentioned the billions of tax dollars that are collected by federal entities. I

could not gather accurate information regarding tax contributions of undocumented immigrants in the state of Texas. Answering this question would require more accurate estimates of both the number of undocumented immigrants and their state contributions. However, we know that state taxes are drawn from undocumented immigrants' paychecks. Whether, undocumented immigrants pay their "share" of the cost is a mystery. Given the relatively small number of undocumented students who enter college versus their tax contributions, one may speculate that undocumented immigrants pay more than their share. However, the above questions wrongly assume that instate rates are directly merited based on parental contributions or taxes. The question misses the point that many of the financial aid reforms were aimed at providing access to the poorest individuals in society – those who contribute little or no taxes (King, 1999). It also misses the point that postsecondary subsidy is an investment of the state. Nation-states invest in education because of the potential economic returns for the country (Kazis et al., 2003). Still, I suggested that money is one type of commitment that facilitates membership. However, the financial aid system is not set up to reward persons based on how many tax dollars they add to state rolls. Still, we do know that undocumented immigrants contribute billions through taxes.

What do we make of the billions of dollars that are sent overseas by immigrants? What does sending remittances overseas say about membership development in other political communities? A report issued by the Pew Hispanic Center and the Multilateral Investment Fund stated that during the 1990s – during the new wave of Latino immigrants – the international remittance flow doubled from the previous decade. Remittances to Latin America and the Caribbean totaled \$23 billion in 2001 (Suro,

Bendixen, Lowell, & Benavides, 2002). The report quoted a person who sent money abroad. The person stated, “Before anything, I send them the money because they count on it. Then afterwards I pay my bills, my rent, but the first thing I do is send it” (Suro et al., 2002, p. 7). Findings from the 2003 National Survey of Latinos on remittances found that in the United States, 42 percent of adult, foreign-born Latinos, some six million people, regularly send remittances to family members in their countries of origin (Suro, 2003). Someone may deduct that remittances to other countries are investments for membership to the country in which they send the funds. Suro sees this as merely a sign of family support.

“At the simplest level, these studies underscore the fact that remittances are the expression of profound emotional bonds between relatives separated by geography and borders, and they are the manifestation of a profound and constant interaction among these relatives regardless of the distances between them” (Suro, 2003, p. 4).

I would agree with this assessment. It corroborates the notion that family is a tremendous source of reciprocal exchange. However, these exchanges may heighten the desire to enter the U.S.

“In Mexico, 19 percent of all adults, representing some 13.5 million people, answered positively when asked, ‘Are you thinking about emigrating to the United States?’ Remittance receivers were much more likely (26 percent) to have migration in mind than those who are not (17 percent)” (Suro, 2003, p. 4) .

In all, people invest in becoming members of a political community and those investments facilitate membership. Not all outlays are intended to yield membership but

they may have affiliated consequences. How then can the concept of investment be assessed? What type of requirements should policy implement if considering making undocumented immigrants eligible for instate tuition? I mentioned that money (taxes), time, service, education, work (employment), and holding political office were all forms of investments. We can require evidence of work and tax contributions, community service, completion of a high school degree, and extracurricular activities for proof of investment. Many of these requirements were suggested in previous sections. However, community service is an altruistic investment of time that is also an indicator of ethical or moral character. Many schools require community service for graduation making it another important facilitator of membership.

Identification

Carla, 19, undocumented immigrant: *When I visit other places, I'm American. People can tell I'm American...I can tell that I'm American even though I'm Mexican.*

Andrea, 42, staff member: *It's my identity. I consider myself American before anything else.*

When asked the follow-up question, in terms of nationality how do you identify, most undocumented respondents claimed some form of an American identity (See Appendices H). Some said American. Other stated Chicano. Some said Mexican American. Most of undocumented immigrants' self-definitions included being an American although they were not officially so. Many respondents claimed a Texan identity. I will spend more time discussing self-concept within undocumented student

responses because American identification among citizens is predictable. Still, responses among all stakeholders to the primary questions yielded similar beliefs.

Although many undocumented respondents saw themselves as having an immigrant background, they did not differentiate themselves from other Americans. These beliefs generally tended to be based upon cultural notions of membership. They saw their day-to-day behaviors and beliefs were similar to American students. Students typically acknowledged their immigrant background, but still saw themselves as American. Carla stated, “I feel a part of the American community...Being an immigrant is American...I belong because I fit in...I love America because everybody is an immigrant.”

The general findings suggest that self-concept bears weight on whether a person shares a general sense of a commitment to exchange resources with others who have the same commitment. The identity that a person gives herself impacts whether one develops that commitment. Plainly, undocumented immigrants are more likely to exchange resources with American citizens if he or she sees himself or herself as American. How does one come to identify as American? Identity theory and social identity theory provide theoretical models that may explain the transformation process.

Identity theory aims to explain social behavior as a function of reciprocal relationships between a multidimensional self and society. It is grounded in the symbolic interactionist belief that society impacts social behavior primarily through its influence on the self. Identity theorists refer to the self as role identities, which are the products of social interactions (i.e., school, employment). “People come to know who they are through their interactions with others; in this perspective, a core mechanism is that of

taking the role of the other” (Hogg et al., 1995, p. 256). People tend to interact with multiple groups; therefore, people tend to have multiple identities or role identities. For instance, immigrants simultaneously take on the role of mother, laborer, Chicano, Latino, American, and immigrant. Each role identity takes on its own meaning in relation to counter or complementary roles. For example, being a mother is partially defined by its connection to father; immigrant to native; laborer to employer; teacher to student; stranger to host. Society provides roles that form the basis of role identities. However, the self actively creates social behavior.

Identity theorists examine roles that play a significant part in defining identity. They examine the self’s hierarchical organization of roles that come to shape behaviors. Roles that lay at the top of the hierarchy are seen as salient and have more influence on how a person identifies than those located at the bottom. “The salience of a particular identity will be determined by the person’s commitment to that role (Hogg et al., 1995p. 258). Commitment is defined as “the degree to which the individual’s relationships to particular others are dependent on being a given kind of person” (Stryker & Statham, 1985, p. 345). Stryker identifies two types of commitment: interactional commitment and affective commitment (Stryker, 1980). Interactional commitment reflects the number of roles associated with a particular identity, and affective commitment reflects the level of affect associated with the potential loss of these social relationships (Hogg et al., 1995). The higher the level of commitment (in terms of interactional and affective commitment) a person has to an identity the more salient it becomes. In this regard, it becomes easier to understand why undocumented immigrants commit to identifying as American when the consequences for being an undocumented alien are heavy.

Social identity theory also contributes to our understanding as to why many undocumented immigrants see themselves as American (Ashforth & Mael, 1989; Stryker & Serpe, 1982; Tajfel, 1981, 1982; Turner, 1982). According to social identity theory, people categorize themselves and others in various social groups: sexual orientation, religion, fraternal organization, etc., so we can situate ourselves and others in the world. Because of the numerous combinations of social groups people may belong to, individuals develop different categorization schemas. People define the categories by the prototypical characteristics that are projected by the members within each social category. Defining social categories serves two purposes. Cognitively it helps individuals organize the social environment. It helps individuals make sense of who is who in a social system. Defining social categories also helps individuals locate themselves in relation to other social groups in the social system. “Social identification therefore, is the perception of oneness with or belongingness to some human aggregate...As such, social identification provides a partial answer to the question, Who am I?” (Ashforth & Mael, 1989, p. 21).

Under a social identity framework, how we define ourselves is relative to individuals in other categories. In this regard, social groupings are *relational and comparative* (Stryker & Serpe, 1982; Tajfel & Turner, 1985, p. 16). However, identities are not pure and discrete. Individuals can hold multiple identities and the extent to which a person identifies with a category is a matter of investment and degree (Ashforth & Mael, 1989). The principles that bolster social identification theory come out of group identification theory (Ashforth & Mael, 1989).

A brief review of Tolman's work, which was a precursor to social identity theory, helps explain why I believe social identity provides a solid theoretical basis for the construct of identification in the membership framework (Tolman, 1943). It also explains why so many undocumented respondents said that they identify as being American. There are three principles that are relevant to this conversation. First, identification is perceptual, meaning it is a cognitive construct that may or may not be derived from actual behaviors. A person needs only to perceive himself or herself as "psychologically intertwined with the fate of the group" (Ashforth & Mael, 1989, p. 21). Second, identification is also seen as personally experiencing the fate of the group. In other words, a person's perceived destiny is tied into the perceived grouping. This concept of destiny became so prevalent in the responses that it warranted its own component in the framework. Finally, identification is not synonymous with internalization. An immigrant can identify as American but incorporate his or her own value structure in that identification. Describing a value set that is associated with being American is problematic given the multiple value sets that exist in a country. However, respondents still identified as American and provided meaning to the idea. Being American has meaning, but it is defined by the person who is identifying.

How do we assess self-concept without requiring a battery of social/psychological tests? If identity is a function of the self and various institutions in the community, then we should look for participation in organizations that reciprocate American values, beliefs and or knowledge. We should also consider how the student interacted with these institutions. Again, high school records, evidence of community and military service,

and work history are all possible sources. If we can not test identity, then we can look for participation with institutions that are critical in shaping one's identity.

Patriotism

Frank, 50, interest group: *I am American because I believe in America.*

Nigel, 22, undocumented immigrant: *My parents put flags up before September 11. They're not even citizens.*

Carla: 19, undocumented immigrant: *I feel a part of the American community...Being an immigrant is American...I belong because I fit in...I love America because everybody is an immigrant.*

When asked the follow-up question, how do you identify, most of the respondents reported multiple identities including an American character (See Appendices I). For instance, undocumented immigrant Leticia states, "We live in a multicultural community...I hang out in different communities all the time...You just can't hang with people in your race." Luis remarked, "I have to be a part of the Guatemalan community, Mexican community and American community." In response to the follow-up question, what does it mean to be Latino Gretchen states, "We [friends] do American things. We're Chicano. I do Salsa and Meringue...Latino American stuff."

The legislative stakeholders and interest group respondents also mentioned multiple identities to the follow-up question, how do you identify or what other communities do you belong to? Todd stated, "I am very active in my fraternity...my political party." Yvonna states, "I am in several communities...I'm a Texan...Republican...PTA...There is no one American community." Lincoln remarked, "We have our own country in Texas." Juliaine said, "I belong to several

communities...We are a tossed salad...That's what makes America great." Despite the multiple identities, most respondents claimed an American national identity.

Shabini asks "who's afraid of patriotism" in his article on the subject's binding force on citizenship (Shabini, 2002). In a country swarming with cultural, ethnic and political diversity, calls for patriotism in a post-September 11 era have often been poorly disguised allegiance checks. These checks of allegiance remind us of a time when nationalistic educational tools were used to exclude or force members to stake essentialist beachheads on either American or enemy soil (Gottlieb, 1989).¹⁹ Despite its flawed historic uses, "[n]ationalism...is a powerful indication of a desire and need to belong to a politico-cultural entity that determines one's identity"(Shabini, 2002, p. 419). The respondents of this study conveyed this need, but patriotism in the proposed membership framework is not the ethnonationalistic brand that liberals have criticized as being steeped in tribal or familial notions of national belonging (Taylor, 1985; Walzer, 1983, 1990). Rather, patriotism reflects our apparent need for civic belonging in a political community that is diverse and pluralistic. "Civic patriotism – as what promises to replace nationalism by providing the civic bond of citizenship necessary for one's sense of belonging and identity while avoiding nationalism's damaging features" (Shabini, 2002, p. 420). Evoking our senses of patriotism can apparently be based on principles of homogeneous unity for purposes of exclusion, or it can be based on principles of collective unity for purposes of inclusion. Ultimately, patriotism is a noticeable need that is inherent to one's commitment to sharing and exchanging resources with likeminded beings.

¹⁹ The Gottlieb article examines how the treatment of Reconstruction, MacArthyism and the Vietnam War in high school textbooks were one-sided, nationalistic views on the topics.

The brand of patriotism that emerged from this study primarily reflects a need to see one's local community as incorporated in the larger nation-state. It is a belief in a mother country – a construct of solidarity between communities of varying doctrines. It is a need and belief that is developed over time. This is one element of membership that is somewhat dependent on the acquisition of other components of the framework.

Conceptually speaking, being “patriotic” would be difficult if the potential member is not socially aware. A potential member will probably not reflect a need to see one's personal communities as part of a larger one if he or she has not identified with a local community. While one may argue that he or she is only “American,” patriotism responds to the question, how does one come to declare a country as an identity? Through patriotism, I make the claim that one does not come to be simply “American” without identifying with a smaller community. Patriotism assumes that identification gives potential members a sense of perspective of which a person can see a relationship to a larger nation-state.

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

Destiny

Julaine, 44, higher education administrator: *You saw who was American during September 11... We were sad, angry, and scared as hell because this is where we live. Americans aren't going anywhere... I'm not leavin.*

Gloria, 23, undocumented immigrant: *September 11 was the big one. First I was sad... I cried all afternoon. Everybody in our [sorority] house sat by the T.V. and cried... Then I was scared. I was afraid to go outside for a while.*

Clifford, 35, House staff member: *This is where I'm going to stay. I'm going to be here... This is my home and my children's home.*

Destiny captures the future vision of where someone sees himself or herself inside or outside of a particular political community. It is the extent to which a person links herself to the fate of the community. As stated earlier, this construct is a subcomponent of identity. However, the frequency in which the concept of destiny was mentioned warranted the construction of a principle that emphasized its importance. Basically, if a person ties his fate to that of the community, it becomes more likely that he or she will develop into a member of a political community. Again, social identity theory and identity theory can offer theoretical models for this component.

Many of the respondents' responses to the primary interview questions included references to their future relationship with the country (See Appendices J). Many of the undocumented students relayed how their educational aspirations involved future employment in the U.S. Erica stated, "I want to go to grad school after I graduate... I want to be a professor like my favorite teacher Dr [Smith]." Undocumented students'

responses also suggested that parents planned for their child's stay in the country. Lolita said, "My parents worked so I could have a future."

Citizen subjects also reported references to the future. Clifford stated, "This is where I'm going to stay. I'm going to be here...This is my home and my children's home." Eben said, "I live in the same house my grandparents lived...my kids will probably stay here." Jaber interest group participant, stated, "I work so that my family can live comfortably...Yes, here in America." The sense that one belongs in his or her future community was a subtle but distinct finding. Many of the remarks that led to this category stemmed from the primary interview questions. In addition, I asked the follow-up question, *where do you see yourself in 5 years, 10 years?* Many respondents reported both school and work as preparing them for a future in the country. The aforementioned September 11 quotes suggested that many undocumented immigrants identify with the country and see themselves as connected to the country's fate. Therefore, I wanted to encapsulate feelings about future membership in the country.

I believe that applying to college is a good indication that the person sees some future connection to the United States. Most of the students interviewed stated that they are going to college so they can realize their professional and academic dreams. The interview data suggested that if you are educated in the states, you are probably more likely to stay in the states. Therefore, school attendance at the primary, secondary, and postsecondary levels is an important indicator of destiny.

Law Abidingness

This principle was not derived from student interview data. In general, students did not report obeying laws as a being a component of membership. However, when

prompted by the question, have you ever been arrested for any crime, all respondents said no. I did not expect to hear otherwise, and I did not have access to criminal or disciplinary data to corroborate responses. Law abidingness was primarily generated by other sources. Many of the proposed policies that would or do grant undocumented immigrants some form of financial aid require that residents have demonstrated “good moral character” upon applying for the subsidy (DREAM, 2001; Student Adjustment Act of 2001, 2001). This typically requires that applicants do not have an arrest record for a certain class of crimes. Many of the non-student stakeholders generally saw law abidingness as an indication that the person can be a good future citizen. Galston’s citizenship virtues and U.S. naturalization policy also require law abidingness as a virtue or condition of membership. Because of its frequency in the literature, non-student stakeholder opinions, and policy, law abidingness emerged as a component of membership. Assuming there are virtues that make for a good member of a community, this principle seeks moral behaviors that facilitate membership.

Without codifying a list of ethical behaviors that should be explored in membership, I asked what basic moral standards facilitate membership in a political community. In other words, what basic, assessable behaviors can policymakers pull from to consider moral/ethical behavior in membership formation? Law observance seems to be a pragmatic and sensible way to examine basic moral behaviors. I make the obvious assumption that public policy and law generally comport with basic notions of justice that are considered morally sound. There are certainly instances where good people break laws for just reasons. Ignoring aberrant circumstances, the principle assumes that

breaking laws is in part a reflection of a person's aversion to the moral doctrine of the state, which is negatively correlated with being a member (or at least a good member).

Law abidingness assumes that a certain degree of allegiance to the constitution or primary doctrine of the political community is needed for people to become members. I say a certain degree because I don't want to suggest that being critical of or aiming to change various aspects of a political community is a form of disloyalty. However, if a stranger enters the country and does not comport with the separation of church and state concept, for instance, then that person may be less likely to obey laws or participate in civic, social and political practices that facilitate membership. The law abidingness principle asks the question, can the stranger align his or her moral doctrine with the basic principles of America's constitutional democracy? If not, it will be less likely that the person will share a commitment to exchange and share with members simply because he or she does not agree with the assumed social doctrine of the community.

Law abidingness is the belief that people are more likely to develop a commitment to exchange and share resources with likeminded beings if they are willing to work within the moral parameters of the state. Many may view that undocumented students automatically violate this principle because they are undocumented. As emphasized in *Plyler v. Doe*, the Supreme Court did not believe that children of undocumented entrants committed a crime, or should be punished for their parents' actions. Therefore, one must consider how children entered (by way of their parents in most cases) the country when making assessments of whether they are following laws of the land.

Application of this principle is somewhat problematic in regards to educational access. Should we consider criminal records when considering membership? What implications do obeying or breaking laws have on membership? What behaviors are egregious enough to prohibit a person's access to higher education? Policymakers must find practical responses to these questions when considering undocumented immigrant instate tuition.

Substantive Membership

As a collective, integrated whole, membership principles answer the question, how are members of political communities developed? Or, they answer how do strangers generally develop a commitment to share and exchange resources firstly among members or citizens? Separately, the components do not define membership. However, I do believe the principles derived from the multiple data sources make a logical map of political membership. In other words, the membership framework explains what it means to have or develop a sense of commitment to share and exchange resources with likeminded beings (See Appendices C): residency, social awareness, reciprocation, investment, identification, patriotism, destiny, and law abidingness. These are the principles that make up what I call *substantive membership*.

Substantive membership entails living in particular spatial boundaries; the attainment of community knowledge, skills and resources; the receipt of communal provisions through exchange with significant community institutions; the investment of communal provisions for membership; the acceptance of the community's identity and fate; and acceptance of the basic moral philosophy of the political community.

Substantive membership answers the question, what make a person a member? It

assumes that not all substantive members are citizens and not all citizens are substantive members.

Citizenship encompasses the specific rights and privileges bestowed to people in a political community. As mentioned earlier, citizenship protects the goals of that community from being changed by non-members. Countries protect the rights of citizens because they are assumed members of the state. In this regard, citizenship is the country's acknowledgement of members' commitments to its goals. Citizens are assumed to be committed to dividing, sharing and exchanging resources among other members. Why do citizens generally commit to the goals of the country? Not only do countries protect the rights of its members, citizens participate, exchange and deliberate in the country *because* they developed into substantive members. Citizens are not born with this sense.

As stated previously, membership is a developmental process that occurs within the borders of a political community. However, it is not a process that exclusively affects citizens in that community. People's sense of commitment to exchanging resources with likeminded beings is developed regardless of status. Membership involves the exchange of material and immaterial communal provisions between and among people and institutions. Institutions of the state have a role in the development of substantive membership. Undocumented immigrants can and do develop a sense of membership through their connections with citizens, non-citizens, and various institutions in the state. As in the case with various work agreements, countries can attempt to control membership development (i.e., BfA). However, what if non-citizens develop into substantive members? By much of the criteria explicated in the framework, the students

interviewed in this study seemed to have developed into substantive members. If citizenship is built to protect the rights of its substantive members, what are countries' moral obligations to its substantive members who are non-citizens? Now that I have explained a basic understanding of substantive membership, I can begin to answer the primary research question – Should undocumented immigrants receive financial aid? The conclusion of this study will focus on outlining a rational response to the primary research question on the basis of substantive membership.

Conclusions

Should undocumented immigrants receive instate tuition? I will argue in this section that countries are morally obligated to provide noncontributory social welfare benefits (health care, child assistance); contributory social benefits (retirement and unemployment programs); and selected social investment benefits (higher education, elementary and secondary education) to substantive members. Substantive members are those who are committed to dividing, exchanging and sharing social goods, first of all among themselves. That commitment is demonstrated by residency, social awareness, reciprocation, investment, identification, patriotism, destiny, and law abidingness. Therefore, I will argue that undocumented immigrants who have developed into substantive members, as defined by its eight principles, should receive financial aid.

The principles of substantive membership represent our basic, intuitive beliefs of what it means to be a member of a political community. These principles signify a priori conditions that substantiate persons' rights to social benefits in the U.S. They are the assumed necessary conditions that a person must achieve before claiming benefits. While the range of stakeholders in the Texas case generally agrees upon these principles, public policy (i.e., Plyler and IIRIRA) reflects divergent ideas regarding the basis for which we distribute higher education benefits. I believe that these policies differ because we do not act rationally based upon our intuitive ideas of membership. Confusion over the five areas of tension (*distribution of individual and citizen rights, membership development, limited resources, discrimination, and state rights versus national goals*) may preclude policymakers from infusing our beliefs of membership in our education policies. These problem areas may be "intellectual detours" that move policymakers

away from enacting policies that reflect our basic beliefs. I believe stakeholders wrestle with these tensions on their way towards action (policymaking, lobbying, advocating, etc.), which may or may not mirror our basic, intuitive beliefs of membership. I can only speculate that a person's answers to these five areas of tension may direct whether he or she sees undocumented immigrants/substantive members as meeting our commonly held notions of membership. I address the points of tension so that readers can possibly reconcile intuitions and actions.

The chapter is primarily organized and focused on the five problem areas of *distribution of individual and citizen rights, membership development, limited resources, discrimination, and state rights versus national goals*. I combined the *distribution of individual and citizen rights* and *discrimination* into one section. I also merged the *limited resources* and *state rights versus national goals* components of the study. This study dealt with many of these problems in the *Literature Review* and *Findings* chapters of this study. *Conclusions* encapsulates and organizes these findings according to the respective areas. Each section will provide the grist to my argument that countries are morally obligated to provide noncontributory social welfare benefits, contributory social benefits, and selected social investment benefits to substantive members.

Distribution of Individual and Citizen Rights/Discrimination

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

democratic values like unity. Likewise, does it promote or discourage practices like discrimination and social stratification?

In addressing these questions, I hope to explicate five important parts of my argument that substantive members should receive financial aid. First, all people carry certain rights in the U.S. Second, nations do have a right to determine who is or isn't a citizen. Third, nations also have the right to permit limited membership as well as the right to determine various privileges and responsibilities that are associated with the various statuses. However (fourth), liberal democratic societies cannot generate membership criteria that are racist or prejudiced towards specific ethnic groups. Fifth, democratic states cannot entice workers to the country, benefit from their labor, ignore employment/immigration laws, permit and encourage substantive membership, and then deny non-contributory, contributory, or social investment benefits to non-citizen/substantive members. These points led me to the conclusion that substantive members should receive financial aid.

Citizenship is probably the most important benefit in democratic states because it guarantees the full allotment of rights, privileges, and benefits that are afforded to people in a country. For sound and just reasons, democratic states establish rules around citizenship. Two prominent reasons are for protection and self-determination. Citizenship helps countries defend the rights of people who are committed to sharing and exchanging resources with likeminded beings. Citizenship protects those rights that are necessary of individual freedom, including the right to property, personal liberty, and justice. It also grants and guards individuals' political rights, i.e., the right to vote or hold office. Citizenship provides a layer of protection by guaranteeing certain social goods

that are necessary for security and welfare, i.e., healthcare and education. For these reasons, countries have a legitimate right to determine the terms of citizenship.

Likewise, citizenship and the rights associated with it shelter a country's ability to self-determine. If people of the nation-state are to be the primary architects of its character, then certain political rights must be privileged to citizens. Voting privileges and the right to hold public office (with the exception of the presidency in the U.S.) are reserved for citizens. Citizenship is the ultimate form of membership in liberal democracies because citizens have the right to create and construct the laws that govern the state. In this regard, citizenship enables political communities to be sovereign states first and foremost through powers to determine who is and who isn't a citizen.

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

While citizenship is a right to all those who are born or naturalized in the U.S., those who do not have citizenship are afforded certain unalienable rights. In other words, there are rights and benefits, which are afforded to citizens, non-citizens and persons in

the main. In *Plyler v. Doe*, the Supreme Court evoked the Fourteenth Amendment Equal Protection Clause, which prohibits states from denying equal protection to ‘any person within its jurisdiction.

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

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

The economic and social realities of the 21st century demand high school completion at a bare minimum. The lack of a high school diploma and low income grant access to impoverished and oppressed lifestyles {U.S. Census Bureau, 2002 #237;U.S. Census Bureau, 2003 #236}. The unemployment rate is highest among people without a high school degree {U.S. Census Bureau, 2002 #237}. Furthermore, overall income is positively correlated with educational attainment {U.S. Census Bureau, 2002 #237}. There is also a strong relationship between income and various factors of well being.²⁰ In addition, those who cannot earn a high school diploma or enter the workforce may turn to crime {U.S. Census Bureau, 2002 #237;U.S. Census Bureau, 2003 #236}. In general, former prisoners report lower levels of income and education than non-prison populations. All of which accentuates the importance of access to postsecondary education for a country's substantive members.

There is mounting evidence that a high school diploma simply does not grant access to jobs that generate the type of income correlated with individual achievement. There is a growing gap between the annual earnings of those with just a high school diploma and those with a postsecondary education. In 1975, full-time, year-round workers with a bachelor's degree had 1.5 times the annual earnings of workers with only a high school diploma. That ratio rose to 1.8 by 1999 {U.S. Census Bureau, 2002 #237}. The U.S. Census Bureau attributes this historical change to the supply of labor and the

²⁰ Well being is a composite factor comprised of variables of possession of basic household materials (appliances and electronic goods such as refrigerators, televisions, telephones, computers, etc.); housing conditions (physical problems, space, warmth, privacy); neighborhood and community conditions (crime, traffic, fire and police protection); ability to meet basic needs (paying bills, avoiding eviction, having enough food); and whether help would be available from family friends, or other sources if it were needed in the household (U.S. Census Bureau, 2003).

demands for skilled workers. Jobs that do not require a minimum of a high school diploma are diminishing nationally.

“Technological changes favoring more skilled (and educated) workers have tended to increase earnings among working adults with higher educational attainment, while, simultaneously, the decline of labor unions and a decline in the minimum wage in constant dollars have contributed to a relative drop in the wages of less educated workers” {U.S. Census Bureau, 2002 #237, p. 3}.

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

Marlene B. Seltzer, President of Jobs for the Future, states, “Across our country, there is a crisis among many families and individuals who lack the basic skills necessary to move into family-supporting employment. Even those working full-time jobs too often still find themselves unable to provide for the basic needs of their families – food, shelter, clothing, transportation, and medical care” (Jobs for the Future, 2004). This is primarily due to the fact that many jobs afforded to those with a high school diploma pay low wages. “For many people, getting into work doesn’t mean getting out of poverty” (Kazis, 2001, p. 1). Less than 2 million Americans head families that are on welfare, but 9 million working Americans are underneath the official poverty line (Kazis, 2001). Many of the jobs that do not require a college degree place people in a socioeconomic bracket that is associated with substandard living conditions, limited health care access, meager educational outcomes, and higher rates of incarceration. Compounding matters, low income jobs are requiring workers to upgrade their skills (Prince, 2004).

There is added value of a postsecondary education, which is manifested by the positive correlation between educational attainment and earnings. For instance, the average of all individuals' annual earnings in 2002 was \$34,700 {U.S. Census Bureau, 2002 #237}. However, the "average earnings ranged from \$18,900 for high school dropouts to \$25,900 for high school graduates, \$45,000 for college graduates, and \$99,300 for workers with professional degrees" {U.S. Census Bureau, 2002 #237, p. 2}. These data suggest that skills associated with a postsecondary education as well as the credential provide access to individual economic freedom. Moreover, postsecondary schooling equips persons with higher-order skills, which increases chances of getting a higher paying job.

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

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

On behalf of the National Governors' Association, Kazis et al. goes on to say,

"The economic returns from higher educational achievement levels are already significant for both individuals and states. College graduates earn on average 70 percent more than high school graduates – a gap that has widened in the past two

decades even as the supply of college-educated workers has risen. Higher levels of educational attainment lead to higher per-capita income levels” (Kazis et al., 2003, p. 4).

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

Since the Morrill Land Grant Acts, the government has recognized the need to heighten access to institutions of higher learning (Higher Education Resource Hub, 2004). The shift from an agricultural, industrial to today’s knowledge-based economy has increased the importance of a college education. There is general consensus among higher education theorists that colleges and universities play a major role in maintaining and facilitating the social health of society (Bok, 1982; Gumpert, 2000; Kerr, Gade, & Kawaoka, 1994). Higher education helps promote societal wellness by providing education for civic or democratic engagement; preserving knowledge and making it available to the broader public; working cooperatively with government and private industry in order to foster their missions; promoting, advancing and preserving arts and humanities; developing the intellectual talents of its students; preparing society’s future

leaders; broadening access to ensure a diverse democracy; and serve as an “unbiased” critic of society (Kezar, 2002). These social benefits in addition to supporting economic and market goals of society comprise what many consider to be the primary elements of the charter between higher education and society (Bok, 1982, Kezar, 2002).

By providing various social benefits and producing workers and knowledge for industry, higher education helps U.S. society thrive. The Court noted in the *Plyler* decision that a basic education should entail the rudimentary knowledge a person needs in order to be able to achieve equality. However, access to this knowledge is beneficial to both the community and the individuals within it. If the U.S. does not provide substantive members access to a basic education, the costs could be devastating to its residents and institutions. I believe that higher education financial assistance should be a non-contributory benefit primarily because postsecondary education is basic and necessary for both individual and societal wellness.

The newest iteration of basic education must replace high school completion with postsecondary attainment. Within this conceptual shift, states must also begin to explicitly acknowledge that all of its substantive members are included in our aspirations for a highly educated populace. Increased skill development is needed for those individuals who are filling the economic needs of the state. Many undocumented immigrants/substantive members are those persons. States need substantive members to apply “new basic skills” in an evolved market and technical community, for substantive members are by definition the people who are committed to sharing and exchanging goods with likeminded beings.²¹ Substantive members are the people who are working, sharing and exchanging in our communities, homes, businesses and schools. The denial

²¹ The phrase “new basic skills” is taken from the Kazis et al. report.

of postsecondary benefits to durable residents of our states will economically disadvantage those individuals and the communities in which they reside.

I spent the last few paragraphs providing reasons why countries and states should enhance financial access to higher education institutions. However, a denial of benefits to substantive members violates U.S.'s normative principles of unity, community and equality. By limiting access to substantive members we discriminate against those who share and exchange with other likeminded beings and who contribute to the overall progression of society. Making college more affordable to undocumented members may change the bias that I think is underlying the resistance to recognizing substantive membership.

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

Raskin's assertions are fundamental to my claim that substantive members should receive financial aid. We perpetuate the notion that some undocumented immigrants are not substantive members when we deny their just place at the learning table.

When thinking about Rawls' principles of justice, we must see that the subject person in his framework is a substantive member. While all persons have an equal and fair claim to certain liberties, the distribution of social goods that are not unalienable should be distributed justly among substantive members. I still hold that higher education is basic and should be distributed firstly on that basis. However, we must

make distinctions between substantive members and non-members. For instance, there is a difference between an immigrant on a travel visa and an undocumented immigrant who has lived in the country for ten years and developed into a substantive member. In other words, higher education is basic for substantive members.

Additionally, countries cannot recruit immigrant workers, choose not to enforce immigration laws in significant sectors of society, reap the benefits of their labor, and then deny benefits to those who have become substantive members. Such exploitive behaviors are forms of discrimination that countries attempt to legitimate through citizenship status. As indicated by the Fourteenth Amendment, countries cannot discriminate against people because they are non-citizens. Moreover, to deny benefits to people that the country's institutions help acculturate is removing its culpability in transforming people into substantive members. Questions involving *membership development* include: Does the nature of the community facilitate a type of membership that is not acknowledged by the U.S. construction of citizenship? Does the nature of the community facilitate a type of membership that is not acknowledged by its laws involving higher education benefits?

Membership Development

As noted earlier, most undocumented entrants emigrate from Mexico. The stark economic differences between the U.S. and Mexico paired with the economic needs of the United States pull a great deal of undocumented immigrants into the country. Employees bring their families as they take available jobs in the market. Employees go to work, many undocumented families join relatives in the states, and children go to schools where they reside. Various institutions facilitate, support and develop

substantive membership. This study found a mutually beneficial relationship between various institutions of the labor market, schools and families. As a result, a significant number of undocumented immigrants develop the basic commitment to exchange with citizens. Consequently, institutions within the United States play a significant role in recruiting, hiring, sustaining, and benefiting from millions of people who are not citizens. The country's institutional involvement has psychological, economic and material consequences that impact a person's sense of membership.

If a country is not enforcing immigration laws especially among various employers, then it must deal with the consequences of immigrants' possible acculturation in society. However, enforcing immigration policies will be difficult if the basis for which U.S. policy distributes citizenship does not encompass elements of substantive membership. We probably have thousands if not millions of residents who meet our expectations of membership, and those people should be at least placed in permanent residency status. Our naturalization processes simply do not capture those residents who are substantive members.

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

sanctions tough enough to curb the hiring of undocumented immigrants because stringent enforcement may weaken the economy.

Limited Resources and State Rights Versus National Goals

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

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

Much of the research in this area is flawed significantly because we are unable to capture the many variables that are required to do a credible cost benefit analysis (Rothman & Espenshade, 1992). Most limited resource arguments question whether the

taxes generated by undocumented immigrants cover the costs of the services they use. Determining the costs and tax revenue is difficult because the data we need to make such analyses are generally not available. We can't accurately determine the degree to which immigrants use services, nor do we know immigrants' added value to the economy. However, most people recognize that any type of "mass exodus" of undocumented immigrants would cause economic havoc on major industries (Borjas, 2000; Lowell & Suro, 2002; Martin, 2002).

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

I believe we miss a larger point in the limited resource debates. When considering limited resource arguments, one must have a sense of what type of benefit financial aid should be. As stated earlier in this study, I believe that higher education financial assistance should be a non-contributory benefit primarily because some postsecondary education is basic and necessary for both individual and societal wellness. In that regard, states must have the right to prevent the devastating social costs associated with not providing basic needs for its residents.

The provisions in IIRIRA limit states' ability to determine the types of benefits their residents and businesses need. This is partially the rationale behind the cases

mentioned in the legal review (*Toll v. Moreno*, *Vlandis v. Kline*, *Johns v. Redeker*, *Starn v. Malkerson*). In general, states have the right to serve their *residents*. States have long recognized that many of their residents are substantive members and contribute to the social and economic well being of communities. If higher education is considered basic, then states must have the ability to empower and protect their residents. Instate tuition is a benefit that we can allocate because substantive members contribute to it and because the potential social and economic costs of not providing basic necessities would far exceed the cost of the subsidy.

Final Thoughts

What does it mean to be educated? This is one of philosophy of education's most persistent questions, and I believe it to be one of the field's most important. Searching for responses to the question evokes more engaging questions about knowledge, schooling and teaching. It is a question that I often draw upon for inspiration. Sometimes it is a question that calls upon me to find the type of insight needed for a dissertation's end.

One such instance motivated my final thoughts. As part of a year-end summary/public evaluation of a philosophy of education course at the University of Maryland College Park, the instructor, Jeffrey Pegram, wanted to see if the class met its learning objectives. Professor Pegram asked the class if they felt more equipped to respond to the question, *what does it mean to be educated?* Class members offered their brilliant replies and most agreed that people who ascend to advanced stages in the *process of education* typically had an ability to critique their solutions especially those that are required for day-to-day sociopolitical problems in our society.

In their responses, the class assumed that educated people not only have an ability to generate solutions, but they can see and account for alternative solutions to those problems if they indeed exist. “Alternative” meaning solutions that fall outside of one’s own paradigm or self interests. This belief is in accord with the old adage that educated people generally find more questions than answers. In their exploration of various philosophers and philosophies of education, it became apparent that the class recognized that many of the instructional, curricular and organizational answers to educational problems are drenched in ideology, politics, and/or simply did not address alternative arguments. In general, the class agreed that a major characteristic of an educated person is the ability to see holes in one’s answers to various problems. In addition, educated people are not so concerned with finding *the* answer as with finding appropriate questions that can lead to good solutions.

After many of the students spoke, Professor Pegram asked me what I thought about the class’ responses. I agreed with the students that being educated had something to do with an ability to frame a range of important questions and use those questions to find solutions. However, there is a point where solutions must be implemented and decisions made. Subsequently, educated ideas are not always reflected in policy. To that point, I did contribute to the idea of what it meant to be educated. I added that being educated also involved making moral decisions based on one’s ability to see outside his/herself as well as acting on those decisions. I added that many people see alternative views as valid but lack courage, political will, resources, or motivation to incorporate changes in what they see as appropriate solutions. I elaborated the point to the class that educated people make adjustments to their solutions because they exercise that moral

component of their education. In summary, I believe that educated people are more than a repository of facts. Educated people exhibit the moral strength to move beyond what one already knows and determinedly find what one does not know. I grew to this point largely due to this study.

My analysis of undocumented immigrant access to financial aid corroborates the notion that many current policies related to this pressing educational problem are not good solutions. They are not good for two reasons. First like Professor Pegram's class identified, educated people, or in this case educated policy, must address alternative arguments or facts. Higher education and immigration policy simply do not address membership issues as they exist. I do not think I discovered anything new from my study. Many people have argued in some form or another that many undocumented immigrants are de facto Americans. In other words, we have another group of unrecognized members in a country where women and Blacks were similarly situated.

While the opinions expressed in the popular media frame this issue as question of benefits (Should undocumented immigrants receive financial aid?), this study found alternative questions that need to be addressed. Are undocumented immigrants fulfilling the country's expectations of membership? What role does the country play in fostering membership among immigrant groups? Should certain undocumented immigrants be propelled in the pipeline for permanent residency? If we have unrecognized members in the country, how can we protect and enhance our national model of membership?

Like many political philosophers, immigration officials, and members of a state, I do believe that national citizenship models have a legitimate place in democracies. Citizenship helps protect and organize rights in a country. But more importantly, it

allows a country's members to determine its character and progression. In regards to naturalization, citizenship also matters as an important symbolic gesture bestowed upon members by the national community. Many potential members' behaviors are motivated by the aim of citizenship. People become members partly because they want to become citizens. The membership framework describes a set of real behaviors that make up a theoretical or imagined membership status to which strangers are generally not satisfied belonging. Strangers may enter the country with citizenship in mind; others may come solely for economic reasons; some for both. Whatever the reason, strangers that become members of a country want tangible membership status or an official recognition of belonging. For these reasons, I posit that citizenship or national models of membership should be sustained.

However, while we should not eliminate national citizenship models, we should not forget what gives it strength. Citizenship is the ultimate expression of membership. Citizenship must continue to embody a person's commitment to sharing and exchanging resources with likeminded beings for the benefit of that community. Because of that principle, national governments must find creative solutions to the problems that mass migration poses on educational, political and economic systems. Countries are incubators of membership; thus, the denial of citizenship to those who become members is an affront to citizenship. Moreover, it dismisses the roles countries play in creating members. Ultimately, if we do not award citizenship to deserving members we lose an important component of community that bonds its members to it.

Why doesn't current policy reflect substantive membership? I want to offer an additional reason. Immigration has always been a hot-button issue in America.

However, periods marked by the rapid influx of Mexican immigrants, and residue from the events of September 11 as well as the Schwarzenegger's gubernatorial run, have peaked our awareness and stirred the pot. Our sensitive sociopolitical context provides a dark contrast to the bright lights of passion that radiate from the opinions expressed by citizens and residents. The colors of these lights seem to be only black and white. People seem to be generally placed in diametrically opposed camps of pro-immigrant benefits based on human rights rationales and anti-immigrant benefits based on national citizenship models of membership. While there are some who offer more educated responses to this issue, I do not think the philosophy class would deem many opinions expressed by citizens, immigrants and public officials as educated ones. For this issue in particular, an educated solution would account for the protection of citizenship while recognizing there may be members in our society that fulfill our expectations of what it means to be a citizen. Why do people take such rigid positions on the issue?

An overemphasis of many of the proposed framework's components can lead to a rigid brand of membership that is potentially exclusive, ideological and tribal. In particular, communities seem to be predisposed to overdose on the underlying belief inherent in patriotism. "Nationalism...is a powerful indication of a desire and need to belong to a politico-cultural entity that determines one's identity"(Shabini, 2002, p. 419). The sense of belongingness that pulls people towards community apparently can compel members to exclude potential members.

An incident in a waiting room highlighted what I believe to be a hyper-sense of nationalism. As I waited for one of my interviewees, I spoke casually with the receptionist about my study. She knew of my primary reason for coming to the

organization, but wanted to know more about my study. Somewhere in the middle of my explanation, the woman stated, “We can’t allow *anybody* in this country.” I went on to explain that my study examined educational benefits. She went on to explain how so many people come to this country and absorb many of the jobs and benefits the country has to offer. She also explained how she is unable to talk with many of her neighbors because of language differences and different living styles. I asked her if she felt this was due to our educational policies. She believed that it was part of the problem why so many immigrants come to the U.S. Before I left to conduct my interview, she quickly explained that people don’t know each other like they used to and that she did not feel part of a community anymore.

Immediately after my interview, I started to record (from memory) as many aspects of the previous conversation I had with the receptionist. I then began to process our discussion and paid particular attention to the emotions wrapped around it. I sensed a frustration that came along with a perceived threat that immigrants posed. She seemed particularly frustrated that the communal bonds that once tied her neighborhood together no longer existed.

I struggled to interpret her comments so I sat on them until inspiration hatched. During my wait between our conversation and this study’s end, I heard many similar sentiments from dozens of radio and television talk show callers who identified themselves as American. Many of these callers were familiar with some of the facts presented in the case: many undocumented immigrants (especially some class of children) grow up American and practice their membership indistinguishably from citizens. As I came closer to the end of collecting data, it became clear to me that many

citizens were reluctant to differentiate between a recent, unauthorized resident who knowingly violated immigration laws and a child of an undocumented immigrant who lived in the country all their life, identifies as American, participates in our institutions, and places their fate with that of the country. Nor do many people implicate the country's role in recruiting, retaining potential members as well as facilitating membership. If I could turn back the clock and respond to the receptionist's comment, "We can't allow anybody in this country," I would agree. However, I would add that we should recognize members of country as citizens. Moreover, our policy must be able to make this distinction. As a policy recommendation, these are my most important conclusions.

What should I make of the reluctance to distinguish non-members from members? I think Walzer and others would deem these attitudes as indicative of a human tendency to form tribal or family communities – groups that share some basic characteristic like race, nationality or ethnicity. Rigid notion of nationality would make immigration policies require club or family-like admissions standards in which selection would be based on characteristics inherent in club members. Democratic nation-states are not clubs and should not possess admission standards that open doors to a recognized group of ethnic-relatives (Walzer, 1983). Still, where does the reluctance to make distinctions between unrecognized members and non-members come from? In this case, the familiarity apparently produces a comfort that many people associate with being a community. The receptionist felt more comfortable when people spoke the same language or shared a community culture. Concerns emerged because of the apparent changes that occurred between the old neighborhood and the new. Concerns that the

receptionist shared regarding her neighborhood community provide some rationale behind why we have the legal matter of citizenship. Again, citizenship helps maintain our ability to determine the character of a country, to protect the rights of members, and to help arrange constitutional governments. Fear naturally arises when we feel our control of those factors is lost.

However, what we see as American citizenship or how we conceptualize an American citizen can not be so rigidly defined that any deviation is seen as a violation of membership. I do not think the receptionist would harbor frustration if her new neighbors behaved like her former neighbors. In her eyes, her new neighbors did not act like members or Americans. Would her frustrations of immigration policy exist if her neighbors were culturally similar? Let's assume the receptionist's neighbors are undocumented but are racially, culturally and linguistically similar – some Canadians often perpetrate. How would we know if they were members (membership statuses are not tattooed on people's foreheads)? We would look for our basic components of membership – residency, social awareness, reciprocation, investment, identification, patriotism, destiny, and law abidingness. Therefore, a frustration exists because of a change in culture, not necessarily because of people's citizenship status. What this study argues is that many undocumented immigrants are members using a collective account of what it means to be a member. However, many undocumented immigrants are linguistic and cultural threats. Citizens may be constricting their idea of citizenship based on cultural attributes rather than membership behaviors.

Placing strict definitions of what it means to be American is problematic for two other reasons. First, if membership conceptualizations are narrowly conceived because

of cultural and linguistic differences, then obvious issues of fairness emerge. Rights and benefits are not allocated based on culture. Rights and benefits are principally distributed equally among members of various statuses in liberal democracies – framing the struggle of benefit distribution as a struggle for membership. Membership is the chief determinant of who gets what, when and how in terms of communal benefits. Again the question is raised, how can we determine if someone is a member? Many people, like our proverbial receptionist, apparently use cultural behaviors as a determinant.

I can understand how citizens grow to construct their concept of an American citizen. There are certainly pockets of the country that are relatively monolithic in terms of race, class, culture, language, and custom, and being “American” is a palpable idea. While I agree that the “American” being exists, it is certainly not distinguishable by phenotypical, cultural or linguistic markers. Placing these types of markers on our conceptualizations of membership can lead to xenophobic, racist and other discriminatory actions – all of which violates widely shared beliefs of justice.

Placing strict definitions of what it means to be American is also problematic because multilingual/multicultural communities have always existed in America. These types of communities may be relatively new in some regions of the country, but they are not new to the country as a whole. A fear may stem from change, but changing communities are nothing new. Immigration and its impacts have always been a part of the American landscape.

This study suggests that we maintain citizenship, primarily as a vehicle for self-determination. The analysis recommends a need to find ways to identify undocumented immigrants who are members of our political space and place them into an accelerated

permanent residency. This is important for several reasons. There are security risks created by our mislabeling of membership statuses. The nation's economic prosperity is at risk. Moreover, placing unwarranted distinctions between members is a recipe for social unrest.

Earlier in this section, I told the story of the philosophy class' offering of the meaning of what it means to be educated. The class collectively defined it as an ability to produce the range of questions that will lead towards a solution to a problem. I added that a moral component existed in being educated. That moral aspect of educated decision making involves a level of self-critique and subsequent action that propels people to create solutions that may or may not be in alignment with a particular person or group's ideology or philosophy. The moral component of being educated leads me to questions worth exploring in regards to this study. What moral obligations do countries have in expanding membership to include undocumented, foreign-born members of society? How do we generate the courage to find creative ways of identifying and naturalizing people who are members of society? These are the moral and philosophical questions I believe our immigration and education policies must cope with in order to solve this pressing problem.

Appendices A - Demographics

| Demographics | | | | | | | | | |
|--------------------------|-----------|-----|-----------|--------|-----------------|--------------------|-----------------------|----------|-----------------------|
| | | | | | | | | | |
| Subject Grouping | | Age | POB | Gender | Race/Ethnicity | Citizenship Status | Highest Degree Earned | Position | Political Affiliation |
| Students | Leticia | 19 | Mexico | F | Hispanic/Latino | Undocumented | High School Diploma | Student | Democrat |
| | Carla | 19 | Mexico | F | Hispanic/Latino | Undocumented | High School Diploma | Student | Democrat |
| | Luis | 19 | Guatemala | M | Hispanic/Latino | Undocumented | High School Diploma | Student | Democrat |
| | Mati | 21 | Mexico | F | Hispanic/Latino | Undocumented | High School Diploma | Student | Undecided |
| | Erica | 19 | Mexico | F | Hispanic/Latino | Undocumented | High School Diploma | Student | Democrat |
| | Carlos | 21 | Mexico | F | Hispanic/Latino | Undocumented | High School Diploma | Student | Democrat |
| | Zack | 19 | Mexico | M | Hispanic/Latino | Undocumented | High School Diploma | Student | Undecided |
| | Gloria | 23 | Mexico | F | Hispanic/Latino | Undocumented | High School Diploma | Student | Democrat |
| | Toby | 20 | Honduras | F | Hispanic/Latino | Undocumented | High School Diploma | Student | Undecided |
| | Mocha | 19 | Mexico | F | Hispanic/Latino | Undocumented | High School Diploma | Student | Democrat |
| | Michelle | 21 | Mexico | F | Hispanic/Latino | Undocumented | High School Diploma | Student | Democrat |
| | Nigel | 22 | Mexico | M | Hispanic/Latino | Undocumented | High School Diploma | Student | Democrat |
| | Allana | 22 | Mexico | F | Hispanic/Latino | Undocumented | High School Diploma | Student | Undecided |
| | Catherine | 24 | Mexico | F | Hispanic/Latino | Undocumented | High School Diploma | Student | Democrat |
| | Gretchen | 23 | Mexico | F | Hispanic/Latino | Undocumented | High School Diploma | Student | Undecided |
| | Rosslyn | 21 | Guatemala | F | Hispanic/Latino | Undocumented | High School Diploma | Student | Democrat |
| | Lolita | 19 | Mexico | F | Hispanic/Latino | Undocumented | High School Diploma | Student | Democrat |
| | Joseph | 21 | Mexico | M | Hispanic/Latino | Undocumented | High School Diploma | Student | Republican |
| | Maxwell | 22 | Mexico | M | Hispanic/Latino | Undocumented | High School Diploma | Student | Democrat |
| | Judith | 20 | Mexico | F | Hispanic/Latino | Undocumented | High School Diploma | Student | Democrat |
| | CeCe | 23 | Mexico | F | Hispanic/Latino | Undocumented | High School Diploma | Student | Democrat |
| Legislative Stakeholders | | | | | | | | | |
| | Todd | 45 | U.S.A. | M | White | Citizen | Bachelors | | Republican |
| | Brad | 53 | U.S.A. | M | Hispanic/Latino | Citizen | Masters | | Democrat |
| | Greg | 46 | U.S.A. | M | White | Citizen | Bachelors | | Republican |

| | | | | | | | | | |
|-----------------|---------------------|----|---------|---|-----------------|---------|-----------|--|------------|
| | Government Official | | U.S.A. | M | Hispanic/Latino | Citizen | J.D. | | Democrat |
| | Norman | 32 | U.S.A. | M | White | Citizen | J.D. | | Democrat |
| | Yvonna | 25 | U.S.A. | F | White | Citizen | Masters | | Republican |
| | Lincoln | 36 | U.S.A. | M | Hispanic/Latino | Citizen | Bachelors | | Republican |
| | John | 33 | U.S.A. | M | White | Citizen | Bachelors | | Democrat |
| | Arthur | 26 | U.S.A. | M | Black | Citizen | Bachelors | | Democrat |
| | Clifford | 35 | U.S.A. | M | White | Citizen | Masters | | Democrat |
| | Julianne | 44 | U.S.A. | F | White | Citizen | Bachelors | | Democrat |
| | Douglass | 27 | U.S.A. | M | Black | Citizen | Bachelors | | Republican |
| | Sharon | 59 | U.S.A. | F | Hispanic/Latino | Citizen | Masters | | Republican |
| | Andrea | 42 | U.S.A. | F | White | Citizen | J.D. | | Democrat |
| | Eben | 33 | U.S.A. | M | Hispanic/Latino | Citizen | Bachelors | | Democrat |
| | Mark | 33 | U.S.A. | M | Hispanic/Latino | Citizen | Masters | | Democrat |
| | | | | | | | | | |
| Interest Groups | | | | | | | | | |
| | Arlene | * | U.S.A. | | White | Citizen | Ph.D. | | Republican |
| | Anton | 52 | Germany | | Black | Citizen | Masters | | Democrat |
| | Jaber | 46 | U.S.A. | | White | Citizen | Ph.D. | | Democrat |
| | William | 33 | U.S.A. | | White | Citizen | Ph.D. | | Republican |
| | Frank | 50 | U.S.A. | | Hispanic/Latino | Citizen | Ph.D. | | * |
| | Kevin | 37 | U.S.A. | | White | Citizen | Masters | | Republican |
| | Dorian | 45 | U.S.A. | | White | Citizen | Ph.D. | | Democrat |
| | Tom | 42 | U.S.A. | | White | Citizen | Masters | | Republican |

Appendices B - Interview Questions

Student Questions

Do you feel like you're a part of an American community? Why do you think that?

Time or physical presence in the U.S.

When and how did your parents [guardian or family member] emigrate to the U.S.?

Why did your parents [guardian or family member] leave?

How long have you been in the U.S.

When was your first day in school in the U.S.

How did your parent's [guardian or family member] learn how to navigate the social, political and economic terrain of America?

When did you realize that you were undocumented?

Did you or your parents attempt to stabilize your citizenship status? If so, when and what happened? If not, why?

Allegiance to the country.

How do you identify in terms of nationality?

Why do you identify or not identify with your originating country?

How does your family influence your national identity?

Economic and social investments.

What are your extracurricular and curricular activities?

What activities did you participate in while in high school?

Do you perform any type of community service? If so what?

Where do you generally see yourself in the next ten years and why? What do you see yourself doing in terms of employment?

Where do you see your friends in the next ten years and why?

Why did you choose to enroll in college?

Have you ever possessed a job? What did you do?

Have you paid taxes?

What clubs or organizations do you belong to?

Cultural awareness (political processes, language, culture).

Have you decided on a major or area of study? If so, what is it and how did you come to the decision?

What language or languages do you speak? What contexts do you speak them?

Good Moral Character

Have you been arrested of a crime? If so what?

Questions to Stakeholders

Do you feel like you're a part of an American community? Why do you think that?

What criteria should determine postsecondary educational benefits?

What should determine the receipt of postsecondary benefits and why?

How does immigrant participation in higher education factor in the state's general investment in education?

Does the denial of instate tuition punish the children for their parent's behavior?

Does the denial of higher education benefits interfere with federal immigration laws?

Can the work performed by immigrants be replaced by citizens?

How should state agencies determine residency for undocumented students?

Are students who attend colleges and universities likely to stay in the U.S.? What impact, if any will this have on our national goals?

Would advancing benefits to undocumented immigrants create a system to open for us to control, administer, or pay for?

Does the denial of financial aid eligibility make a class of persons vulnerable to essential goods needed to thrive in society and for society to thrive?

Will providing benefits to non-citizens weaken or strengthen the country's ability to provide for its official members?

Does granting or denying benefits impose upon the government's ability to protect individual rights of its members or does it interfere with citizens' individual rights?

What is the average length of stay for undocumented immigrants?

Are undocumented students who attend colleges and universities more likely to stay in Texas or the U.S. than students who do not?

Are there social benefits for granting instate tuition to undocumented immigrants? If so, what?

Are there potential dangers to granting instate tuition to undocumented immigrants? If so, what?

How is the financial aid system funded in Texas?

Will providing benefits to non-citizen residents reduce the amount of financial aid afforded to citizen-residents?

What are students expected to contribute to the financial aid system? Parents?

Appendices C - Membership Framework

| Substantive Membership | | | | | | | | |
|------------------------|---|---|--|---|--|---|---|--|
| Principle | <i>Residency</i> | <i>Social Awareness</i> | <i>Reciprocation</i> | <i>Investment</i> | <i>Identification</i> | <i>Patriotism</i> | <i>Destiny</i> | <i>Law-abidingness</i> |
| Key Analytic Questions | Has the person been living in the community long enough to become socially aware, work, learn, and invest in the community? | Has the person acquired the basic knowledge that enables them to communicate with members and participate in the socio-political, cultural, and legal environments of the political community | Is the person linked into a network of institutions through a series of exchanges of values, skills, and basis knowledge that enables a person to thrive in the community? | Has the person invested time, money, skills, education, and other resources for the return of membership? | Does the person identify as a member? | Does the person incorporate his or her identity in a larger conceptualization of the community? | Does the person place his or her fate with that of the community? | Does the person abide by the law of the land? |
| Practical Assessment | School Attendance Records, Library Records, Driving History, Church Records, After-School Program Attendance | Completion of High School, Employment History, Drivers License, | School Attendance, High School Diploma, Participation in Community Centers, Employment, Family Status | High School Diploma, Community Service, Extracurricular Activities, Wages Earned and Taxes Paid | Completion of High School, Extracurricular activities, | Cross-cultural Collaborations, Evidence of working well with others, Military Backgrounds | Education Track, Career Path | Criminal History, School's Disciplinary Records, |
| Policy Requirements | Be present in the state long | Graduate from a high school | Graduate from a high school in | Graduated for High School; | Graduate from High School | Evidence of cross- | Applied and accepted in | No felonies. |

| | | | | | | | | |
|--|---|--|--|--|--|---|---|--|
| | enough to meet current residency laws; attend high school for at least three years. | in the state in which the student is a resident. | the state in which the student is a resident; show evidence of sustained community service | show evidence of sustained community service; participation in the armed forces or ROTC. | | cultural collaboration or working with people of different socioeconomic background | accredited college or university; sign affidavit promising to initiate naturalization | |
|--|---|--|--|--|--|---|---|--|

Appendices D - Residency

| Residency | | |
|--------------------------|-----------|--|
| Subject Grouping | Name | Validating Remarks |
| | | |
| Students | Leticia | I lived here all my life; this is my home |
| | Carla | I live here |
| | Luis | I've been living in Texas since I was 5 |
| | Mati | We live here |
| | Erica | I am a resident of Texas |
| | Carlos | I've lived here for years |
| | Zack | I lived here for so long that I don't know anything else |
| | Gloria | This is where I live |
| | Toby | This is my home; I haven't been in Mexico in over 10 years. |
| | Mocha | I live here |
| | Michelle | I've been here so long that I fell like this is my home; I've been here for 12 years |
| | Nigel | You are where you live |
| | Allana | How did Rakim say it, "It ain't where your from, its where your at." This is my home now; I'm American |
| | Catherine | I live in America |
| | Gretchen | I lived in 5 states in fifteen years |
| | Rosslyn | I live here |
| | Lolita | My school says I'm a resident; so I'm a resident |
| | Joseph | My family (from Mexico) calls me American...I've lived in the states so long I guess I am. |
| | Maxwell | My family always live here |
| | Judith | America is my home...I live in here |
| | Mel | I live here |
| | | |
| Legislative Stakeholders | | |
| | Todd | This is my home;my family has been here; I lived in the same city all my life |
| | Brad | I was born and raised in America |

| | | |
|-----------------|---------------------|---|
| | Greg | Yes and no...I feel part of the community because I live here. |
| | Government Official | I've lived here all my life |
| | Norman | I was brought up in the country |
| | Yvonna | I live here, but I don't get the rights that other citizens get. |
| | Lincoln | My family has been here since about the depression. |
| | John | I live in America; I live in Texas; I am a resident |
| | Arthur | I was born here; I've lived here all my live. |
| | Clifford | I was born in Texas |
| | Julianne | I a citizen through birth; I feel American because I live here. |
| | Douglass | I never lived anywhere else. I'm ashamed to say that I only been out the country once. |
| | Sharon | I live here |
| | Andrea | I was born in here. I've lived here...Living in a place is not enough. |
| | Eben | I grew up in Texas |
| | Mark | Yes, because I live here |
| | | |
| Interest Groups | | I feel a part because I live here |
| | Arlene | I was born in the U.S., I lived here ever since. |
| | Anton | I grew up in all over the world (parents in the military); I grew up with America on steroids |
| | Jaber | I was born here; I never left |
| | William | I was born in Witchata; I lived in Texas for the last 20 years |
| | Frank | I live here |
| | Kevin | I live in the country |
| | Dorian | I was born and raised here |
| | Tom | My family has worked and lived here for 6 generations |

Appendices E – Social Awareness

| Social Awareness | | |
|--------------------------|-----------|---|
| Subject Grouping | Name | Validating Remarks |
| | | |
| Students | Leticia | I know America more than I know Mexico |
| | Carla | She helped me learn English |
| | Luis | You have to understand everything. |
| | Mati | But you have to learn (English)... You have to know how we were pushed off this land. |
| | Erica | I started getting good grades...when I could understand people's jokes. |
| | Carlos | This is what I know...People think I automatically know Cinco de Mayo...I know the fourth of July. |
| | Zack | I learned more about America at my jobs |
| | Gloria | We spoke with senators and representatives about getting in-state tuition |
| | Toby | I know English better than most Americans |
| | Mocha | I understand American culture more than Mexican culture. I pledged allegiance everyday...I know who George Washington is. |
| | Michelle | I live in two worlds, when I go to Mexico, I speak Spanish and eat real burritos...In America, I speak English and eat McDonalds. |
| | Nigel | I started to feel American when I could understand everything going on around me. |
| | Allana | I didn't always feel a part of the community. I had to learn what America was about. |
| | Catherine | My family raised me to be American. We had to learn English and study American culture. |
| | Gretchen | We (friends) do American things. We're Chicano. I do Salsa and Merenga...Latino American stuff |
| | Rosslyn | I dream in English. I only know how to drive in America. |
| | Lolita | I'm going to school to be a lawyer...In America. You got to learn American law...policy. |
| | Joseph | I want to change policy because it isn't fair...You need to know how policy affects people |
| | Maxwell | I may be Mexican American but I'm American...I know Mexican American culture. |
| | Judith | You have to know English to be American, you won't survive. |
| | Mel | I lived here all my life, I don't know anything else...I know the language...culture. |
| | | |
| Legislative Stakeholders | | |

| | | |
|-----------------|---------------------|---|
| | Todd | I distinctly American...I have the ability to be a part of the American community...You need to know English, the law...history. |
| | Brad | If I skydived in Russia...I wouldn't know where to go. I wouldn't even know how to ask for help |
| | Greg | The hardest part about being American is knowing then it's OK to make fun of your friends mother |
| | Government Official | I do have a problem when people come over here and don't know our great, American heroes |
| | Norman | I know how to communicate in the country...I vote...I know the political processes. |
| | Yvonna | I should feel a part of of the community because I this is all I know...You know how you can be a part of something but not a complete part. |
| | Lincoln | I know the language, I participate in American traditions. |
| | John | You have to know English...I don't know how you could feel American and not speak English |
| | Arthur | You are what you know. I only know American stuff...language, culture, how America works. |
| | Clifford | Are you asking me do you know what I am. I'm American because I was raised here and I know this place. |
| | Julianne | I thought we were going to talk about undocumented students. Being a part of the community is not knowing the community |
| | Douglass | Undocumented immigrants know about America like I know. |
| | Sharon | I speak the language...I'm a citizen. |
| | Andrea | My heros were American by citizenship but I wouldn't say they were fully a part of the community... idolize mostly Americans...I would hope that being American meant knowing about its history...Everyone's history. |
| | Eben | English is basic. |
| | Mark | I know all the important stuff associated with being American...English...politics...history...how to drive in the country |
| | | |
| Interest Groups | | |
| | Arlene | I feel a part because I know customs, laws, traditions...There are basic things everyone needs to know in America...I guess these are universal. |
| | Anton | I'm a part of a Black American Community...you need to know our sense of struggle...history. There has to be communication. |
| | Jaber | Part of it is knowing the social groups. When you're in school you know what community you belong to. |
| | William | I'm American because I know how to be one...You need to know the culture. |

| | | |
|--|--------|---|
| | Frank | English is important |
| | Kevin | You need knowledge that will get you in the flow of the community |
| | Dorian | There's so many things you need to know to be American...English is one thing. You need to know laws...cultural things. |
| | Tom | I know the social landscape. |

Appendices F - Reciprocation

| Reciprocation | | |
|------------------|-----------|---|
| Subject Grouping | Name | Validating Remarks |
| | | |
| Students | Leticia | I learned English in school; That's what you do in school, learn about America. |
| | Carla | I work at a day care in the summer; I teach the White kids how to speak Spanish. |
| | Luis | I learned it(how to understand American culture) in school. I watched tv and then I would see how it was said in school. |
| | Mati | When I first came everybody was just saying blah, blah, blah. I hated school at first...When I started to learn English school became fun; You can make mistakes in school. |
| | Erica | The reason why I know English and my family don't is because we have to speak English in school. They don't have to speak English on the farm. |
| | Carlos | I never had to learn how to be American; This is what I know; I always be a part of the community; There is not one place you learn; I didn't even know I was illegal until I wanted to get a job in the [summer program]. I needed a social security card; My dad gave me a number to use. I think it was the one he used at work. |
| | Zack | I spend most of my time in school. All my friends are in school. |
| | Gloria | I used to work with my Mom on a Farm in Lubbock. |
| | Toby | I went to school here; my family works here...I am going to go to college so I can get a job here |
| | Mocha | I have to work to help my family...That's why I had to take last semester off. |
| | Michelle | I learned about America in school; like the Presidents, social studies, civics...you learn stuff like that in school...you learn like the real stuff out of school |
| | Nigel | My cousin taught me how to speak English. |
| | Allana | I really started to learn how to speak English at my job. I worked at [restaurant] in the suburbs...I shouldn't have done it because everyone spoke English...but I learned cause I had to. |
| | Catherine | My mom still can't speak English, but she would make us do our homework...and learn English...She could tell when we were studing |
| | Gretchen | My family came here to work...We work on the farms...They do seasonal work...My older sister watches us if they have to travel...They send the money home. |
| | Rosslyn | We came to help my family...Some of them are American. They work on farms in Texas. |
| | Lolita | We say the pledge of Alligiance like everybody else...I do everything they do. |

| | | |
|--------------------------|---------------------|---|
| | Joseph | I have a cousin who helps us [family] come in. They hook us up with jobs and papers. |
| | Maxwell | My Dad came over to work about 10 years ago. My mom brought us here about a couple of months later. |
| | Judith | I learned so much from my American friends...They were in school |
| | CeCe | My family worked here since I was in elementary school |
| | | |
| | | |
| Legislative Stakeholders | | |
| | Todd | You learn everywhere...School is important. |
| | Brad | I learned so much in church. Church gave me a community that taught me how to live in America |
| | Greg | I work here...I'm part of the economic engine...We exploit these people and take away jobs from Americans. |
| | Government Official | I think I became American in College. I thought everybody had experiences like mine. College showed me that I was a part of something larger...an American community |
| | Norman | I learned a lot of it in school. I learned more in college...Then I learned more in Law school...Yeah I learn at work everyday. |
| | Yvonna | this is where I live, work, and raise my family. |
| | Lincoln | I don't know if there is a place you learn how to be American. Once your in the country, you are going to learn like it or not |
| | John | School. School is the foundation. |
| | Arthur | The church was a instrumental part of me becoming an American. It was the place where I learned about politics...I probably read more in church than in school. America has different people in it...We need each other to survive. |
| | Clifford | You just absorb information when you are here |
| | Julianne | My colleagues are like my family...I tend to relax at home...When I come to work, we talk about what's going on in society. |
| | Douglass | When I was school aged-I learned in school; now I learn all over...museums...work...travel. |
| | Sharon | I was born here. I've been learning since birth...I guess I learned in school with my friends...my mother...work...church. |
| | Andrea | School was instrumental in my cultural development |
| | Eben | My job gives me the resources I need to live. |
| | Mark | Of all the places we want undocumented folks it's our schools. We know what they're getting in schools. |
| | | |

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|-----------------|---------|---|
| Interest Groups | | |
| | Arlene | My family taught me everything. We read everything. |
| | Anton | I don't know...I guess your supposed to get information in school...I learned the most about my community out of school; self study...College is the place where you can learn about your specific community. |
| | Jaber | My peers have always been very influencial on how I percieve the world. Your talking about membership...I'm a member of a peer group first. |
| | William | now I learn at work...I read the paper at work. |
| | Frank | I spend so much time at work...This is where I learn |
| | Kevin | You learn about your community by living in it. I'm American, but I am a Texan first. Texas is where I grew up...You learn from everything...school, work, friends, family, church. |
| | Dorian | I learned being an American through my family. |
| | Tom | They going to do the work that citizens won't...We tried to hire folks, but it just doesn't happen. |

Appendices G - Investment

| Investment | | |
|--------------------------|-----------|---|
| Subject Grouping | Name | Validating Remarks |
| | | |
| Students | Leticia | I want to work in the country when I graduate. |
| | Carla | I always knew I wanted to go to college...I am in accounting...I want to work in the country. |
| | Luis | Yeah, they took taxes out of my check...I hate when people say we don't pay taxes. |
| | Mati | No doubt, I'm going to work here. |
| | Erica | I want to go to grad school after I graduate...I want to be a Professor like my favorite teacher Dr. [Smith]...I would like to teach at a school like [State University]...I can't wait till its over [being naturalized]. Then I can just let my worries go. |
| | Carlos | When they took taxes out of my check I was like cool. I thought everything was OK. |
| | Zack | I want to stay here. Why do you think I'm going to college...I want to take care of my family...here in America |
| | Gloria | Taxes are taken out. |
| | Toby | I'm going to school to be a teacher...In America. |
| | Mocha | I work to help my family. I go home in the summers to help out. |
| | Michelle | * |
| | Nigel | They worked here so I could have a better life. |
| | Allana | I'm in college so that I can get a job. |
| | Catherine | I have to go to college. I can't to Mexico. |
| | Gretchen | * |
| | Rosslyn | Yes, I work and go to school. I have to work to stay in school |
| | Lolita | My parents worked so I could have a future. |
| | Joseph | My family makes all of us go to school so that we don't have to work in the factory |
| | Maxwell | I do community service at school...I want to help someone in the community. |
| | Judith | My mother does everything for us...She worked three jobs once...She is going to cry when I graduate. |
| | Mel | Want am I going to do. I'm American. I have to go to college if I want to be anything. |
| | | |
| Legislative Stakeholders | | |

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|-----------------|---------------------|--|
| | Todd | I pay taxes. |
| | Brad | My father sent me to college so that I could get a job...Where else...they wanted me to work here. |
| | Greg | I pay taxes, vote, and everything else that required of me. |
| | Government Official | I pay taxes every year. |
| | Norman | You go to college so that you can get a job. |
| | Yvonna | One of the problems with undocumented immigrant is that they burden local governments. The money that is collected goes to the federal reserves. |
| | Lincoln | I work so that my family can have a life. |
| | John | I know that my kids are going to college. |
| | Arthur | * |
| | Clifford | I work here, I pay taxes...I do my fair share of service...We forget that we have to do these things so that we can be a community |
| | Julianne | My entire family went to UT. That's our school. |
| | Douglass | * |
| | Sharon | I put my time in. I'm damn near 60...I worked this school district for 27 years...I'm more American than anybody in here. |
| | Andrea | I pay taxes. |
| | Eben | * |
| | Mark | I went to college, got a job, and became a productive member of society. |
| | | |
| | | |
| Interest Groups | | |
| | Arlene | |
| | Anton | I give a lot of myself for this country...I deserve everything I get. |
| | Jaber | * |
| | William | I vote...pay taxes |
| | Frank | My grandparents sacrificed everything so that I could live a comfortable life here in the country...But they did it the right way. |
| | Kevin | I went to [State U]...I had to...I knew I was getting into Education |
| | Dorian | We didn't have a choice...We had to go to school in Texas...That's how we do it down here...Most people stay. |

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| | Tom | I want to give people a chance to work. It will help families realize their goals...My business is proof that work can lead to something bigger. |
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Appendices H – Identification

| Identification | | |
|--------------------------|-----------|---|
| Subject Grouping | Names | Validating Remarks |
| | | |
| Students | Leticia | This is what I am...I don't think I'm Mexican anymore. |
| | Carla | I feel American...I tell people that I'm American, but I know that I'm not. |
| | Luis | American |
| | Mati | I'm Chicano |
| | Erica | I am more American than Mexican |
| | Carlos | American |
| | Zack | American |
| | Gloria | Mexican American |
| | Toby | American |
| | Mocha | American |
| | Michelle | American |
| | Nigel | American |
| | Allana | Mexican American |
| | Catherine | American |
| | Gretchen | Mexican American |
| | Rosslyn | American |
| | Lolita | American |
| | Joseph | Mexican America |
| | Maxwell | American |
| | Judith | American |
| | Mel | Chicano |
| | | |
| Legislative Stakeholders | | |
| | Todd | I identify first as an American |
| | Brad | American |

| | | |
|-----------------|---------------------|--|
| | Greg | I may be an American in name...I'm don't feel a part of an American community. |
| | Government Official | American |
| | Norman | American |
| | Yvonna | American |
| | Lincoln | American |
| | John | American |
| | Arthur | American |
| | Clifford | American |
| | Julianne | American; Texan |
| | Douglass | American |
| | Sharon | American |
| | Andrea | American |
| | Eben | American |
| | Mark | American |
| | | |
| Interest Groups | | |
| | Arlene | American |
| | Anton | * |
| | Jaber | American |
| | William | American |
| | Frank | American |
| | Kevin | American |
| | Dorian | American/Texan |
| | Tom | American |

Appendices I - Patriotism

| Patriotism | | |
|------------------|-----------|--|
| Subject Grouping | Name | Validating Remarks |
| | | |
| Students | Leticia | We live in a multicultural community...I hang out in different communities all the time...You just can't hang with people in your race. |
| | Carla | I feel a part of the American community...Being an immigrant is American...I belong because I fit in...I love America because everybody is an immigrant. |
| | Luis | I have to be a part of the Guatemalan community, Mexican community and American community |
| | Mati | * |
| | Erica | I am more American than Mexican...It's all good...I don't know what I am but who says you have to be one thing |
| | Carlos | Even though I'm illegal, I hate when people assume I'm illegal...How do you know what I am. |
| | Zack | * |
| | Gloria | * |
| | Toby | * |
| | Mocha | My mom hinks she a chameleon...She is everything. |
| | Michelle | * |
| | Nigel | My parents put flags up before September 11. They're not even citizens. |
| | Allana | * |
| | Catherine | * |
| | Gretchen | We (friends) do American things. We're Chicano. I do Salsa and Merenga...Latino American stuff |
| | Rosslyn | * |
| | Lolita | * |
| | Joseph | In college you can be different. It's OK. We're all just students |
| | Maxwell | * |

| | | |
|--------------------------|---------------------|---|
| | Judith | Sometimes I think they don't like me because I'm Mexican...We were here first...I should be here...We're all immigrants. |
| | Mel | * |
| | | |
| Legislative Stakeholders | | |
| | Todd | Yes, I am very active in my fraternity...my political party. |
| | Brad | * |
| | Greg | * |
| | Government Official | I think I became American in College. I thought everybody had experiences like mine. College showed me that I was a part of something larger...an American community |
| | Norman | * |
| | Yvonna | I am in several communities..I'm a Texan...Republican...PTA. There is no one American community. |
| | Lincoln | We have our own country in Texas. We got immigrants from all over. |
| | John | * |
| | Arthur | I don't get caught up with this illegal immigrants can't be in the county...America has different people in it...We need each other to survive. |
| | Clifford | * |
| | Julianne | I belong to several communities...We are a tossed salad...That's what make America great. |
| | Douglass | I'm part of many communities...Countries are made up of smaller communities. |
| | Sharon | * |
| | Andrea | I just don't want my American child to suffer to fill someone else's need. We have millions of children...Black, White children who need our attention...We act like we are the United Nations...We're not. |
| | Eben | * |
| | Mark | * |
| | | |
| Interest Groups | | |
| | Arlene | Yes, sometimes I think I'm more active in my Book Club |
| | Anton | I'm a part of a Black American Community...you need to know our sense of struggle...history. There has to be communication. |

| | | |
|--|---------|--|
| | Jaber | * |
| | William | I would consider myself American first...I am a Texan...We do things a little different down here...You can read on my sheet that I am also a Republican |
| | Frank | My colleagues form a community...more than my wife would like...I am very involve in the local Chicano community...with chicano student access |
| | Kevin | I guess myfriends are a community...We all work on the same thing [immigration issues]. |
| | Dorian | I am a Texan...in my neighborhood association...involved with my church. |
| | Tom | * |

Appendices J - Destiny

| Destiny | | |
|--------------------------|-----------|---|
| Subject Grouping | Name | Validating Remarks |
| | | |
| Students | Leticia | Yeah, I want to work here. |
| | Carla | I plan on it [working in the America] |
| | Luis | I want to move to LA and by a home in Hollywood... You know I'll be bankin. |
| | Mati | This is my home..I'm not going anywhere. |
| | Erica | I want to go to grad school after I graduate...I want to be a Professor like my favorite teacher Dr. [Smith]...I would like to teach at a school like [State University]...I can't wait till its over [being naturalized]. Then I can just let my worries go. |
| | Carlos | I just can't wait till I'm a permanent resident |
| | Zack | |
| | Gloria | September 11 was the big one. First I was sad...I cried all afternoon. Everybody in our [sorority] house sat by the T.V. and cried...Then I was scared. I was afraid to go outside for a while. |
| | Toby | I went to school here; my family works here...I am going to go to college so I can get a job here |
| | Mocha | |
| | Michelle | I want to live in New York...Nobody leaves Texas |
| | Nigel | |
| | Allana | |
| | Catherine | Yes here in America...I think about going home sometimes...I still am going to live here. |
| | Gretchen | |
| | Rosslyn | |
| | Lolita | My parents worked so I could have a future. |
| | Joseph | My family makes all of us go to school so that we don't have to work in the factory |
| | Maxwell | |
| | Judith | Working somewhere near my family...In the U.S. |
| | Mel | |
| | | |
| Legislative Stakeholders | | |

| | | |
|-----------------|---------------------|--|
| | Todd | |
| | Brad | My father sent me to college so that I could get a job...Where else...they wanted me to work here. |
| | Greg | * |
| | Government Official | I believe in America...I'm going to stay. |
| | Norman | You go to college so that you can get a job. |
| | Yvonna | * |
| | Lincoln | I work so that my family can have a life. |
| | John | * |
| | Arthur | * |
| | Clifford | This is where I'm going to stay. I'm going to be here...This is my home and my children's home. |
| | Julianne | You saw who was American during September 11...We were sad, angry, and scared as hell because this is where we live. Americans aren't going anywhere...I'm not leavin. |
| | Douglass | * |
| | Sharon | * |
| | Andrea | Sometimes I think about moving on...I can't say if I'll be here in ten years. |
| | Eben | I live in the same house my grandparent lived...my kids will probably stay here |
| | Mark | * |
| | | |
| Interest Groups | | |
| | Arlene | * |
| | Anton | I might move to Jaimaca one day |
| | Jaber | I work so that my family can live comfortably...Yes, here in America |
| | William | I don't know what I'll do, but I know I'll do it in the country. |
| | Frank | * |
| | Kevin | * |
| | Dorian | I'm also a father, and I have a responsibility to make sure my kids can live comfortably,,,I want them to travel, but they have to know we have a home form them. |
| | Tom | * |

Terms

Institution: An organization of society founded for a particular purpose or an established law, practice, or custom (Urdang, 1996).

Investment: The outlay of money, time or other resources, in something that offers (promises) a profitable return (Etzioni, 1998, p. 682).

Law abidingness: The belief that people are more likely to develop a commitment to exchange and share resources with likeminded beings if they are willing to work within the moral parameters of the state.

Membership and Members: The group of people in a political community who are “committed to dividing, exchanging, and sharing social goods, first of all among themselves” (Walzer, 1985, p. 31).

Patriotism: Patriotism reflects the need to see one’s local community as incorporated in the larger nation-state. It is a belief in a mother country – a construct of solidarity between communities of varying doctrines.

Reciprocation: Reciprocation is the exchange of communal provisions between individuals and institutions that leads to an inextricable relationship between the two.

Social Awareness: The degree to which a person has acquired the basic knowledge that enables them to communicate with members and participate in the socio-political, cultural, and legal environments of the political community.

Strangers: The concept of stranger is used liberally in philosophical and anthropological studies. A “stranger” is generally seen as a person who is new to a community and their experiences in the communities changes them (Park, 1969). Much of this study examines how strangers become members or a community.

Substantive Membership: The attainment of community knowledge, skills, and resources; receipt of communal provisions through exchange with significant community institutions; investment of communal provisions for membership; acceptance of the community’s identity and fate; and acceptance of the basic moral philosophy of the political community.

Undocumented: The term characterizes anyone who cannot demonstrate proof of United States citizenship. Terms such as *illegal alien*, *unauthorized resident* and *non-citizen* are also commonly used. The undocumented includes those who cross the nation’s border illegally as well as those who overstay the terms of authorized visas or travel documents.

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