

# WORKING PAPER SERIES

*Jus Domicile: A Pathway to Citizenship for Temporary Foreign Workers?*

**Carly Austin and Harald Bauder**

**CERIS Working Paper No. 81**

**December 2010**

Series Editor

Judith K. Bernhard  
School of Early Childhood Education  
Ryerson University  
350 Victoria Street  
Toronto, Ontario, M5B 2K3  
bernhard@ryerson.ca



**CERIS – The Ontario Metropolis Centre**

## **The CERIS Working Paper Series**

**Manuscripts on topics related to immigration, settlement, and cultural diversity in urban centres are welcome. Preference may be given to the publication of manuscripts that are the result of research projects funded through CERIS - The Ontario Metropolis Centre.**

**All manuscripts must be submitted in both digital and hard-copy form, and should include an Abstract of 100-200 words and a list of keywords.**

**If you have comments or proposals regarding the CERIS Working Paper Series please contact the Editor at:  
(416) 736-5223 or e-mail at <ceris@yorku.ca>**

**Copyright of the papers in the CERIS Working Paper Series is retained by the author(s)**

**The views expressed in these Working Papers are those of the author(s), and opinions on the content of the Working Papers should be communicated directly to the author(s) themselves.**

**CERIS – The Ontario Metropolis Centre  
8<sup>th</sup> Floor, York Research Tower, 4700 Keele St.  
Toronto, Ontario, Canada M3J 1P3  
Telephone (416) 736-5223 Facsimile: (416) 736-5688**

## ***Jus Domicile: A Pathway to Citizenship for Temporary Foreign Workers?***

Carly Austin  
c7austin@ryerson.ca  
Ryerson University

MA Program in Immigration and Settlement Studies  
and

Harald Bauder (Corresponding Author)  
hbauder@ryerson.ca  
Ryerson University

Geography Department & MA Program in Immigration and Settlement Studies

### **ABSTRACT**

Canada's Temporary Foreign Worker Program (TFWP) has grown exponentially in recent years. Canada now accepts more temporary residents than permanent residents every year. Employers rely increasingly on foreign labour to maintain their competitive advantage in a global market, but are failing to address issues of labour exploitation and abuse. This study explores the TFWP in the context of contemporary theories of citizenship. In particular, it explores the *jus domicile* principle of citizenship and applies it to the context of the TFWP in Canada. Taking into consideration existing federal and provincial policies, we argue that *jus domicile* provides a pathway to permanency and citizenship for temporary foreign workers. In addition, we consider the possibility of rescaling *jus domicile* citizenship from the national to other scales.

### **KEYWORDS**

Citizenship, Temporary Foreign Worker, Canada, *Jus Domicile*, Labour

### **ACKNOWLEDGEMENTS**

We thank Aparna Sundar for helpful comments, and Judith Bernhard and Phillipa Campsey for outstanding editorial work.

### **ACRONYMS**

Citizenship and Immigration Canada	CIC
Human Resource and Skills Development Canada	HRSDC
Labour Market Opinion	LMO
Non-Immigrant Employment Authorization Program	NIEAP
Temporary Foreign Worker	TFW
Temporary Foreign Worker Program	TFWP



## Table of Contents

ABSTRACT .....	ii
ACRONYMS .....	iii
INTRODUCTION .....	2
CONFIGURING CONTEMPORARY CITIZENSHIP .....	2
CITIZENSHIP PRINCIPLES .....	5
TEMPORARY FOREIGN WORKERS IN CANADA .....	6
<i>JUS DOMICILE</i> AND TEMPORARY FOREIGN WORKERS .....	9
DISCUSSION .....	11
REFERENCES .....	14

## INTRODUCTION

Industrialized countries increasingly depend on foreign migrant labour (Sassen 1998; Thomas 2010). These countries often deny these workers permanent membership in their national communities, even though temporary foreign workers (TFWs) today are staying in the host country for longer periods, or returning repeatedly. In Daniel Weinstock's words, these countries have brought "great numbers of temporary workers in to occupy economic roles that nationals of these countries no longer wanted to perform, but without the intention of ever including them as full members, they have found themselves with communities of temporary economic migrants who were temporary in name only" (Weinstock 2008: 5).

Canada too follows this practice (Fudge and MacPhail 2009). In recent years, it has accepted more temporary migrant labourers than permanent immigrants. The shift towards temporary migration to Canada has come with serious consequences, especially for the workers. Exploitation is widely documented and pathways to permanency are either complex or nonexistent.

Historically, Canada has relied on migrant labour for its demographic and economic expansion (Avery 1995; Knowles 2007). While in the past, these migrants were promised membership in the national community, today most migrants are denied this opportunity. In this paper, we discuss this situation within the context of citizenship.

The recent literature has challenged territorial conceptions of citizenship (Gustafson 2005). Notions of nested (Kvisto 2007; Kivisto and Faist 2007), transnational (Bauböck 1994), postnational (Soysal 1994) and stakeholder (Bauböck 1994) citizenships have emerged in response to the increasing mobility of populations and the geographical complexities of citizenship practices. By applying conceptual ideas of citizenship to the concrete case of Canada's Temporary Foreign Worker Program (TFWP), we seek to bridge the gap between theoretical scholarship and the practices of citizenship (Bloemraad, Korteweg, & Yurdakul 2008). In particular, we explore the principle of *jus domicile* as an approach to improving stability, protection, and fairness for TFWs.

We first examine the literature on citizenship and contemporary configurations of citizenship practices. Second, we discuss principles of citizenship, including *jus domicile*. Third, we present an analysis of the TFWP. Fourth, we apply the *jus domicile* principle to the case of the TFWP. Following a discussion, we end with policy recommendations.

## CONFIGURING CONTEMPORARY CITIZENSHIP

The concept of citizenship can be traced back to the Greek city-state, the Roman Empire, feudal arrangements in medieval Europe, and the modern nation-state that emerged in the late 18th century. At the turn of the 19th century, citizenship began to be associated with certain economic, social, and educational rights, which supported citizens' civil and political standing (Castles and Davidson 2000). In the Introduction to T.H. Marshall's (1965) classic book on citizenship, Seymour Lipset (1965) illustrates how civil, political,

and social aspects of modern citizenship evolved in the context changing historical circumstances:

The civil aspects of citizenship arose with the emergence of the bourgeoisie in the 18<sup>th</sup> century and involved a set of individual rights including liberty, freedom of speech, equality before the law, and the right to own property. Political rights, the access to the decision making process through participation in the choice of parliament by universal manhood suffrage, emerged in the 19<sup>th</sup> century and reflected in part the demands of the working classes for citizenship. Social rights, which include welfare, security, and education, have become a major component in the definition of citizenship in the 20<sup>th</sup> century.

Since Marshall published his work, the concept of citizenship has evolved further, based on changing material circumstances that have affected citizenship practices and the way scholars approach the concept of citizenship. International migration has led to the inclusion of cultural aspects into the concept of citizenship (Cohen 2009; Bloemraad, Korteweg, & Yurdakul 2008). Multicultural citizenship, for example, is premised on the idea of group rights, whereby different ethno-racial groups exist together within a multicultural society and possess the right to be treated as full, equal, and respected participants in the political community (Kymlica 1995). Multicultural citizenship, however, has also been criticized for perpetuating inequalities and maintaining structures of domination (Bloemraad, Korteweg, & Yurdakul 2008; Bloemraad 2000; Young 1989; Kostakopoulou 2008).

Recent trends towards securitization (Wæver 1995; Burke 2002; Bigo 2002) have further led to the “thickening” of political belonging and the ethnicization of citizenship boundaries. As multicultural citizenship is thought to “gloss over” differences between ethno-racial groups, the notion of differentiated citizenship suggests that not all citizens are equal; some have different rights and entitlements within a society (Kostakopoulou 2008; Young 1989). This differentiation stems from increasing securitization and differential treatment of ethno-racial groups.

Contemporary geographies of citizenship are particularly problematic. Modern citizenship has been closely tied to the nation-state as the “natural” focal point of human welfare (Kostakopoulou 2008). However, with the increased mobility of people worldwide, citizenship tied to the nation-state fails to uphold important principles and represent political communities (Bloemraad, Korteweg, & Yurdakul 2008; Bellamy 2008). Although nation-states pursue a range of naturalization processes and practices to bring migrants under the umbrella of national citizenship, a growing number of migrants remain without formal citizenship and consequently lack the rights citizens take for granted. Furthermore, international agencies that advocate on behalf of these migrants possess neither the right nor the means to interfere in the “internal” affairs of nation states (Yuval-Davis 1999).

Trends of globalization and transnationalism, in particular, have challenged understandings of citizenship centred on the nation-state (Tambini 2001; Spiro 2008; Joppke 2010). Some scholars have recently suggested that citizenship should be refocused, away from the scale of the nation-state and oriented towards personhood, universality, and human rights (e.g. Basok 2004; Kofman 2005). Others have argued for reconfiguring citizenship. We will briefly discuss the notions of nested, transnational, postnational, and stakeholder citizenships, which offer new geographies of citizenship and suggest that multiple forms and geographical scales of citizenship can coexist.

*Nested citizenship* follows Roger Brubaker's (1992) idea that political membership involves an inner circle of citizenship (based on nationality), and an outer circle of denizenship (based on residency). Similarly, nested citizenship refers to membership at multiple scales of governance, ranging from an inner circle of a particular locality to regional and transnational scales. Nested scales of citizenship are not independent of each other, but are interconnected. Moreover, they are organized hierarchically, with the inner circle being of greater significance than outer circles (Kivisto 2007; Kivisto and Faist 2007).

*Transnational citizenship* is characterized by an expansion of citizenship beyond the national framework. Rainer Bauböck (1994) observes the following in the context of transnational citizenship: first, the clash between principles of liberal democracy and current forms of exclusion from citizenship at the scale of nation-states; second, the emergence of interstate citizenship in certain regions of the world; and third, the evolution of universal human rights as an element of international law. As rights, and claims to rights, are no longer confined to national boundaries, migrants respond fluidly and opportunistically to varying political-economic conditions. For example, in the context of transnational mobile elites, Aihwa Ong (1993; 1999; 2006) speaks of "flexible citizenship" as a mechanism to mobilize a range of resources, entitlements, and protections.

*Postnational citizenship* is based on claims and entitlements associated with human and universal rights. It awards the right and duty of participation to every person within the authority structure and public life of a polity, regardless of their historical or cultural ties to that community (Soysal 1994). Yasemin Nuhoğlu Soysal (1994) anchors postnational citizenship in international human rights law, but stresses the extension of rights and entitlements based on length of residency and the accumulation of social and economic contributions to a community. Although postnationalism may weaken the boundaries of the state, the state is nonetheless responsible for upholding postnational citizenship entitlements of persons residing within its territory, independent of these persons' formal national membership (Spiro 2007).

The idea of *stakeholder citizenship* argues that rights and entitlements should be grounded in place of residence; everyone who resides in a territory and is subject to its laws should be represented in the making of the laws as stakeholders. Stakeholders in this sense have a moral claim to be recognized as citizens and to be represented in democratic self-government. Bauböck (2008) posits that citizenship status and rights should be



extended to all persons whose circumstances of life tie their personal fate to the long-term prospects of a political community. Similarly, the concept of “denizen” refers to foreign citizens who enjoy domestic rights derived from residency (Bauböck 2008; Hammar 1990).

As this review of citizenship concepts shows, scholars have acknowledged that citizenship entitlements and the material practices of citizenship are becoming decoupled from the nation-state. Yet, nation-states continue to hold substantial power over the formal rules and rights associated with citizenship (Bloemraad, Korteweg, & Yurdakul 2008). In the next section, we discuss the principles of citizenship employed by the nation-state.

### **CITIZENSHIP PRINCIPLES**

Citizenship principles define the way through which a person becomes a citizen of a nation-state. Two citizenship principles are widely used in most countries today. The first, *jus sanguinis*, refers to citizenship based on blood lineage. For example, until Germany recently changed its citizenship law, the children of German emigrants carried German citizenship, even though they had not set foot in the country for generations, while foreigners born on German soil were not given citizenship. The second is *jus soli* referring to citizenship based on the land. Traditional immigration countries, including Canada, follow this citizenship principle, whereby individuals born in the territory of a nation-state are awarded citizenship regardless of their parents’ citizenship (Castles and Davidson 2000). Typically, nation-states award citizenship through a combination of these two principles.

A rarely-used third citizenship principle is *jus domicile*: citizenship based on location of residency. At the core of *jus domicile* is the notion of home and the bonds of association that persons have with the political community in which they reside (Kostakopoulou 2008). *Jus domicile* has been discussed in the United Kingdom, where the Committee of Ministers of the Council of Europe defined it in 1972 as:

The concept of domicile imports a legal relationship between a person and a country governed by a particular system of law or a place within such a country. This relationship is inferred from the fact that a person voluntarily establishes or retains his [sic] sole or principal residence within that country or at that place with the intention of making and retaining in that country or place the centre of his personal, social and economic interests. This intention may be inferred, inter alia, from the period of his residence, past and prospective, as well as from the existence of other ties of a personal or business nature between that person and that country or place (as cited in Hammar 1990: 193).

*Jus domicile* can be considered a complementary citizenship principle for situations in which a permanent inconsistency exists between place of birth or blood lineage and

country of residence. Dora Kostakopoulou (2008) further differentiates between domicile of choice and domicile of birth, arguing that citizenship and entitlements based on choice of residence and place of birth can coexist. The discussion below focuses on *jus domicile* of choice. In a way, *jus domicile* can be regarded as a more legitimate principle than *jus sanguinis* or *jus soli*, because citizenship does not depend on the accident of birth in a territory or to particular parents (Bauböck 1994).

According to Kostakopoulou (2008), the principle of *jus domicile* entails two requirements: *factum* – the taking up of residence in a particular country as an inhabitant, and *animus* – a freely formed intention to reside there permanently or indefinitely. In other words, the citizenship principle based on *jus domicile* is possible only when the state gives inhabitants the option to remain at a place of residence and does not force them to leave.

The incorporation of the *jus domicile* principle into citizenship law and practice responds to contemporary material practices of increased human mobility. *Jus domicile* holds the possibility of defining every member of a community as a potential citizen (Bauböck 1994); it promises to treat every contributing resident as belonging to the political community.

It could be argued that Canadian immigration and citizenship policies already implement the *jus domicile* principle in that foreign permanent residents, i.e. “landed immigrants,” acquire an entitlement to Canadian citizenship if they have remained in the country for at least three out of five years. The difference between Canada’s current naturalization practice and the *jus domicile* principle in the way we discuss it is that permanent residency is granted on a highly selective and inequitable basis. The majority of TFWs have no option of retaining permanent residency in Canada and subsequent citizenship. Yet, they are making similar local connections and contributions to the national and/or local community as permanent residents.

In the next section, we apply the ideas and concepts discussed above to the case of Canada’s TFWP. Our aim is to explore the possibility of incorporating the *jus domicile* principle into contemporary migration policies and practices. In addition, we investigate the geographical scale at which *jus domicile* would be feasible.

## **TEMPORARY FOREIGN WORKERS IN CANADA**

While throughout Canada’s history many foreign-born workers have been permitted to settle permanently in the country (Knowles 2007), others have been denied long-term residence and remain excluded from the national political community (Satzewich 1991). As early as the 1880s, Chinese labourers were not only exploited and abused when they worked on the Canadian Pacific Railway, but at the end of their contracts, Canada’s government also denied these workers the right to belong to the nation and rejected any responsibility for these workers’ welfare (Avery 1988; Kelly and Trebilcock 2000).

In 1973, the Non-Immigrant Employment Authorization Program (NIEAP) created the official category of TFW. Between 1973 and 2002, the number of TFWs entering Canada increased from just over 14,000 to over 228,000 (Sharma 2006). Under the NIEAP, workers experienced substandard working conditions, work permits were tied to a specific employer, there were restrictions on the workers' labour market entry and mobility, and workers had to leave Canada to apply for subsequent work visas. The NIEAP also established a rotational system of migration whereby migrants repeatedly came and went, thus becoming "permanently temporary" (Fudge and MacPhail 2009; Sharma 2006). The NIEAP established the foundation of today's TFWP, which includes the Seasonal Agricultural Workers Program, the Live-In Caregiver Program, and the Low-Skilled TFW Pilot Project, launched in 2002 (CIC 2009a).

In 2006, the number of non-permanent residents who entered Canada exceeded the number of permanent immigrants for the first time. By 2008, Canada admitted just under 400,000 temporary residents and less than 250,000 permanent residents (Office of the Auditor General of Canada 2009; CIC 2009b). Most non-permanent residents are TFWs. Even during the recession of 2009, the number of TFWs increased (CIC 2010b). The general increase of TFWs has been especially notable in Alberta, where the largest numbers of TFWs have been employed. Along with an increase in numbers, there has been a shift toward lower-skilled occupations and towards low-income and "non-traditional" source countries in South Asia, Southeast Asia, and Latin America (Nakache and Kinoshita 2010; Thomas 2010).

Restrictions on the amount of time TFWs are able to remain in Canada are being eased. Since May 2009, it is easier for employers to renew TFWs' one-year work permits for a second year (CIC 2009b). In addition, new legislation simplifies employers' administrative requirements in rehiring TFWs for the same position, enabling TFWs to remain for longer uninterrupted periods of time in Canada (Nakache 2010).

Although TFWs bear the largest costs of labour migration (Hennebry 2008; Martin 2003), the program is largely employer-driven. To hire TFWs, employers must issue a request for a Labour Market Opinion (LMO), which assesses wages and working conditions, the availability of Canadian workers and trainees, labour shortages, and the transfer of skills and knowledge to Canada (HRSDC 2010b). The quick processing time, however, has raised questions about the accuracy and rigour of the LMOs (Nakache 2010; Office of the Auditor General of Canada 2009). Between 2007 and 2010, a pilot project, called the expedited LMO, was put in place to reduce the processing time to five business days for certain occupations in Alberta and British Columbia (HRSDC 2010a).

In 2007, the government announced further changes to the TFWP to facilitate employers' requests to hire low-skilled workers. Regional lists of "Occupations Under Pressure" were compiled to further streamline recruitment, requiring employers to advertise a job to Canadian workers for only seven days (Fudge and MacPhail 2009; Flecker 2010). Furthermore, employers have been exempted from obtaining LMOs to recruit workers in certain occupations covered by the North American Free Trade Agreement and the

General Agreement of Trade in Services (Thomas 2010). With these measures, employers receive a flexible and on-call foreign labour force that can be dispensed with at any time.

From a foreign worker's perspective, the TFWP is highly problematic. TFWs cannot freely choose an occupation or employer in Canada. Furthermore, employers are required to write an evaluation of the TFW at the end of each contract period, and many employers invite or "name" workers back for the following year. Given their paternalistic relationship with their employers and workers' fear of expulsion from the program or of deportation with loss of employment, workers reportedly follow an unwritten "behavioural code" of remaining unobtrusive, accepting without question accelerated work schedules, extended workdays, and employers' requests for overtime (Binford 2009). In addition, they tend to refrain from reporting illness and injury, and filing complaints about substandard working conditions, long work hours, or other forms of mistreatment.

The abuse and exploitation of TFWs is well documented, especially within the agricultural sector (e.g., Byl and Foster 2009; Basok 2000; CIC 1994; Binford 2009; Smart 1997). Although some measures have been put in place by the government to protect workers from exploitation, they have been insufficient or unsuccessful (Fudge and MacPhail 2009). Since TFWs are prevented from unionizing, they are unable to exercise the few labour rights they possess (Fudge and MacPhail 2009). Clearly, the vulnerability and exploitability of TFWs results from their precarious status, and the lack of citizenship and the associated rights and entitlements.

Citizenship—and the denial of citizenship—is an important mechanism regulating labour markets (Bauder 2006; 2007). The majority of TFWs cluster in specific occupations in the lower end of the labour market, particularly in the service sector (HRSDC 2010a). Meanwhile, the rights and entitlements associated with citizenship permit Canadian citizen to occupy jobs that offer better pay, benefits, and career advancement opportunities. In fact, the availability of a flexible, dispensable, cyclical, and rotational foreign labour force to fill labour-intensive positions at the bottom of the labour market protects the capital-intensive skilled and higher-waged segment of the economy and stabilizes this segment in light of seasonal and cyclical swings (Piore 1979). As TFWs become a permanent feature of the Canadian labour market, these non-citizens are no longer simply a labour reserve army that can be hired and fired based on seasonal and cyclical economic cycles, they constitute an exploitable underclass (Sharma 2006).

The lack of citizenship rights creates and reproduces inequalities among people who are working and residing in the territory of the same nation-state (Stasiulis and Bakan 1997; Bauder 2008). TFWs are caught in a Catch-22 situation. They lack citizenship, so their visa can be temporally restricted, they can be denied permanent residence, and they cannot accumulate social, economic, and economic rights and entitlement and claims to citizenship (Soysal 1994). Yet their contributions to the community justify their formal membership in this community. Arguably, their contributions even exceed that of many citizens, due to the sacrifices they make, the abuses they suffer, and the exploitation they experience (Balibar 2000).

To meet the entitlement of TFWs for community membership, an additional principle of citizenship beyond the birthrights of *jus soli* and *jus sanguinis* is needed. Below, we explore the principle of *jus domicile* in the context of TFWs.

### ***JUS DOMICILE AND TEMPORARY FOREIGN WORKERS***

The citizenship principle of *jus domicile* responds to contemporary patterns of human mobility and can thus be used as a formal mechanism for TFWs to claim rights and entitlements based on *de facto* membership in a community. TFWs participate in local and national economies and civic society as workers, consumers, and residents. As long as they make these contributions, they should be able to claim *jus domicile* citizenship and possess the right to stay permanently and indefinitely. However, if they move away and thereby cease to make such contributions, their citizenship would expire. Multiple *jus domicile* citizenship would not be accumulated over time. Yet citizenship acquired through *jus domicile* would complement other layers of citizenship, including citizenship acquired through *jus soli* or *jus sanguinis*.

The *jus domicile* principle of citizenship presents a mechanism to institutionalize normative notions of nested, transnational, postnational, and stakeholder citizenships. It would formalize the particular layer of citizenship linked to place of residence that is “nested” within other forms of citizenship that TFWs possess. *Jus domicile* citizenship would also express forms of transnational citizenship in that it would permit TFWs to claim their rights and entitlements outside of the boundaries of the territorial nation-state of their original (*jus soli* and/or *jus sanguinis*) formal citizenship. By the same token, the state would assume the same responsibility of TFWs on its territory as it does of all its citizens.

In terms of postnational citizenship, *jus domicile* would formally recognize the accumulation of rights and entitlements based on residency and the participation and contribution of TFWs in the economic, social, and public life of a community, regardless of the citizenship they acquired at birth. Finally, *jus domicile* would implement stakeholder citizenship grounded in rights and entitlements based on residence. Using *jus domicile*, TFWs could claim formal citizenship based on their stake in the community.

An important practical consideration is at which point a TFW would receive *jus domicile* citizenship. As Bauböck (1994) remarks, host states can easily manipulate residence permits so that some immigrants are not allowed to stay long enough to become citizens. To protect TFWs from abuse and exploitation, citizenship privileges and entitlements should apply as soon as a TFW assumes residency at a particular location. Conversely, a TFW’s contribution to and stake in a community is likely to accumulate over time, in which case citizenship should be granted after a certain period of residency. In Canada’s Live-In Caregiver Program, TFWs are granted permanent residency after two years with the prospect of formal citizenship after an additional three years. Yet, within the first two years, workers remain extremely vulnerable and often suffer from abuse and

maltreatment. The valuable “price” of future citizenship deters these TFWs from claiming the rights and entitlements they already possess.

*Jus domicile* would be consistent with Canada’s history of labour migration and contemporary permanent immigration policy. Canada has historically linked migration with citizenship acquisition, and many generations of immigrants have become citizens through the contributions they have made to Canada and local communities. Today’s TFWs deserve the same opportunity (Siemiatycki 2010). Furthermore, labour shortages that exist should be filled by workers who are able to claim the necessary rights and entitlement to uphold Canada’s high wage and labour standards. *Jus domicile* would inhibit the reproduction of a vulnerable and exploitable underclass in the form of TFWs.

A further benefit of *jus domicile* would be to eliminate the need for TFWs to go underground and work in the informal economy if they wish to switch employers or want to remain in Canada after their contract expired. Working conditions in the informal economy are often even more abusive than they are under the TFWP. The Canadian state has been alerted by the prospect of TFWs joining the informal economy, as Citizenship and Immigration Canada communicates to employers in the *Temporary Foreign Worker Guidelines*:

While there is a reluctance on the part of CIC and HRSDC to support work permits for lower-skilled workers because their skills profile would not normally qualify them for permanent immigration to Canada, concerns regarding these persons going out of status and remaining in Canada illegally are mitigated when the foreign national has been nominated for permanent residence (CIC 2010a).

If given *jus domicile* citizenship, TFWs would formally be able to compete for jobs with other immigrants and Canadian citizens. *Jus domicile* is a constraint on employers’ access to cheap and docile labour, since improved access to rights and entitlement and the prospect of permanency would prevent wages from spiralling downward, which can be a consequence of the presence of vulnerable and exploitable workers who are denied these rights and entitlements (Bauder 2006; Sweetman and Warman 2010).

Furthermore, *jus domicile* would address the problem of deskilling and lack of “Canadian experience” which current immigrants often face. TFWs who successfully participate in the labour market, gain recognized Canadian work experience and would be well prepared for the Canadian labour market (Sweetman and Warman 2010). Thomas (2010) has found that temporary residents are more likely to speak English than recent immigrants, are younger than permanent residents, are more likely to live in less populated parts of the country, and are more likely to have postsecondary education than permanent immigrants selected by the points system. In addition, the weekly earnings of male TFWs are higher than those of recently landed immigrants (Warman 2009, 2010).

Lastly, *jus domicile* would recognize the links that already exist between TFWs and their Canadian communities. With the recent legislation allowing TFWs to remain in Canada

for longer periods of uninterrupted time and the increasing numbers of TFWs who are becoming “permanently temporary” (CIC 2009a; Thomas 2010), their connections within communities will intensify and their contributions to these communities will increase.

Kostakopoulou (2008) outlines three main objections to the idea of *jus domicile* which can be fittingly applied to the TFWP in Canada. First, it can be argued that migrants lack the loyalty required to be full members of a political community after a relatively short period of residence. This reason for denying citizenship to TFWs assumes them to be unable to develop an appreciation of and commitment to Canada. Under the democratic principle of participation in a community, however, citizenship rights should be extended to all contributing members independent of their perceived degree of loyalty.

Second, from a transnational perspective, *jus domicile* holds on to territoriality while migrants’ lives are already transnational. Therefore, citizenship should be conceived more radically in a de-territorial manner. A similar point has long been made by Austro-Marxist Otto Bauer (1924) and has theoretical merit. Pragmatically, however, states have authority over particular national territories and territorial citizenship is unlikely to disappear anytime soon.

Third, *jus domicile* is a theoretical concept that is not pragmatically feasible. We do not share this objection. In fact, we apply the *jus domicile* principle to the concrete case of the TFWP in Canada. As we have shown, citizenship through *jus domicile* is feasible for TFWs.

## **DISCUSSION**

The current Canadian government has little interest in pursuing pathways to permanency for TFWs. Permanency would defeat the very purpose of the TFWP, as it is designed to ensure that workers are temporary and can be denied the rights and entitlements of permanency and citizenship. Yet, workers do possess moral claims to rights and entitlements that contradict government intentions.

Furthermore, the TFWP does not stand alone in terms of economic migration to Canada. It functions in connection with permanent immigration through the points system, the Provincial Nominee Program, and the Canadian Experience Class. These three programs offer permanent residence with the prospect of citizenship. The idea of *jus domicile* does not contradict the spirit of Canada’s current immigration programs.

In a way, the Canadian Experience Class already follows the principle of *jus domicile* by offering temporary workers the prospect of permanent residency. This program began in 2008 and was designed as a pathway for highly skilled TFWs and international students with Canadian education to apply for permanent residency. It emphasizes and endorses Canadian work or education experience, something that TFWs possess. In 2009, the federal government expected between 10,000 and 12,000 applicants, but received only about 1,000 applications (CIC 2009b). For low-skilled TFWs (other than Live-in Caregivers), however, the Canadian Experience Class does not provide a pathway to

citizenship—which may explain the low numbers of applications (Nakashe and Kinoshita 2010).

To truly live up to the *jus domicile* principle of citizenship, the Canadian Experience Class should not distinguish between persons based on their skills; as in other citizenship principles, citizenship based on *jus domicile* spans ethnic, social, and class divisions. Furthermore, *jus domicile* citizenship should be a right and should not be conferred selectively on some residents and denied to others. Such a right must not be subject to the manipulation of residency permits in such a way that some residents are excluded from claiming it. This is precisely the case, for example, when residency time restrictions prevent TFWs from accumulating the necessary time for *jus domicile* citizenship (Bauder, 2010).

Similarly, some Provincial Nominee Programs offer pathways to permanency and citizenship to TFWs. Since these programs are provincial, TFWs may be eligible for permanent residency in some provinces and not others, based on the province or territory of their original work permit (House of Commons Canada 2009). In this case, *jus domicile* citizenship is effectively reconfigured to the provincial scale.

More problematically, applications from TFWs for permanent residency through a Provincial Nominee Program are tied to a job with a specific employer. If a worker is laid off before attaining permanent residency, the application is often cancelled (Nakashe and Kinoshita 2010). The *jus domicile* principle of citizenship would rectify this problem.

Manitoba has been the most progressive of all provinces in respect to its Provincial Nominee Program. In this province, employers are able to nominate low-skilled TFWs for permanent residency after only six months of residency. Approximately 70% of all TFWs who arrive in Manitoba apply for permanent residency (Bucklaschuck, Moss, and Annis 2009). British Columbia, Alberta, and Saskatchewan have recently expanded their Provincial Nominee Programs to include lower-skilled occupations in specific industries (Nakashe and Kinoshita 2010).

Awarding citizenship to TFWs through the principle of *jus domicile* would effectively delegate immigration selection and citizenship decisions to employers and exclude persons who are unattractive to Canadian employers or who migrate for other reasons than employment. However, *jus domicile* is by no means a principle restricted to TFWs. It can equally be applied to all migrants. In this paper, we have merely used the case of TFWs to explore the appeal, utility, and feasibility of this principle.

## **POLICY RECOMMENDATIONS**

Canada's current practice of relying on TFWs and exploiting their labour while keeping them from accumulating postnational rights by expelling them is neither economically nor morally sustainable. Although some commentators believe the program should be terminated (Byl and Foster 2009; Alboim 2009), the TFWP offers opportunities as a pathway to permanent residency and formal citizenship for many migrants.



Given the low number of Canadian Experience Class applications relative to government targets in 2008, federal policy makers need to re-evaluate their approach in retaining workers who are residing and working in Canada. As an immediate measure, the Canadian Experience Class should be expanded to all occupations, not only high-skill occupations. In this way, the Canadian Experience Class can provide a pathway to permanency at the national scale for TFWs who have made contributions to Canada's national community and have been members of this community for the last two years. At the provincial scale, Provincial Nominee Programs should also include all occupations, which would allow provinces to select TFW based on provincial labour market needs.

Medium-term policy recommendations include giving all foreign workers permanent residency and thereby the prospect of future citizenship. This approach will help end rampant abuse and exploitation of vulnerable TFWs. Furthermore, other migrant groups, including non-status immigrants, should not remain excluded, but also be offered *jus domicile* citizenship based on the residency principle and their social and economic contributions to the community.

Finally, in the long-run, we recommend revamping Canada's citizenship system and situating *jus domicile* at its centre. According to this recommendation, citizenship would be granted citizenship based on de-facto membership in a community and not the "accident of birth". This final recommendation may also permit thinking seriously about the proper geographical scales of citizenship. Traditionally, citizenship has been tied to rigid notions of the nation-state and the boundaries of national territory. Recently, less rigid notions of citizenship have challenged these territorial demarcations. Although *jus domicile* is still a territorial principle, it can be applied at variable geographical scales. For example, scholars have recommended extending voting rights in municipal elections to permanent-resident non-citizens (Siemiatycki 2006). Such rights would effectively implement *jus domicile* at the local and municipal scale. Furthermore, provinces are already deeply engaged in selecting and extending rights to immigrants, amounting effectively to a form of citizenship at the provincial scale. In a similar way, we believe that *jus domicile* can be used to extend formal citizenships to migrants at urban, provincial, or other geographical scales.

**REFERENCES**

- Alboim, N. (2009). Abolish the Low-Skilled Temporary Foreign Worker Program. *Policy in Focus*, Issue 10.
- Avery, D. (1988). Continental European Immigrant Workers in Canada, 1896-1919: From "Stalwart Peasants" to "Radical Proletariat." *Canadian Review of Sociology and Anthropology*, 12(1): 53-64.
- Avery, D. (1995). *Reluctant Hosts: Canada's Response to Immigrant Workers, 1896-1994*. Toronto: McClelland & Stewart.
- Balibar, E. (2000). What we owe to the Sans-Papiers. In L. Guenther & H. Heesters (Eds.), *Social Insecurity* (pp. 42-43). Toronto: Anansi.
- Basok, T. (2000). He Came, He Saw, He Stayed. Guest Worker Programs and the Issue of Non-Return. *International Migration*, 38(2): 215-238.
- Basok, T. (2004). Post-National Citizenship, Social Exclusion, and Migrants' Rights: Mexican Seasonal Workers in Canada. *Citizenship Studies* 8(1): 47-64.
- Bauböck, R. (1994). *Transnational Citizenship: Membership and Rights in International Migration*. Aldershot: E. Elgar.
- Bauböck, R. (2008). Citizens on the Move: Democratic Standards for Migrants' Membership. *Canadian Diversity*, 6(4): 7-12.
- Bauder, H. (2006). *Labor Movement: How Migration Regulates Labor Markets*. New York: Oxford University Press.
- Bauder, H. (2007). What a Difference Citizenship Makes: Migrant Workers in Rural Ontario. *Our Diverse Cities* 4: 95-98.
- Bauder, H. (2008). Citizenship as Capital: The Distinction of Migrant Labour. *Alternatives: Global, Local, Political* 33: 315-333.
- Bauder, H. (2010) Foreign Workers Present a Moral Dilemma: Canada has the Capacity, and Obligation to Integrate Guest Workers. *Edmonton Journal*, Nov. 15: A17.
- Bauer, O. (1924). *Die Nationalitätsfrage und die Sozialdemokratie*. (2nd ed.). Wien, Wiener Volksbuchhandlung.
- Bellamy, R. (2008). *Citizenship: A Very Short Introduction*. Oxford: Oxford University Press.

Bigo, D. (2002). Security and Immigration: Toward a Critique of the Governmentality of Unease. *Alternatives* 27: 63-92.

Binford, L. (2009). From Fields of Power to Fields of Sweat: The Dual Process of Constructing Temporary Migrant Labour in Mexico and Canada. *Third World Quarterly* 30(3): 503-517.

Bloemraad, I. (2000). Citizenship and Immigration: A Current Review. *Journal of International Migration and Integration* 1(1): 9-37.

Bloemraad, I., Korteweg, A., & Yurdakul, G. (2008). Citizenship and Immigration: Multiculturalism, Assimilation, and Challenges to the Nation-State. *Annual Review of Sociology*, 34: 153-179.

Brubaker, R. (1992). *Citizenship and Nationhood in France and Germany*. Cambridge: Harvard University Press.

Bucklaschuck, J., Moss, A., & Annis, R. (2009). Temporary May Not Always Be Temporary. The Impact of "Transitional" Foreign Workers and Increasing Diversity in Brandon, Manitoba. *Our Diverse Cities* 6(spring): 64-70.

Burke, A. (2002). Aporias of Security. *Alternatives*, 27: 1-27.

Byl, Y., & Foster, J. (2009). *Entrenching Exploitation: The Second Report of the Alberta Federation of Labour Temporary Foreign Worker Advocate*. Edmonton: Alberta Federation of Labour.

Castles, S., & Davidson, A. (2000). *Citizenship and Migration. Globalization and the Politics of Belonging*. New York: Routledge.

Citizenship and Immigration Canada. (1994). *Hiring Foreign Workers: Facts for Canadian Employers*. Ottawa: Minister of Supply and Services.

Citizenship and Immigration Canada. (2009a). *Changes to the Temporary Foreign Worker Program: Pilot Project for Occupations Requiring Lower Levels of Formal Training (NOC C and D)*. Retrieved from <http://www.cic.gc.ca/english/work/low-skill.asp>

Citizenship and Immigration Canada. (2009b). *Facts and Figures 2008 – Immigration Overview: Permanent and Temporary Residents*. Retrieved from <http://www.cic.gc.ca/english/resources/statistics/facts2008/index.asp>

Citizenship and Immigration Canada. (2010a). *Temporary Foreign Worker Guidelines*. FW 1.

- Citizenship and Immigration Canada (2010b). *Facts and Figures 2009: Preliminary Tables – Permanent and Temporary Residents*. Retrieved from <http://www.cic.gc.ca/english/resources/statistics/facts2009/index.asp>
- Cohen, E. (2008). *Semi-Citizenship in Democratic Politics*. Cambridge: Cambridge University Press.
- Kivisto, P. (2007). Conclusion: The Boundaries of Citizenship in a Transnational Age. In T. Faist & P. Kivisto (Eds.), *Dual Citizenship in Global Perspective: From Unitary to Multiple Citizenship* (pp. 272-287), Hampshire: Palgrave MacMillan.
- Kivisto, P., & Faist, T. (2007). *Citizenship: Discourse, Theory, and Transnational Prospects*. Malden: Blackwell Publishing.
- Flecker, K. (2010). Building a Disposable Workforce Through Temporary Migration Policy. *Canadian Issues* (spring): 99-103.
- Fudge, J., & MacPhail, F. (2009). The Temporary Foreign Worker Program in Canada: Low-Skilled Workers as an Extreme Form of Flexible Labour. *Comparative Labor Law and Policy Journal* 31: 101-139.
- Gustafson, P. (2005). International Migration and National Belonging in the Swedish Debate on Dual Citizenship. *Acta Sociologica* 48(1): 5-19.
- Hammar, T. (1990). *Democracy and the Nation State: Aliens, Denizens, and Citizens in a World of International Migration*. Hampshire: Ashgate.
- Hennebry, J. (2008). Bienvenidos a Canadá? Globalization and the Migration Industry Surrounding Temporary Agricultural Migration in Canada. *Canadian Studies in Population* 35(2): 339-356.
- House of Commons. (2009). Standing Committee on Citizenship and Immigration. *Temporary Foreign Workers and Non-Status Workers*. Ottawa.
- Human Resources and Skills Development Canada. (2010a). *Temporary Foreign Worker Program - Labour Market Opinion (LMO) Statistics. Annual Statistics 2006-2009*. Retrieved from, [http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/stats/annual/table4a.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/stats/annual/table4a.shtml)
- Human Resources and Skills Development Canada. (2010b). *Steps to Hire TFWs*. Retrieved from, [http://www.rhdcc-hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/temp\\_workers.shtml](http://www.rhdcc-hrsdc.gc.ca/eng/workplaceskills/foreign_workers/temp_workers.shtml)
- Joppke, C. (2010). *Citizenship and Immigration*. Cambridge: Polity.

- Kelley, N., & Trebilcock, J. (2000). *The Making of the Mosaic: A History of Canadian Immigration Policy*. Toronto: University of Toronto Press.
- Kivisto, P. (2007). Conclusion: The Boundaries of Citizenship in a Transnational Age. In T. Faist & P. Kivisto (Eds.), *Dual Citizenship in Global Perspective: From Unitary to Multiple Citizenship* (pp. 272-287), Hampshire: Palgrave MacMillan.
- Knowles, V. (2007). *Strangers at our Gates: Canadian Immigration and Immigration Policy, 1540-2006*. Toronto: Dundurn Press.
- Kofman, E. (2005). Citizenship, Migration and the Reassertion of National Identity. *Citizenship Studies* 9(5): 453-467.
- Kostakopoulou, D. (2008). *The Future Governance of Citizenship*. Cambridge: Cambridge University Press.
- Kymlica, W. (1995). *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Clarendon Press.
- Lipset, S. (1965). Introduction. In T.H. Marshall (Ed.), *Citizenship and Social Class* (pp. v-xxii). New York: Doubleday.
- Marshall, T.H. (1965). *Class, Citizenship, and Social Development: Essays*. New York: Doubleday.
- Martin, P. (2003). *Managing Labor Migration: Temporary Worker Programs for the 21<sup>st</sup> Century*. Geneva: International Institute for Labor Studies.
- Nakashe, D. (2010). Temporary Workers: Permanent Rights? *Canadian Issues* (spring): 45-48.
- Nakashe, D., & Kinoshita, P. (2010). The Canadian Temporary Foreign Worker Program. Do Short-Term Economic Needs Prevail over Human Rights Concerns? *IRPP Study No.5*.
- Office of the Auditor General of Canada. (2009). *Chapter 2 – Selecting Foreign Workers under the Immigration Program*. Retrieved February 6, 2010, from [http://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_200911\\_02\\_e\\_33203.html](http://www.oag-bvg.gc.ca/internet/English/parl_oag_200911_02_e_33203.html)
- Ong, A. (1993). On the Edge of Empires: Flexible Citizenship Among Chinese in Diaspora. *Positions: East Asia Cultures Critique* 3(1): 745-778.
- Ong, A. (1999). *Flexible Citizenship: The Cultural Logistics of Transnationality*. Durham: Duke University Press.
- Ong, A. (2006). Mutations in Citizenship. *Theory, Culture, and Society* 23(2-3): 499-531.

- Piore, M. (1979). *Birds of Passage: Migrant Labor and Industrial Societies*. Cambridge: Cambridge University Press.
- Sassen, S. (1998). *Globalization and its Discontent: Essays and the New Mobility of People and Money*. New York: New York Press.
- Satzewich, V. (1991). *Racism and the Incorporation of Foreign Labour: Farm Labour Migration to Canada since 1945*. New York: Routledge.
- Sharma, N. (2006). *Home Economics: Nationalism and the Making of 'Migrant Workers' in Canada*. Toronto: University of Toronto Press.
- Siemiatycki, M. (2006). *The Municipal Franchise and Social Inclusion in Toronto: Policy and Practice*. Toronto: Inclusive Cities Canada, Community Social Planning Council of Toronto (CSPC).
- Siemiatycki, M. (2010). Marginalizing Migrants: Canada's Rising Reliance on Temporary Foreign Workers. *Canadian Issues* (spring): 60-63.
- Smart, J. (1997). Borrowed Men on Borrowed Time: Globalization, Labour Migration, and Local Economies in Alberta. *Canadian Journal of Regional Science* 20 (1/2): 141-156.
- Soysal, Y. (1994). *Limits of Citizenship. Migrants and Postnational Membership in Europe*. Chicago: The University of Chicago Press.
- Spiro, P. (2008). *Beyond Citizenship: American Identity After Globalization*. Oxford: Oxford University Press.
- Stasiulis, D., & A. Bakan. (1997). Negotiating Citizenship: The Case of Foreign Domestic Workers in Canada. *Feminist Review* 57: 112-139.
- Sweetman, A., & Warman, C. (2010). Canada's Temporary Foreign Workers Program. *Canadian Issues* (spring): 19-24.
- Tambini, D. (2001). Post-National Citizenship. *Ethnic and Race Studies* 24(2): 195-212.
- Thomas, D. (2010). Foreign Nationals Working Temporarily in Canada. *Canadian Social Trends*, 90: 34-48.
- Wæver, O. (1995). Securitization and Desecuritization. In R.D. Lipschutz (Ed.), *On Security* (pp. 46-86). New York: Columbia University Press.
- Warman, C. (2009). *The Earnings Outcomes of Temporary Foreign Workers in Canada*. Kingston: Queen's University, Economics Department Working Paper.

Warman, C. (2010). The Portability of Human Capital of Male Temporary Foreign Workers: You Can Bring It With You. In T. MacDonald, E. Ruddick, A. Sweetman, & C. Worswick (Eds.), *Canadian Immigration: Economic Evidence for a Dynamic Policy Environment* (pp. 209-233). Montreal: McGill-Queen's University Press.

Weinstock, D. (2008). The Theory and Practice of Citizenship in the 21<sup>st</sup> Century: A Few International Trends. *Canadian Diversity* 6(4): 3-6.

Young, I. (1989). Polity and Group Differences: A Critique of the Ideal of Universal Citizenship. *Ethics* 9(2): 250-274.

Yuval-Davis, N. (1999). The "Multi-Layered Citizen": Citizenship in the Age of "Glocalization." *International Feminist Journal of Politics* 1(1): 119-136.

## **CERIS - The Ontario Metropolis Centre**

CERIS - The Ontario Metropolis Centre is one of five Canadian Metropolis centres dedicated to ensuring that scientific expertise contributes to the improvement of migration and diversity policy.

CERIS - The Ontario Metropolis Centre is a collaboration of Ryerson University, York University, and the University of Toronto, as well as the Ontario Council of Agencies Serving Immigrants, the United Way of Greater Toronto, and the Community Social Planning Council of Toronto.

CERIS wishes to acknowledge receipt of financial grants from the Social Sciences and Humanities Research Council of Canada and Citizenship and Immigration Canada and the data provided by Statistics Canada.

CERIS appreciates the support of the Departments and Agencies participating in the Metropolis Project:

Citizenship and Immigration Canada  
Social Sciences and Humanities Research Council of Canada  
Department of Canadian Heritage  
Canada Mortgage and Housing Corporation  
Human Resources and Social Development Canada  
Public Health Agency of Canada  
Public Safety Canada  
Canada Border Services Agency  
Justice Canada  
Royal Canadian Mounted Police  
Atlantic Canada Opportunities Agency (ACOA)  
Canada Economic Development for Quebec Regions (CEDQ)  
Federal Economic Development Initiative for North Ontario (FedNor)  
The Rural and Cooperatives Secretariats of Agriculture and Agri-Food Canada  
Statistics Canada

For more information about CERIS contact:  
CERIS - The Ontario Metropolis Centre  
8<sup>th</sup> Floor, York Research Tower, 4700 Keele St. Toronto, Ontario, Canada M3J 1P3  
Telephone: (416) 736-5223 Facsimile: (416) 736-5688



## The Metropolis Project

Launched in 1996, the Metropolis Project strives to improve policies for managing migration and diversity by focusing scholarly attention on critical issues. All project initiatives involve policymakers, researchers, and members of non-governmental organizations.

Metropolis Project goals are to:

- Enhance academic research capacity;
- Focus academic research on critical policy issues and policy options;
- Develop ways to facilitate the use of research in decision-making.

The Canadian and international components of the Metropolis Project encourage and facilitate communication between interested stakeholders at the annual national and international conferences and at topical workshops, seminars, and roundtables organized by project members.

**For more information about the Metropolis Project  
visit the Metropolis web sites at:  
<http://canada.metropolis.net>  
<http://international.metropolis.net>**

