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INTRODUCTION



## The making of procedural justice: enacting the state and (non)citizenship

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### ABSTRACT

Recent advances in citizenship and migration studies have demonstrated the need to explore noncitizens' social, political and legal relationships to the state in their own right. Such a rethinking inevitably requires analysing how both 'citizenship' and 'the state' are enacted and performed in the negotiation of substantive rights. This special issue follows an unexplored path by scrutinizing these interactions between 'citizenship' and 'stateness' in the domain of procedural law, procedural safeguards, and perceptions of procedural justice among a variety of actors. The contributions explore empirically how procedural rules are invoked, altered, disregarded, or reinvented in different sites of interaction, ranging from asylum determination and adjudication to immigration and municipal registration offices. This interactionist approach not only recasts procedural rules as an integral part of citizenship struggles, thereby shedding light on the co-constitution of state and noncitizenship, but also stresses the importance of nuanced analyses of the nexus between procedural and substantive rights.


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Asylum; immigration; procedural justice; citizenship; stateness

Citizenship and noncitizenship have typically been conceived of in binary terms, defining noncitizens chiefly through what they do *not* possess. This obscures not only significant differentiations among noncitizens, but also state practices that are responsible for them. Recent advances in the citizenship literature, on the other hand, have demonstrated the need to further explore noncitizens' social, political and legal relationships to the state on their own right (Landolt and Goldring 2015; Tonkiss and Bloom 2015). Drawing on a growing body of scholarship in the field of migration studies that mobilizes postcolonial and decolonial approaches as well as critical race theory in order to analyse migration law, sovereignty, state, and citizenship as racialised formations and practices (Achieme 2019; Nisancioglu 2020; El-Enany 2021; Sharma 2022), Favell (2022, 1) has recently called for closer critical examination of the 'state-power building effects of bordering, managing and cultivating "diverse" national populations, and its ongoing governmental

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The authors share first co-authorship of this article. While they have equally contributed to the development of the arguments made, they have different expertise. Sophie Andreetta enriched the article with insights from the anthropology of state, Larissa Vettters from (socio)legal scholarship on procedural law, and Zeynep Yanaşmayan from critical citizenship studies.

categorisation of citizens and migrants, nationals and aliens, majorities and minorities'. He highlights these state-power building effects as a key feature 'of the reproduction of massive global inequalities between "the West and the Rest"'. Responding to these calls in the scholarship inevitably requires analysing how both 'citizenship' and 'the state' are enacted and performed in the negotiation of substantive rights. Building on the seven contributions to this issue, we argue in this introduction that a focus on procedural rules and perceptions of procedural justice not only makes an important conceptual contribution to (critical) citizenship and migration studies, but also allows for a more nuanced analysis of the nexus between procedural and substantive rights.

Each of the articles in this special issue follows an unexplored path by scrutinizing the co-constitution of 'citizenship' and 'stateness' in the domain of procedural rights and perceptions of procedural justice among various actors. In 'Just Another Benefit? Administrative Judges' Constructions of Sameness and Difference in Asylum Adjudications', Livia Johannesson (2022) analyses the procedural consequences that flow from Swedish asylum judges' understanding of the principle of equality. In the second article, 'Making Sense of Noncitizens' Rights Claims in Asylum Appeal Hearings: Practices and Sentiments of Procedural Justice among German Administrative Judges', Larissa Veters (2022) explores how procedural rules and practices affect legal categorizations and shines a light on important distinctions within the category of noncitizens. In 'Informing for the Sake of It: Legal Intricacies, Acceleration and Suspicion in Germany and Switzerland', Lisa Borrelli and Anna Wyss (2022) highlight how such procedural rights as the rights to information and due process are hollowed out by the structural dynamics embedded in administrative practice. In 'The Governance of Vulnerable Migrants: Procedure, Resources and Affect in Asylum Reception', Sophie Andretta and Sophie Nakueira (2022) describe how asylum reception bureaucrats in Belgium and Uganda mobilize various strategies to provide assistance and guarantee procedural safeguards to 'vulnerable' claimants in a context of resource limitations. Barbara Gornik (2022) continues to explore procedural safeguards connected to a category of persons also characterized as vulnerable, namely unaccompanied minor asylum seekers in Slovenia, in 'Transcending Non-citizenship? Looking at Asylum Policy Through the Lens of a Child-centred Approach and the Procedural Justice Perspective'. Roos-Marie van den Bogaard, Ana Correia Horta, Wout van Doren, Ellen Desmet, and Anthony Valcke's (2022) contribution, 'Procedural (In)justice for EU Citizens Moving to Belgium: An Inquiry into Municipal Registration Practices', shows how hierarchies of deservingness (and conditional citizenship) among intra-EU migrants are created within the overall privileged category of economically active, mobile EU citizens, not only by municipal authorities, but also by relocation agencies. In the final article in this issue, 'Reluctant Border Agents: Enlistment of Transportation Workers in Procedures to Limit Refugee Mobilities in Turkey', Mert Pekşen (2022) explores how (non)citizenship is enacted through document controls, travel bans and authorizations in Turkey and how bordering practices move further away from formal procedural guarantees and possibilities for appeal.

In this introduction, we identify two broader research traditions in which these individual contributions are embedded to various degrees: critical citizenship and migration studies on the one hand, and (socio)legal scholarship on procedural justice and the anthropology of state bureaucracies on the other hand. By empirically exploring how

procedural rules are appropriated by state actors and by noncitizens, the contributions attempt to bridge a divide between ‘classical’ and ‘new’ citizenship and migration studies. Classical citizenship studies focused on citizenship as a legal status tightly connected with the nation-state, and rarely expanded the focus to rights claims outside the law. Scholars engaging in new citizenship studies perceive citizenship as a performance and a continuous site of struggle rather than as a static and statist position (Isin 2017). Yet they often fail to connect back to the ‘state’ and to recognize the socially embedded and socially productive side of law that shapes both legal and political subjectivities, as well as the claims raised in acts of citizenship. This special issue brings the law – particularly procedural law, which determines how legal claims can be pursued through administrative and judicial institutions – back into the picture and places citizenship struggles in the interactional space between noncitizens and the actors who ‘perform’ the law. In this bridging exercise, we rely on ethnographic insights into state bureaucracies that illuminate the various ways formal and informal norms are mobilized and produced in the interactions between state actors and (non)citizens (Spire 2008, Dubois 2010, Bierschenk and Olivier de Sardan 2014, Thelen, Vettters and von Benda Beckmann 2018), as well as on a strand of sociolegal studies that explores perceptions of procedural justice among those who use state services or are subjected to law enforcement (Tyler 1988, Ryo 2017).

The authors in this issue demonstrate, each in their own way, how the empirical, ethnographic study of procedural processing of migrants’ claims in different sites and on different scales can contribute to theorizing how both citizenship and the state are enacted. Thus, rather than taking the binary pair of citizenship and noncitizenship as the conceptual starting point that needs to be decentred and retheorized (Landolt and Goldring 2015), we shift the analytical focus to the conceptual pairing of state and legal (or perhaps more accurately, legally constructed) subject and explore how the two entities are continuously constructed, contested, remade and rescaled in relation to each other. In line with this shift, this special issue covers diverse sites of interaction, yet reads them through a specific focus on the role of procedural rules in daily practice and perceptions of procedural justice. The contributions to this issue are organized such that the first ones deal with quintessentially legalistic and statist sites where claims to asylum are adjudicated. We then move on to administrative settings in which migrants encounter street-level and rank-and-file bureaucrats and, finally, to settings in which nonstate actors enforce immigration or asylum law as gatekeepers and intermediaries.

### **Rethinking (non)citizenship through state–migrant interactions**

Traditionally, the study of citizenship has been dominated by political philosophers and theorists who have vigorously debated citizenship’s paradoxical sources of legitimacy as identity, as a set of rights, and as a legal status (Delanty 2000; Joppke 2008; Marshall 1950). In transforming subjects into citizens, citizenship has unwaveringly functioned as a mechanism of social closure that is ‘internally inclusive and externally exclusive’ (Brubaker 1992, 21). That migrants therefore appear as subjects of exclusion is intrinsic to the concept of national citizenship. Hence, many scholars working on the migration–citizenship nexus have focused on the macro-structural membership conditions and citizenship regimes, particularly when these were seen to come under pressure from various transformative dynamics, such as the emergence of EU citizenship, post-Cold

War reconfigurations of citizenship regimes in successor states of the Soviet Union and Yugoslavia, and the restructuring of welfare states and global migration movements. As a result, many Western states began to engage in revalorizing national citizenship by establishing citizenship tests and ceremonies (see, e.g. Goodman 2010; Michalowski 2011). A more recent and much smaller body of literature has also attended to migrants' perspectives on naturalization processes without necessarily challenging the nation-state as the locus of citizenship (Aptekar 2015; Badenhoop 2021; Bassel, Monforte, and Khan 2018; Yanaşmayan 2015).

As globalization started to become a household word in the early 1990s, scholars also began breaking away from the 'statist' shadow that hovered over citizenship and turned to other frames of political organization, such as the urban (Holston and Appadurai 1999), the global (Held 1995), the cosmopolitan (Linklater 1998), the transnational (Fox 2005), and the postnational (Soysal 1994). This decoupling of the 'nation' and 'citizenship' was an attempt to trigger the emancipatory potential of the concept. One particularly influential trend of scholarship centres on the notion of 'acts of citizenship' that disrupt the national order of things and, in the process of creating a 'rupture', produce its actors as citizens (Isin 2008, 2009). Conceptualizing citizenship as performative (Isin 2017) or as an institution 'in flux' (Isin 2009) that is continuously (re)constituted through acts of citizenship has opened up a new research agenda that concentrates on different sites and scales where the contestation over citizenship plays out – from the courts to the streets and from the urban to the transnational. This framework has been particularly fertile for studying (irregular) migrants' membership struggles and acts of citizenship that transform them into political actors (see, e.g. Castañeda 2013; Nyers 2010). Further conceptual refinement came, for instance, through Peter Nyers's work (Nyers 2015), which 'reconciled' an activist citizenship framework with the 'autonomy of migration' perspective (Papadopoulos and Tsianos 2013; Scheel 2019), which typically dismissed citizenship as a concept on account of its exclusionary character. He calls for 'migrant citizenships' that recognize the paradoxical yet existential nature of citizenship both as a site of contestation and as a regime of control. In this manner, citizenship can be 'remade into a potentially creative and critical concept that challenges statist ontologies, and clears ground for new ways of thinking of political subjectivity' (Nyers 2015, 34). In a similar vein, Schwiertz and Schwenken (2020) have developed the concept of 'solidarity citizenship' to denote how citizenship regimes and solidarities mutually define, shape and help renegotiate each other in inclusive and exclusive ways.

Finally, a third strand of literature has paid closer attention to the actual encounters between migrants and the various gatekeepers they encounter (state actors and other intermediaries) and has attempted to bring the top-down and the bottom-up perspectives into dialogue with one another. Nordberg and Wrede (2015, 56) coin the term 'citiZENisation' to describe the process through which 'citizens to be' enact and negotiate their paths to citizenship through myriad street-level encounters. CitiZENisation is, therefore, co-produced in these encounters in specific institutionalized or semi-institutionalized settings, or in specific 'spaces and places' (ibid.) where migrants' agency to influence hegemonic discourses is renegotiated. Moreover, as Fortier (2017, 11) underlines, in the citiZENisation process institutional actors also 'reflectively engage with what citizenship means through their encounters with noncitizens'. The concept of citiZENisation also connects with the noncitizenship framework developed by Landolt and Goldring (2015,

853), which proposes combining attention to systemic and structural factors with interest in individual agency, indeterminacy and contingency. They assert that ‘noncitizens exercise agency in choosing to make claims (or choosing to not make claims) to substantive rights’, but also that ‘the individuals and institutions with which they interact may facilitate or hinder such claims-making’ (ibid., 854). Consequently, they conceptualize both citizenship and noncitizenship as dynamic, multi-scalar and relational assemblages with porous boundaries rather than as binary opposites of fixed legal statuses (ibid., 854).

The articles in this special issue can be read as continuations of this third strand of literature that, to varying degrees, build on and incorporate insights from the two other strands. They all focus on migrants’ encounters with state actors and other gatekeepers and explore how citizenship and noncitizenship are being (re)produced and (re)negotiated in various sites and spaces, particularly through the mobilization (or lack thereof) of procedural law and safeguards. The interactionist and relational perspective on (non)citizenship that runs through this special issue is also informed by ethnographic works that analyse state configurations through a relational lens (Thelen, Vettters, and von Benda-Beckmann 2018) and by a body of literature that builds on Lipsky’s (1980) analysis of policy implementation through the daily work of street-level bureaucrats. This literature empirically investigates the implementation of immigration law in all its bureaucratic detail by a range of social actors in state agencies (Eule et al. 2018), welfare organizations (Perna 2019; Andreetta 2019), and commercial legal counselling services and advocacy groups (Coutin 2019; Podgornik-Jakil 2020), or by migrant brokers (Tuckett 2018). While focusing on different sites and actors, they have all shown that seemingly clear-cut legal provisions are open to discretion and negotiation – even if often asymmetrical (Eule, Loher, and Wyss 2017) – in which not only are legal facts assessed, but social evaluations of deservingness also come into play.

The special issue starts with an investigation of spaces that are quintessentially statist and legalistic: courtrooms. The first two articles, by Johannesson (2022) and Vettters (2022) respectively, focus on how procedural norms in asylum law are interpreted and enacted in courts when asylum seekers appeal unfavourable decisions handed down by the competent administrative authorities. Through ethnographic accounts, both authors reconstitute the court and formal status decisions as a site of struggles over citizenship and highlight the practical and procedural work that goes into (re)producing formal legal categories. In her contribution, Johannesson argues that by classifying asylum claims as benefit claims rather than as protection claims and subsuming them under the same procedural rules as benefit claims, Swedish administrative judges end up reproducing injustices that exist between those who belong to a political community and those who stand outside that community asking to be let in. Through a fine-grained analysis of her interlocutors’ legal reasoning, she therefore reveals that citizenship – understood as legal membership in a polity – and the demarcation of citizens from noncitizens are powerful hegemonic discourses that play out in subtle ways in the courtroom. Vettters takes oral hearings in court as sites of interaction and contestation in order to further explore the stratified and fragmented landscape of noncitizenship. She analyses how judges manage the oral hearing in asylum appeal cases and traces their emergent sentiments of procedural justice, ultimately demonstrating how these practices and sentiments can lead

administrative judges to participate in the transformation of asylum claims into subsequent claims under immigration law despite the strict doctrinal separation between asylum and immigration claims, thereby potentially enlarging the scope of rights claims by noncitizens initially categorized as asylum seekers.

Focusing on asylum reception institutions as a potential interface of state–noncitizen interactions, Andretta and Nakueira's (2022) contribution illuminates the central place of affect in these interactions, where 'stateness' and citizenship are enacted through the use of street-level discretion by bureaucrats. They also further stress the fragmentation of the category of noncitizenship by the creation of 'vulnerability' as a concept that offers protection and assistance to those select few who fulfil the criteria to be deemed 'vulnerable' in these interactions. Borrelli and Wyss (2022), on the other hand, build on multi-sited fieldwork in Germany and Switzerland to demonstrate how, for migrants who have a precarious legal status, interactions with street-level bureaucrats are characterized by pervasive suspicion, legal uncertainty resulting from frequent legislative changes, and an emphasis on accelerated procedures. These structural conditions create a highly asymmetrical terrain for migrants' rights claims in bureaucratic encounters and can inhibit acts of citizenship *tout court*, despite existing procedural safeguards, which instead aggravate the structural violence inherent in citizenship as a status. Gornik (2022) highlights the ambivalent legal and political subjectivities of young asylum seekers that result from the patchwork application of two distinct logics by Slovenian state actors during reception and status determination procedures. On the one hand, the UN Convention on the Rights of the Child establishes a legally binding responsibility for Slovenian authorities to protect all children who fall under their jurisdiction, and thus opens a space for young asylum seekers to partially transcend noncitizenship and remain in Slovenia as long as they are underage. On the other hand, a strong national focus on migration control and containment leads state actors 'enacting the border' to frequently disregard children's procedural rights, which results in negative asylum decisions that produce a state of protracted liminality.

The last two contributions attest to the co-production of (non)citizenship in the interactive space between migrants and non-state actors who have been formally or informally put in a position to enact the state. The article by van den Bogaard and her colleagues (2022) focuses on municipal registration procedures for EU citizens who exercise their right to free movement on the basis of the EU Citizens Rights Directive. They elucidate how formal EU citizenship status falls short of guaranteeing equal treatment, and how claiming citizenship remains contingent on economic status, among other things. Their article once again underlines the fragmentation of the non-citizenship landscape. At the top of these hierarchies are migrants with 'standard' types of employment (full-time, permanent), while applicants with part-time jobs or short-term contracts are excessively scrutinized by registration offices.

While van den Bogaard et al. identify relocation agencies as brokers whose interventions ultimately facilitate registration procedures for certain categories of 'seemingly' more deserving migrants, Pekşen (2022) shows how transportation workers understand and negotiate their assigned role as internal border agents within the ambivalent political and legal context of Turkey's migration regime. Pekşen expands our gaze to citizen–noncitizen interactions, revealing how refugees can claim and exercise a right to (internal) mobility through negotiations with transport workers even when their formal legal

status excludes them from this right. This is an example of what Bassel and Isin (2022) call ‘citizenship struggles’. Transportation workers either apply only cursory checks of travel permits, allowing some leeway for refugee mobility, create their own procedures based on phenotypical assessments of who a refugee is, or strictly enforce mobility restrictions. As a result, the right to move without state authorization and without fear of being detected emerges as the key feature that distinguishes the status of citizenship from that of noncitizenship (see also Cresswell 2006, 751–2). While this interactive space grants room for acts of citizenship, mainly due its informality, the very informality also makes it fragile ground for rights claims. Together, these two articles illustrate how the privatization of the implementation of procedural guidelines contributes to reproducing a classed divide between noncitizens, where wealthier, better-connected applicants are also seen as more deserving of mobility.

Placing this interactionist and relational approach at the core of our inquiry in this special issue also directs our attention towards the formal rules and informal practices that structure encounters between migrants on the one hand, and state actors and other gatekeepers on the other. Consequently, administrative and judicial *procedures* come into view as an important field of analysis that can tell us a great deal about how substantive rights claims can (or cannot) be articulated and pursued.

### **Procedural norms, procedural practices, and perceptions of procedural justice – a sociolegal and ethnographic turn**

While interdisciplinary conversations between legal scholars and social scientists have had considerable theoretical impact on questions of citizenship over the last few years (Volpp 2011; Shachar et al. 2017), the classic distinction in legal scholarship between substantive and procedural law has not gained similar traction. In this special issue, we take this distinction as a starting point and demonstrate its analytical potential for studying, from a distinctly sociolegal perspective, the co-constitution of (non)citizens and the state through legally regulated processes of interaction and claims-making.

In legal scholarship, substantive norms are understood to define and regulate rights and duties, whereas procedural norms prescribe the means and processes of obtaining or enforcing those rights and duties. In public and administrative law, the right to claim asylum or the right to welfare benefits are hence generally considered to be substantive rights, whereas rules about the competent jurisdiction for applying for asylum, rules about what evidence to present and how the burden of proof is divided between the claimant and the decision-making public authority, rules structuring an administrative or judicial hearing, rules for legal aid, or rules structuring the possibilities of appeal are procedural norms. These procedural norms must also comply with procedural rights, such as the right to good administration or the right to an effective remedy, and they cannot limit the effectivity of substantive rights, but should rather safeguard their realization.

Immigration and asylum law have traditionally been characterized by a procedural exceptionalism, with fewer procedural safeguards than in other fields of administrative law precisely because it was a field of law concerning noncitizens (Guild 2006, 2; Bast, von Harbou, and Wessels 2022, 115). However, in the post-WWII period, several developments are seen as contributing to the expansion of procedural rights for noncitizens,



among them a general ‘constitutionalization’ of domestic legal systems, the rise of international human rights law and its transformative effects on domestic systems and – perhaps the most important driver – the harmonization of migration law through EU legislation and the jurisprudence of the two EU Courts (*ibid.*; see also Bast 2010; Weissbrodt and Divine 2015; Guild 2017; Tsourdi 2019). As noteworthy as this expansion of procedural safeguards is, most of these authors also highlight that their full realization hinges on the ability and willingness of nation-states to implement them. And while the scope of application of procedural rights to noncitizens has widened, we are simultaneously witnessing a countertrend. Without explicitly distinguishing between procedural and substantive rights, Shachar (2022) observes ‘the global spread of legal techniques’ to deny asylum and restrict immigration. These techniques frequently rely on shifting jurisdictional borders (*ibid.*, 969). In European and national asylum law, concepts such as safe country of origin and the categorization of claims as manifestly unfounded are tied to accelerated procedures and less procedural protection (Hunt 2014; AIDA (Asylum Information Database) 2017). National legislatures and executive actors may request additional documentation, tie the duty to cooperate with administrative authorities to sanctions, shorten deadlines, or limit possibilities of appeal and lift the suspensive effects of appeal. These measures in effect narrow the scope of rights claims through legal means for noncitizens. In sum, while harmonization and proceduralization of EU asylum and immigration policy have taken place, the emerging procedural landscape has become increasingly complex and ambivalent.

A closer reading of how this procedural landscape is discussed in legal scholarship reveals the usage of distinct terminologies that hint at two diverging conceptualizations of the role and function of legally regulated procedures. In our view, the term ‘procedural law’ seems to denote a perspective firmly rooted in traditional doctrinal legal scholarship and practice that emphasizes a more systemic approach. This perspective aims to be highly attentive to the internal coherence of a legal system – be it domestic or European – and pays equal regard to the twin goals of enabling effective and efficient state action in the larger public interest (as expressed by elected legislative bodies) while protecting individuals from arbitrary state infringements on their individual rights and civil liberties. In times of globalized migration governance, this approach grapples with the challenge of maintaining a systematic approach to an increasingly complex and multi-level legal framework (Biondi and Gentile 2019, 1).

‘Procedural safeguards’ or ‘procedural rights’ are twin terms also frequently used by legal scholars, but often denote a more human rights-oriented perspective that takes the individual rights claimant as the starting point (see, e.g. Bast, von Harbou, and Wessels 2022, 114). This perspective foregrounds more strongly the agency and dignity of the individual claimant as a human being and thus provides a fruitful analytical opening to an understanding of citizenship as ‘acts of claiming rights’ by noncitizens. However, this second conceptualization is also predominantly grounded in doctrinal analysis and does not yet tell us much about the actual capacity of noncitizens to mobilize procedural rights so as to successfully raise substantive rights claims, nor about ways in which administrative and judicial procedures shape the legal and political subjectivities of noncitizen rights claimants. In this special issue, we demonstrate how both of these perspectives can benefit from a sociolegal and ethnographic turn.

In order to advance such a turn, this special issue suggests bringing in insights from research on procedural justice that is more firmly rooted in sociolegal scholarship as well as from the large body of work in the anthropology of the state and bureaucracy that emphasizes the role of discretion, practical norms, and notions of deservingness in interactions between the state and (non)citizens.

Literature on procedural justice investigates the relationship between perceptions of just treatment and legal compliance, initially in judicial settings and more recently in the wider criminal justice context and in administrative processes (Tyler 1988; Nagin and Telep 2017). Predominantly concerned with citizens and their assessment of administrative and legal institutions, a growing body of scholarship – mostly US-based – is now also investigating noncitizens' or ethnic minorities' perceptions of procedural justice (Kirk et al. 2011; Ryo 2017; Morales and Curry 2021; Dierckx, van Hiel, and Valcke 2020). This research is all the more important since the lack of formal citizenship rights and exclusion from democratic decision-making processes force migrants to process their interests and rights claims through administrative procedures and the court system.

What has been even less explored thus far are administrative and judicial actors' own perceptions of procedural justice. In sociolegal studies, some work has been done to conceptualize bureaucrats' understanding and interpretation of administrative justice as 'legal consciousness' (see, e.g. Hertogh 2010; Richards 2015), but the role of procedural norms and notions of procedural justice have received only limited attention (Richards 2019, 79–89). Bringing into the picture state actors' perceptions of procedural justice and how these inform their (non)observance of procedural rules is an innovative move that sheds light on how state and non-state actors entrusted with enacting state law perceive and interpret the legitimacy of their own actions vis-à-vis noncitizens and thereby perform contingent manifestations of legitimate 'stateness'. The contributions gathered here address this lacuna and uncover how state actors and other intermediaries conceptualize and enact procedural principles in their daily work. They do so by mobilizing additional insights from the rich body of ethnographic studies of statehood and bureaucrats' procedural practices that have underlined the inconsistencies embedded in formal sectoral norms and reforms (Holm Vohnsen 2017) and illuminated the plurality of normative sources that bureaucratic work relies on (Blundo and Olivier de Sardan 2007; Andretta 2019; Vettors 2019). Particular attention has been paid to discretion (Evans 2010), notions of deservingness (Chauvin and Garcés-Mascareñas 2014; Lafleur and Mescoli 2018; De Coninck and Matthijs 2020), practical norms (Olivier de Sardan 2015), and bureaucratic ethos and ethics (Eckert 2020) as conceptual frameworks to describe how bureaucrats pragmatically process their tasks and make decisions in practice. Our contributions bring these frameworks into dialogue with the language of procedural law, procedural safeguards, and perceptions of procedural justice.

Of the contributions presented here, Johannesson's (2022) is the most attentive to the concerns of the doctrinal systematization of procedural law. Yet her angle is ethnographic, and she seeks to investigate how judges concretely interpret the principle of equal treatment within the overall body of procedural law. Her sociolegal exploration makes visible the unintended and paradoxical consequences of applying such a systematization to noncitizens seeking asylum: by treating all cases the same, judges miss out an opportunity to close the gap between citizens and noncitizens and end up aggravating inequalities.

The articles by Borrelli and Wyss, van den Bogaard et al., and Andreetta and Nakueira are much-needed empirical illustrations of the evolving and ambivalent role of procedural law and procedural safeguards in migration governance. Borrelli and Wyss (2022) are most centrally concerned with the gap between legally enshrined procedural rights and their implementation in administrative procedures concerning migrants. They contend that the nature of the multi-level European regulatory space itself, in which there are frequent legislative changes at various levels and a multiplicity of actors working from within or for the state, generates a degree of illegibility and legal uncertainty for noncitizens. For their part, van den Bogaard et al. (2022), while concerned with a highly privileged category of migrants, namely EU citizens seeking work in another member state, come to a similar conclusion with regard to the practical implementation of the European Citizenship Directive, which regulates the free movement of EU citizens. Looking at registration procedures for mobile EU workers and their family members in Belgium, they find a hierarchy of deservingness emerging through the actual procedural practices in municipal registration offices.

These empirical studies add a new dimension to legal debates on the shifting terrain of procedural law vis-à-vis migrants, but they also make visible how this complex and ambivalent proceduralization of the state–noncitizen relationship is being turned into a site of complex citizenship struggles and contestations.

While these last two contributions underline procedural safeguards' limited practical effects due to systemic obstacles and the social embeddedness of formal norms – be it in notions of deservingness (van den Bogaard et al.) or mistrust (Borrelli and Wyss) – and emphasize an 'implementation gap', the articles by Andreetta and Nakueira, Vettters, Pekşen, and Gornik delve even further into the socially productive nature of formal norms. Andreetta and Nakueira (2022) nuance such views by showing how Belgian and Ugandan civil servants enact their moral and ethical commitments to helping and assisting asylum seekers despite, and sometimes even in direct contravention of, restrictive procedural rules and structural factors such as limited resources. They insist on the powerful force of affect and emotions in civil servants' daily practices and interactions with noncitizens – demonstrating how, despite their growing frustration with the state and its procedural rules, their affective reactions drive them to welcome and help applicants 'nevertheless'. In the process, the legal and bureaucratic category of 'vulnerability' is at once renegotiated and reaffirmed, taking further hold as a way of categorizing refugees. In a similar manner, Vettters (2022) highlights the emergence of sentiments of procedural justice among German administrative judges in which legal and extra-legal considerations become fused. Here again we see the simultaneous transformation and legitimization of legal categorizations and how these categorizations take hold in the lives of claims-making migrants. In yet another fine-grained ethnographic analysis, Pekşen (2022) elucidates how non-state actors' understandings of procedural justice, the state, and their own citizenship are shaped by their enforcement – sometimes reluctant, sometimes overzealous – of state regulations vis-à-vis refugees, and how refugees' perceptions of procedural (un)fairness in turn shape their mobility strategies. In her contribution, Gornik (2022) focuses squarely on those who are subjected to state actions to trace how the intersection of a migration control regime with a children's rights regime produces a crippled sense of entitlement to procedural justice and ultimately also to an

ambivalent legal and political subjectivity among young asylum seekers who are granted the right to remain in Slovenia while still underage.

Taken together, these articles reveal the strength of an ethnographic approach to procedural norms, procedural practices, and perceptions of procedural justice on both sides of the state–(non)citizen relationship. The contributions establish procedural rules as an important site of the simultaneous enactment of (non)citizenship and the state.

### **Procedural (in)justice for noncitizens? Claiming substantive rights and making ‘stateness’**

This special issue investigates how procedural law, rights, and safeguards can be analysed as a site where the clear-cut demarcation between citizens and noncitizens is contested, negotiated, and ultimately either reinforced or blurred. Accordingly, the contributions explore how procedural law’s promise of fair treatment and access to justice plays out when noncitizens take recourse to the law to make specific rights claims in situated encounters. Without the procedural means for claiming and enforcing rights, substantive rights granted on paper are hard to realize. In rights regimes that are fundamentally built on the distinction between citizens and noncitizens, we ask: To what extent does this distinction pervade the ways in which procedural law and procedural safeguards are applied, interpreted, and enacted? In this concluding section we draw on the empirical evidence presented in these articles to show how the interpretation and enactment of procedural rules and safeguards may restrict, shape or advance substantive rights claims, thereby either amplifying the structural injustices at the heart of the legal distinction between citizens and noncitizens or, alternatively, providing the tools that make possible acts of citizenship that challenge those practices.

The contributions collected in this special issue provide nuanced sociolegal and ethnographic illustrations of how procedural rights, rules, and principles are mobilized, enacted, and perceived, illustrating how this differentially affects the underlying substantive rights claims. They show that the relationship between procedural and substantive rights is often neither straightforward (that is, the realization of procedural rights might not lead to the realization of substantive rights) nor unidirectional, but remains contextual and ambivalent.

On the one hand, the articles reveal that, in different sites and settings, both very strict adherence to procedural law and complete disregard for procedural safeguards in the interaction with noncitizens can endanger substantive rights claims. For instance, Johannesson (2022) skilfully shows how judges’ commitment to and interpretation of procedural justice principles perpetuate structural injustices and impede the extension of substantive rights to noncitizens. Borrelli and Wyss (2022) argue that bypassing procedural safeguards or merely paying lip service to them due to discretionary implementation may also result in restrictions of substantive rights for persons with precarious legal status. Along the same lines, Gornik (2022) highlights how the Slovenian children rights regime – which includes strong procedural safeguards with the potential to open up space for unaccompanied minor asylum seekers to claim and negotiate substantive rights (to asylum and residence) – is in everyday interactions filled with state actor practices geared towards migration control. Finally, van den Bogaard et al. (2022) show how, despite the dense legal framework of EU and national law enshrining a high level of substantive and

procedural rights, hierarchies of deservingness (and conditional citizenship) among intra-EU migrants are nevertheless created in practice within the overall privileged category of economically active, mobile EU citizens. Blurring the distinction between state actors and gatekeepers or intermediaries entrusted with enforcing state law, several of the contributions (Andreetta and Nakueira, Pekşen, van Bogaard et al.) point to the crucial role of ‘deservingness frames’ (Chauvin and Garcés-Masareñas 2014) in granting substantive rights – and to the fact that such frames often tend to reproduce inequalities among noncitizens.

On the other hand, we see that actors enacting the state can both mobilize and disregard procedural safeguards to advance the substantive rights claims of noncitizens. Andreetta and Nakueira (2022) describe how, in certain cases, asylum reception bureaucrats in Belgium and Uganda bend procedural rules to help asylum seekers whom they consider to be particularly vulnerable access their substantive rights to reception benefits. They do so by either breaking procedural rules to the applicant’s advantage, or by purposely handing down procedurally flawed decisions that asylum seekers can then easily challenge in court. Their analysis nuances current studies of civil servants’ discretionary practices towards migrants, which are otherwise regularly described as restricting rather than furthering their rights. Pekşen (2022) shows how transportation workers, when ignoring or bypassing official procedures, effectively create substantive rights to mobility for certain categories of migrants – although in practice, such rights are structured along racialized and classed lines. Similarly, the practices and sentiments of procedural justice that Veters (2022) observed among German administrative judges opened up some space for tacitly acknowledging and addressing rights claims that exceed those allocated to predetermined legal categories of noncitizens. At the same time, however, these practices and sentiments are geared towards upholding the legitimacy of the legal system and the state’s authority to determine membership in the political community.

All of the contributions thus confirm that procedural rights and rules are sometimes rendered ineffective, sometimes circumvented to achieve greater substantive outcomes, and sometimes just partially realized, but always appropriated within complex dynamics of ‘stateness’, where migration control and fundamental rights protections act as competing substantive logics. By shifting the focus away from migrants’ agency outside of or at the margins of the state, and towards interactions between and within state institutions, this issue therefore unpacks how both ‘stateness’ and citizenship, as embedded in social relationships, are enacted by various categories of actors. It demonstrates how ethnographic methods borrowed from the anthropology of the state can help grasp these relationships – and ultimately help understand state actors’ perceptions and strategic uses of procedural norms in the face of competing substantive objectives. It is in these situated enactments, negotiations, and appropriations of procedural rules that procedural law becomes socially productive in a twofold manner. On the one hand, understandings of citizenship are reaffirmed or transformed among those that participate in these citizenship struggles. On the other hand, as the state is continuously enacted in administrative and judiciary procedures, the state’s authority to act as decision-maker and to confer legal status is not only legitimized with reference to procedural rights, but also reaffirmed in everyday practice. One way to better understand and critically question how this process works is to trace the distinct ways in which procedural law’s promise of fair treatment is

enacted, always keeping an eye out for the intended and unintended effects that occur where procedural safeguards and substantive outcomes intersect.

Focusing on the state and those enacting it therefore not only makes visible the struggles happening within, with, and against state law, but also opens another empirically grounded avenue to further question the everyday ‘making’ of sovereign statehood (upon which the right to exclude noncitizens rests) in the realm of immigration and asylum law. Decolonial, postcolonial, and critical race theorists (Achieme 2019; Nisancioglu 2020; El-Enany 2021), critical migration scholars (De Genova and Peutz 2010; De Genova 2018; Bauder 2021) and anthropologists (Hansen and Stepputat 2005) have provided trenchant critiques of sovereignty as a foundational concept and its racializing consequences in historical and contemporary legal theory and in the practice of migration governance. A common thread in much of this work is the insight that, in the words of Hansen and Stepputat (2005, 3), ‘sovereign state power is always a tentative and unstable project whose efficacy and legitimacy depend on repeated performances’. It is our hope that, beyond their intrinsic value as individual contributions, the seven articles presented here and this introduction can set out an agenda for further research, one that considers procedural dimensions as a central aspect of such state–(non)citizen interactions and performances and leads to further reflection on the role of procedural law in either reproducing or transforming the inequalities and exclusion that are at the heart of citizenship as a legal status.

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