

Migration, Mobility, & Displacement

Vol. 3, No. 1 Summer 2017

Mares, Peter . 2017. "Locating Temporary Migrants on the Map of Australian Democracy." *Migration, Mobility, & Displacement* 3 (1): 9-31.

Migration, Mobility & Displacement is an online, open-access, peer-reviewed journal. It seeks to publish original and innovative scholarly articles, juried thematic essays from migrant advocacy groups and practitioners, and visual essays that speak to migration, mobility and displacement and that relate in diverse ways to the Asia-Pacific. The journal welcomes submissions from scholars and migrant advocacy groups that are publicly engaged, and who seek to address a range of issues facing migrants, mobile and displaced persons, and especially work which explores injustices and inequalities.

We welcome submissions and inquiries from prospective authors. Please visit our website: mmduvic.ca, or contact the editor for more information.

Editor-in-Chief

Dr. Feng Xu
mmded@uvic.ca

Technical Editor

Joel Legassie
mmpcapi@uvic.ca

Published by

The Centre for Asia-Pacific Initiatives
University of Victoria
3800 Finnerty Road, Victoria, BC, V8P 5C2, Canada
uvic.ca/research/centres/capi/



Licensed under Creative Commons
Attribution-NonCommercial 4.0 International.
creativecommons.org/licenses/by-nc/4.0/



Locating Temporary Migrants on the Map of Australian Democracy

Peter Mares

Abstract. *This article asks whether there should be a limit on the number of years that a temporary migrant can reside in Australia before either being granted permanent residence or required to depart.*

Temporary migration on the scale now experienced in Australia is a relatively recent phenomenon that contrasts strongly with the established pattern of permanent settler migration that characterised Australia in the 20th Century. As a result, the question of whether or not there should be a limit to temporariness has not yet been addressed in public policy debates.

Drawing on the approach of Joseph H. Carens (2013), I take Australia's self-definition as a liberal democracy as a standard to which the nation sees itself as ethically and politically accountable. I argue that a commitment to liberal democracy renders a purely contractual approach to migration invalid—more specifically, a migrant's consent to the terms of a temporary visa does not provide sufficient ethical grounds to extend that temporary status indefinitely. Moving beyond a contractual approach to consider whether current temporary migration arrangements are consistent with the principles of representative democracy raises debates within liberalism, particularly between cosmopolitan and communitarian perspectives. I argue that practical policy must reconcile these cosmopolitan and communitarian positions. I consider, but reject, the option of strictly time-limited temporary visas that would require migrants to depart after a set number of years and instead recommend a pathway to permanent residence based on duration of stay.

Introduction

In one of the more bizarre moments in a bizarre US Presidential election campaign, Republican candidate Donald Trump live-polled a town hall rally in Austin Texas about his immigration policy. After receiving rousing endorsement for the height of his proposed wall along the US-Mexico border (“35 to 45 feet”) and for his declaration that all “criminal aliens” would be expelled from the US on “day one” of his presidency, Trump put a more complex question to his partisan audience: “So you have somebody that’s been in the country for 20 years, has done a great job, has a job, everything else. OK. Do we take him and the family, her or him or whatever, and send them out? Are they gone?” (Trump 2016).

Despite expressing unified and passionate opposition to “illegal immigra-

tion” moments earlier, most of Trump’s vocal audience were willing to make an exception for such long-term, law-abiding but undocumented residents. They largely agreed with their candidate’s proposition that, as President, he should “work with” such people and “let them stay in some cases” (Trump 2016).

Sitting beneath Trump’s question and the response of his supporters in Austin is an inchoate recognition of Joseph H. Carens’ argument that the passage of time has moral force in questions of immigration and entitlement: “the longer the stay, the stronger the claim to full membership in society and to the enjoyment of the same rights as citizens, including, eventually, citizenship itself” (Carens 2008,419). As Reilly (2016, 280) notes, this claim is both normative and empirical: “It is empirical because it reflects state practice. It is normative because it is an argument for what ought to be the basis of citizenship.”

At the Austin rally, Trump appeared to recognise the strength of this claim, even for those who initially entered the country without authorisation: “I’ve had very strong people come up to me, really great, great people come up to me. And they’ve said, Mr. Trump, I love you, but to take a person that’s been here for 15 or 20 years and throw them and the family out—it’s so tough, Mr. Trump. I mean, I have it all the time! It’s a very, very hard thing” (Trump 2016).

If a case can be made from such a populist corner for the eventual inclusion of migrants who entered the country without authorisation, then how much stronger must the argument be for the full inclusion, over time, of migrants whose stay in the country is approved, indeed promoted, under a government-organised temporary visa regime?

Over the past two decades, long-term temporary migration to Australia has expanded dramatically (Mares 2016a). As of December 2016, there were 691,720 international students, working holiday makers and temporary skilled workers present in Australia (DIBP 2016a)—almost double the number (369,041) present 10 years earlier (DIAC 2006). While many temporary migrants sojourn in Australia for a few months to a few years, an increasing number are extending their stay to periods of several years, either by repeatedly renewing a temporary visa, or, more often, by shifting from one temporary visa category to another. Many will do this kind of visa hopping in the hope of making the transition to the “holy grail” of permanent residence (Robertson 2011). This raises the question of whether there should be a time limit to temporariness, since long-term temporary migrants might otherwise be at risk of suffering a precarious second class status with diminished rights, increased uncertainty and indefinite or even permanent exclusion from the political life of the country that they have made their home. Such a status presents an ethical problem in a liberal democracy, because “the inner logic of democracy and a commitment to liberal principles require the full inclusion of the entire settled population” Carens (2008, 419). While liberal democracy takes different forms in different nations, it is everywhere underpinned by the liberal principles of equality and freedom, which both imply, at a bare minimum, that all adult members of a political community are enfranchised to vote and run for office. This immediately raises the question of who qualifies to be a member of the political community and so necessarily has “concrete and significant implications for immigration” (Carens 2013, 5). As “embodied creatures” our lives unfold within physical space and the spaces in which we live

“are organised politically primarily as territories governed by states” (Carens 2013, 23). Thus time spent actually living in a state on an ongoing basis lays down the foundation for a claim to membership that democratic states are “obliged to respect” (Carens 2013, 45).

Carens formulates the problem in the following terms: “What are the claims of non-citizens who are present on the territory of a state but who are not permanent residents? Does the normative map of democracy have room for them?” (Carens 2008,420). In applying Carens’ questions to Australia, I take Australia’s self-definition as a liberal democracy as a core standard to which the nation sees itself as ethically and politically accountable. A consideration of the issues from the perspective of liberal democracy will thus be apt to generate policy questions and responses that cannot be easily disregarded.

The Rise of Temporary Migration in Australia

For reasons of clarity, the term “temporary migrant” is taken here to include all foreign entrants to Australia who are granted a valid visa that entitles the holder to a stay of at least 12-months duration and that grants work rights in some form. This definition excludes tourists, who are issued a “visitor visa” with no work rights. It also excludes both the relatively small number of migrants who have overstayed a valid visa and become unlawful and participants in the small Seasonal Workers Program, who come to Australia from Pacific Island states and East Timor for a maximum stay of nine months at a time, but who may make repeated visits to Australia over subsequent years.¹

There are four main categories of visa holders included in this definition of “temporary migrant”: temporary skilled workers, international students (and student graduates), working holidaymakers and New Zealanders who arrived in Australia after 2001. Another smaller group of temporary visa holders relevant to this discussion is made up of refugees and asylum seekers who arrived in Australia by boat and who are ineligible to apply for a permanent visa.

The number of temporary migrants in Australia expanded rapidly in the two decades from 1996 as the migration system morphed from the 20th Century model of permanent settler migration to a hybrid system of two-step and multi-step migration, in which the first step to permanent residency is increasingly via temporary entry under one of the four visa categories outlined above (Mares 2016a, Robertson 2013).

A range of global and local factors drove the rapid expansion of temporary migration to Australia. As in other global north countries, skills shortages in the context of demographic ageing and the shift to a service-based economy saw Australia supplement permanent settlement with “flexible migrant labour forces” selected “on the basis of their ability to both rapidly integrate into the labour market and to create minimal burden on state-sponsored social services” (Robertson and Runganaikaloo 2014, 209). More Australia-specific drivers included the search for alternative sources of higher education revenue in an era of declining govern-

¹ In 2015-16 4,772 visas were approved under the Seasonal Worker Program. (DOE 2016, 29). Discussion of whether there should be a pathway to permanent residency for repeat seasonal workers is beyond the scope of this article.

ment funding, and the desire to ease labour market pressures for both skilled and unskilled labour during a long period of economic growth fuelled by the mining boom. Changes to immigration policy were made after sustained “labour shortages raised the risk of escalating wages” and because improved labour market efficiency “was deemed necessary in the context of more competitive and internationalised market environments” (Wright 2012, 128).

Year	International students and Student Graduates²	Working Holiday Makers³	Skilled Workers⁴	Bridging Visas and Other Visas⁵	Total
2011	357,120	111,990	131,340	140,850	741,300
2012	342,000	136,590	162,270	145,530	786,390
2013	340,470	160,500	191,220	134,500	826,690
2014	364,958	151,200	195,080	126,330	837,568
2015	400,826	143,920	188,000	152,300	885,046
2016	439,140	137,380	170,590	170,230	917,340

Table 1: Long term temporary visa holders in Australia at 30 June 2011-2016, (DIBP 2016a)

In the early 2000s, amid continuing complaints from business about skills shortages, the Australian government made it easier for international students to transition directly to permanent residency after completing their studies (Robertson, 2013). This had the bonus effect of making Australia’s higher education system more attractive in international markets as the prospect of achieving permanent residency became a “key motivation” (Robertson and Runganaikaloo 2014, 210) to study in Australia. It also had the unintended consequence of encouraging the growth of a low-value, private sector training industry catering to an influx of international students seeking to enrol in courses that could lead to a permanent visa via the cheapest and quickest route (Mares 2016a). In response, government significantly weakened the nexus between Australian study and permanent residency after 2007 (Mares 2010) and, as a result, international students who extend their stay in Australia after graduation today are far more likely to move onto another temporary visa than to make a direct transition to permanent residence. This can leave them “living in limbo”, a status that “keeps student-migrants in prolonged states of anxiety and constructs them as outsiders on several levels” (Robertson and Runganaikaloo 2014, 215).

As of 30 June 2016 there were 917,340 long-term temporary visa holders

² Visa subclasses 570, 571, 572, 573, 574, 575, 576 and 485.

³ Visa subclasses 417 and 462.

⁴ Visa subclass 457.

⁵ The “other” category includes, among others, non-New Zealand citizens who are family members of a New Zealand citizen, visiting entertainers, sportspeople, academics and trainees, while bridging visa are granted to non-citizens who have business with the government or the courts regarding immigration matters.

Mares: Locating Temporary Migrants

present in Australia, an increase of around 24 per cent over six years (Table 1). The total increases to more than one million if New Zealanders who moved to Australia after January 2001 are included in the calculation.⁶

Regulations governing these different categories vary, as do the entitlements accorded to visa holders. International students, for example, are restricted to working 40 hours per fortnight alongside their studies, whereas there are no limits on the working hours of most other temporary migrants. New Zealanders can obtain publicly funded healthcare on the same terms as Australian citizens and permanent residents, whereas most other temporary visa holders are required to take out private insurance and pay their own medical bills. Working holiday visas are only available to citizens aged between 18 and 30 years of age from countries that have signed a reciprocal agreement with the Australia government, but the 457 skilled worker visa is not subject to such restrictions. A 457 visa can be valid for up to four years, whereas a subclass 417 Working Holiday Visa is initially limited to 12 months, with the possibility of a second 12-month visa if a holidaymaker spends at least 88 days working in a specified industry in a regional area. The Special Category Visa issued to New Zealanders on arrival in Australia allows for an indefinite stay, even though the Department of Immigration and Border Protection classifies it as a temporary visa (DIBP 2016b).

Despite these differences, the holders of these temporary visas all share important characteristics: they have the right to work and are expected to pay taxes and abide by the law, yet they have no say in choosing the representatives who make the law and decide how tax revenues are allocated. They cannot vote or run for office, have no formal political representation, and have, at best, only restricted access to government services and welfare payments such as unemployment benefits, healthcare, housing assistance and disability support. A significant number of temporary migrants are able to utilise existing migration pathways to overcome their temporary status and gain permanent residency. In 2015-16, for example, 58 per cent of the 128,550 permanent visas available in the skilled stream of Australia's annual migration program were granted onshore—that is, to temporary visa holders who were already present in the country (DIBP 2016e, 7). In addition, 38 per cent of 47,825 partner visas were granted to applicants already in Australia. (DIBP 2016e, 3). The most common pathway to permanent residency runs via the 457 temporary skilled worker visa, with around half of all visa holders in this category transitioning to permanency over time. Many other visa holders always consider their stay in Australia temporary and depart at a time of their own choosing. But, as will be discussed in more detail below, some face the potential of becoming long-term or indefinitely temporary, either because they move across a number of temporary visas,

⁶ As of 30 June 2016, there were 660,180 New Zealanders present in Australia on Special Category (subclass 444) Visas. However since all New Zealanders are issued with the same visa on arrival, this figure includes approximately 100,000 short-term visitors who are not living or working in Australia and an estimated 350,000 New Zealanders who arrived in Australia prior to 2001 and who enjoy a status analogous to permanent residence. I estimate that there are around 200,000 New Zealanders living in Australia who arrived after 2001 and are treated in legislation as temporary visa holders. In private communications with the author New Zealand government officials have provided an estimate of 250,000.

or because no pathway to permanent residency is open to them.

To allow the formation of a sub-group within the long-term population who are denied access to political representation and social support creates an unsustainable conflict with the basic principles of liberal democracy. There are two potential ways to resolve this conflict. The first option would be to set a threshold number of years that temporary migrants are allowed to remain in Australia. After this threshold is crossed, temporary migrants would no longer be able to renew an existing visa or switch to a different visa category and would be required to depart the country. The second option would be to recognise that with the passage of time temporary migrants acquire an increasing entitlement to full membership of the political community of the nation (which means, in the Australian context, an entitlement to permanent residence as a precursor to potential citizenship).

Debating the Contractual View of Temporary Migration

There may be a temptation to deny that the prospect of migrants becoming indefinitely temporary creates a conflict with democratic principles on the basis that temporary migration is a contract freely entered into. When temporary migrants come to Australia to study or work there is no promise that permanent residence will ever be part of the deal. In fact the assumption, at least on the part of government, is often the reverse. In order to secure a visa to study in Australia, for example, prospective international students must meet the immigration department's "genuine temporary entrant requirement"—that is, they must satisfy a decision maker that have "a genuine intention to stay in Australia temporarily" and are not seeking a way to "maintain ongoing residency" (DIBP 2016c). Similarly, when temporary workers are recruited under a labour agreement—a formal arrangement with the federal government that enables an enterprise to recruit an agreed number of semi-skilled workers on 457 visas—the immigration department specifically advises employers to "avoid promising overseas workers that they will be sponsored for permanent residence" (DIBP 2015). The Australian government makes clear to New Zealanders that although the special category visa grants work rights and an indefinite stay, it is "a temporary visa" that "does not provide a direct pathway to a permanent visa or citizenship" (DIBP 2016f). It could thus be argued that temporary migrants have implicitly accepted the terms of the bargain that enabled them to acquire a visa and that if they choose to extend that visa (or swap to another temporary visa) and remain indefinitely, then they have made their beds and should lie in them without complaint or further expectation.

This argument invites important rejoinders. First, it must be noted that the contractual approach to migration assumes that states have the sovereign right to determine who enters their borders, and for how long on and on what terms those foreign entrants may remain. This is a widely accepted assumption in international relations but it is not beyond challenge, particularly in relation to refugees. At a deeper level, we might question the legitimacy of borders *per se*. In Carens' view, border controls—and the citizenship status that sits behind them—constitute a morally indefensible protection of the entirely undeserved

Mares: Locating Temporary Migrants

advantages that richer nations enjoy over the rest of the world. They are “the modern equivalent of feudal privilege—an inherited status that greatly enhances one’s life chances” (Carens 2014, 19).

For the purposes of this article, let us set aside both the particular case of refugees and the general ethical argument in favour of open borders and uphold the assumption that sovereignty enables states to legitimately set the terms of entry for non-nationals. Let us also assume that the fundamental human rights of temporary migrants are upheld by the host state so that they are not subject to arbitrary arrest or detention, can enjoy freedom of worship, cultural expression and association, and are able to openly voice their political views. We are thus considering temporary migration under conditions that prevail, or should ideally prevail, in representative liberal democracies like Australia. Can we now agree to a contractual view of temporary migration? That is, can we concur with an argument that temporary migrants cannot make claims on the host state beyond the terms specified in their visa conditions? Only up to a point.

States generally put a strict time limit on visitor (or tourist) visas. As the visitor is neither a citizen nor a permanent resident, and does not have an “invitation to work” that constitutes a particular building block towards future membership (Reilly 2016, 287), they cannot reasonably hold any expectation of entitlements beyond the protections of their “general human rights” (Carens 2013, 93) and the usual protections associated with the rule of law.

Ruhs (2013) argues that it is legitimate to apply the same conditions and expectations to holders of temporary visas with work rights, at least in cases where those visas are strictly time-limited. He argues that the rights and entitlements of temporary migrants can be restricted, even in a liberal democracy, in order to facilitate the greater good of increased movement of workers from low-wage to high-wage countries. Ruhs argues that migrant workers knowingly consent to such trade-offs, noting that they will pay “substantial recruitment fees and other costs” to secure a job in the Gulf States, even when they are aware of the draconian conditions that prevail there, “in order to improve their incomes as well as raise the living standards of their families” (Ruhs 2013, 128). Ruhs is not endorsing the slave-like treatment of foreign workers in the Arabian Peninsula: he insists that migrants’ fundamental civil and political rights should always be upheld—including freedom of thought and expression, freedom of religious belief and worship and freedom of association. Two crucial exceptions are the right to vote in national elections and the right to run for public office—rights that demarcate the boundaries of citizenship. Ruhs also accepts significant restrictions on certain social and economic rights of temporary migrants—such as access to government benefits and services, the right to family reunion and freedom of movement within the labour market (Ruhs 2013, 197).

This devil is in the detail of Ruhs’ contractual approach to temporary migration: how long is it acceptable for temporary migrants to be present within the boundaries of the host state under such arrangements? Ruhs considers four years to be a reasonable period, though he can offer little justification for settling on this number: “Anything less than three years seems to me ‘too short’ to

ensure that the policy generates the intended benefits for receiving countries as well as migrants and their countries of origin, while restrictions that last longer than five years seem to come close to ‘long term’ or ‘permanent exclusion’ from equal citizenship rights—something that I reject” (Ruhs 2013, 177).

So might we conceivably agree with Ruhs that such temporary arrangements represent an ethically acceptable trade off: the migrant worker accepts restrictions on some of her rights in return for the opportunity to earn a higher wage in the host state for a limited period of time? Or must we first assume that the transaction meets the ideal liberal standard of being voluntary and informed; that the worker is not a forced migrant and that she understands the terms of the contract she is entering into? Such ideal conditions are hard, if not impossible, to realise in practice given the reality of global inequality. But to deny workers the right to enter into such arrangements smacks of paternalism. As Reilly (2016, 280) argues, “consistent with liberal values, the human agency and freedom of temporary migrant workers requires that they be free to enter a less than equal employment relationship, at least for a time”.

Even if we set aside questions about whether contracts made in unequal conditions can meet the liberal standard of voluntary and informed, other problems emerge. Ruhs’ proposal implies that low-skilled workers would only stay in the host country for a maximum of four years, since that is the condition on which the high-wage host nation has admitted them in order to avoid the obligation to extend rights and entitlements that must otherwise arise with the passage of time. This envisages a situation in which cohorts of migrant workers are swapped out every four years. As Group A approaches the four-year point at which they would start to make legitimate claims on the host state, they are replaced by freshly-arrived Group B and the clock on entitlements re-sets to zero. In this way, no individual worker would suffer the long-term denial of a full suite of rights accrued over time, but the host society has nevertheless created a subclass of permanently disentitled, if constantly replaced, migrant workers who will occupy a subordinate place in the labour market and the society. This appears to come close to replicating Walzer’s famous warning that that temporary labour migration renders the nation equivalent to “a family with live-in servants”, which is, he thinks, inevitably, “a little tyranny” (Walzer 1983, 52). The presentation of temporary migration as a “neutral policy objective” or as a “win-win-win” scenario for workers, employers and nation states “embeds and normalizes a directionality in which workers’ rights are limited and states’ rights (to expel, to control) are expanded” (Dauvergne and Marsden 2014, 231). From the perspective of democratic justice and liberal equality, it is therefore inadequate for states “to rely on the migrant worker’s choice to be exploited.” (Reilly 2016, 291)

Applying the Contractual Model to Australia’s Temporary Migration Regime

Further complications emerge if we apply Ruhs’ thinking to Australia’s existing temporary migration regime. Ruhs scheme is designed to apply to low-skilled migration. With the exception of the small Seasonal Workers Programme, it is not the stated intention of Australian policy to bring in low-skilled temporary

Mares: Locating Temporary Migrants

migrant workers. Students and working holidaymakers, however, often end up in low-skilled, low-wage jobs. Indeed the parameters of the working holiday-maker programme have been amended to specifically entice these visa holders to take up low skilled seasonal jobs in regional and remote areas, and a post-study work visa for international student graduates does not require them to work in jobs associated with their Australian qualifications (Mares 2013). The student and working-holidaymaker visa programs can thus be said to operate as “de facto” migrant labour schemes (Tham, Campbell and Boese 2016). Yet, under current arrangements, it would be difficult, if not impossible, to apply Ruhs’ model and require these “de facto” migrant workers to leave Australia after four-years because the system enables repeated extensions of stay by facilitating movement from one temporary visa category to another.

With the exception of the Special Category Visa issued to New Zealanders, all other temporary visas to enter Australia are time limited: 457-skilled work visas to four years, working-holidaymaker visas to 12 months (with a possible 12-month extension if conditions are met), and student visas to the duration of the course of study. But these separate visa categories also feed into each other. After spending two years in Australia as a working holidaymaker, for example, a visa holder may decide to extend her stay in Australia by enrolling as a student. She may study English before embarking on a four-year undergraduate degree, followed by a two-year 485 post-study work visa. By this time she will have been in Australia for at least eight years, well beyond Ruhs’ suggested four-year time limit, but could subsequently extend her temporary status still further by seeking employer sponsorship as a temporary skilled worker or by returning to university for postgraduate study. Despite the “genuine temporary entrant” requirement mentioned above, there are no disincentives built into the system to discourage these types of transitions. In 2015-16, more than 72,000 international students transferred to a different temporary visa subclass: almost 40 per cent (27,538 individuals) swapped to a different student visa (DIBP 2016d, Table 7.03) as they moved from one type of study to another (undergraduate to postgraduate, for example). Most of the rest transferred from being a student to one of three other temporary visa categories—a 485 post study work visa (30,166 individuals), a 457 temporary skilled work visa (11,696 individuals) or a working holiday visa (2902 individuals) (DIBP 2016d, Table 7.01). In addition, there were more than 9000 temporary visa holders moving the other way; working holidaymakers and skilled workers on 457 visas switching to student visas (DIBP 2016d, Table 7.04). Although a 457-skilled worker visa is only valid for four years, there is nothing to prevent repeated renewals of such visas (and around half of all 457 visas are issued onshore, suggesting that there are thousands of such visa renewals each year). In these circumstances, it is easy to see how individual migrants could end up spending much longer than four years in Australia on a series of temporary visas without necessarily gaining any of the rights and entitlements that come with permanent residency and/or citizenship.

These temporary migrants may have intended to seek permanent residence in Australia when they applied for their first visa, or their intentions may have

changed after they spent time in Australia and began to put down roots. Either way, it is difficult to accurately document the number of migrants living in Australia on temporary visas for an extended period because the immigration department does not routinely collect and publish data in this form. A periodic survey by the Australian of Statistics (ABS 2017) does generate data organised by visa status and year of arrival and from this it can be gleaned that as of November 2016 there were 45,300 temporary-visa holders in Australia who had first arrived on a temporary visa at least eight years earlier (in 2007 or 2008) and another 78,800 temporary migrants who had first arrived in Australia six or seven years earlier (in 2009 or 2010). While this is not conclusive evidence of a cohort of indefinitely (or very long term) temporary migrants,⁷ it suggests that a significant number of migrants remain temporary well beyond Ruhs' putative four-year limit.

The ABS survey does not include New Zealanders, who can find themselves in a state of indefinite temporariness (Mares 2014). There is no time limit on of the Special Category Visa issued to New Zealanders on arrival in Australia. Yet New Zealanders who arrived after 2001 have no clear pathway to permanent residency, regardless of how long they live in Australia, unless they are the partner of an Australian citizen or have the necessary qualifications or income history to be recognised as skilled migrants (Mares, 2016b). Similarly, refugees who arrived by boat have almost no prospect of applying for permanent residency, because they can only be granted temporary protection visas.⁸ When the initial temporary visa expires they have to submit a new refugee claim based on current circumstances in their homeland. If they are found to be in continuing need of protection, then they will be granted another temporary visa, and so on, *ad infinitum* (Kaldor Centre 2016).

Temporary Migration and the Requirements of Liberal Democracy

So even if we were to accept Ruhs' contractual, utilitarian approach to temporary migration in theory, it seems impossible to apply such an approach to Australia's existing temporary migration regime in practice. A number of challenges emerge. First, all visas would need to be strictly time limited to a maximum of four years, with no potential to move across visa categories. This would contradict embedded features of the system and have profound repercussions: it would prevent movement from undergraduate to higher-value post graduate study, for example, and rule out the option of a post-study work visa, which was specifically intended to make Australia's higher education system more attractive and competitive in the international education market (Mares 2013). Second,

⁷ The reservation with this data is that it cannot be assumed that these entrants have lived continuously in Australia since their first year of arrival; they may left Australia again and then returned. Immigration department data records the duration of stay of temporary visa holders from the last date of entry, but as many visa holders leave Australia for short periods of overseas travel this does not give a good indication of the duration of time actually based in Australia. For further discussion of this issue see Mares (2016a, 61-2).

⁸ Refugees who arrived by boat can be granted either a three-year temporary protection visa (TPV) or a five-year safe haven enterprise visa (SHEV). The SHEV may enable the refugee to seek another type of visa, including a permanent visa, in certain, highly restricted circumstances, but very few refugees are likely to be able to access this pathway to permanent residency.

it would become problematic for working holidaymakers to convert directly to student visas, removing another stream feeding into Australia's education export industry. Third, it would prevent student graduates from switching to a temporary 457 skilled worker visa. Yet the system is deliberately designed to allow such transitions as part of its multi-step, permanent migration program because it enables Australia to cherry pick skilled workers and future permanent residents from the crop of self-funding international students. Indeed, one observer approvingly describes this as "pay-as-you-go" migration (Mares 2016a, 214). As Robertson and Runganaikaloo (2014, 209) note, young, locally qualified international student graduates are presumed to be fluent in English and acculturated to Australian conditions and so "fit the neoliberal model of the 'desirable worker' or even 'designer migrant'". Strict time limits on visas would require the long-standing Trans Tasman Travel Arrangement between Australia and New Zealand to be recast to restrict New Zealanders' duration of stay in Australia. Such fundamental reshaping of Australia's temporary visa system would face stiff resistance from a range of actors who benefit from current arrangements and seems highly unlikely.

How then are we to proceed? Is there another way in which temporary migration can be reconciled with the ethical requirements of Australia's liberal democracy? Walzer would suggest it is difficult to do so, unless temporary migrants are "set on the road to citizenship" (Walzer 1983, 60). He mounts a powerful critique of the "contractualist argument" that men and women choose to accept their temporary status on the basis that "this kind of consent, given at a single moment in time ... is not sufficient for democratic politics" (Walzer 1983, 58). If we are unwilling to include migrants as full members of our society, Walzer insists (1983, 59) that we should not admit them in the first place, but instead "find ways within the limits of the domestic labor market to get socially necessary work done."⁹

At the time of writing, Walzer had in mind the "exploited and oppressed" class of disenfranchised guestworkers in Western Europe. He was not considering a "dedicated" skilled temporary migration scheme like Australia's 457 program or "de facto" migrant workers like international students and backpackers. Yet while Walzer's critique was aimed at a different type of temporary migration in a different time and place, it is still relevant to 21st Century Australia as an articulate expression of the liberal communitarian view. Walzer argues that it is the nation state that provides the political framework for achieving justice—that is, for making decisions about the distribution of goods and services and about the allocation of rights and responsibilities. It follows that there must be boundaries to membership of the nation, because if membership were completely open then there would be no political community by, and for which,

⁹ If we were to follow Walzer's prescription in the contemporary Australian context, then we would have to add that it is necessary to find alternative sources of funding for a tertiary education system that is increasingly reliant on the fees paid by international students.

decisions could be made: “For it is only as members somewhere that men and women can hope to share in all the other social goods—security, wealth, honor, office, and power—that communal life makes possible” (Walzer 1983, 63).

The logic of Walzer’s position is that the pre-existing political community of the nation must be able to determine who is to be included or excluded from future membership. A liberal communitarian thus supports the right of citizens in a representative democracy like Australia to decide (in former Prime Minister John Howard’s infamous 2001 formulation) “who will come to this country and the circumstances in which they come”, but it does not grant them *carte blanche* to do so in any way they choose. Walzer acknowledges the special claims of refugees and Carens (2013) notes that liberal principles impose moral constraints on the policies that democratically elected governments can implement—such as discriminatory migration selection system based on race or religion—even when those policies enjoy popular support. The “moral impermissibility of this sort of overt discrimination is one of the clearest points of consensus today among those who accept democratic principles” (Carens 2013, 174).

Walzer and Carens have much to argue about: the former takes as his communitarian starting point the state’s right to prevent an outsider from crossing its borders, the latter begins from the cosmopolitan premise that the outsider has a prior right to cross. But they also share essential common ground: both agree that if a democratic country allows an outsider to live within the boundaries of the nation for an extended period, then at some point it must also offer them full membership of the political community. Walzer (1983, 58) puts it this way: “Political power is precisely the ability to make decisions over periods of time, to change the rules, to cope with emergencies; it can’t be exercised democratically without the ongoing consent of its subjects. And its subjects include every man and woman who lives within the territory over which those decisions are enforced”. Carens (2013, 50) argues: “It is a fundamental democratic principle that everyone should be able to participate in shaping the laws by which she is to be governed and in choosing the representatives who actually make the laws, once she has reached and age where she is able to exercise independent agency. . . . Therefore, to meet the requirements of democratic legitimacy, every adult who lives in a democratic political community on an ongoing basis should be a citizen, or, at the least, should have the right to become a citizen if she chooses to do so.”

Consequently, the starting point for a consistent liberal response to temporary migration must be a pathway to permanent residence that is, after a certain period of time, unconditional—not one that requires migrants to jump over a particular bureaucratic hurdle that can only be cleared if they have the endorsement of an employer, or possess a particular qualification, or can achieve a very high score on an English language test. There is a qualitative difference between Carens focus on the passage of time in giving rise of membership of the political community and a rights-based approach that seeks to enhance and enshrine certain protections for temporary migrants, such as equal pay and conditions at work, without asking questions about their long-term visa status. Expanding and upholding the rights of temporary migrants can achieve important gains, but

a rights-based approach can only go so far before running up against its inherent limitation—the underlying subordinate and contingent status of temporary migrants in the host state, and the “right” of the state to exclude or expel them: “While migrant workers do acquire rights within their state of employment, they must first seek permission to simply ‘be’ there, at the most basic level.” (Dauvergne and Marsden 2014, 237).

So the question we confront is this: at what point does a migrant become a “subject” (to use Walzer’s language), or a member of the “settled population” (Carens 2008, 420) or qualify as living in a society “on an ongoing basis” (Carens 2013, 50)? In other words, after how many years does “democratic justice” (Carens 2013, 89) require that temporary migrants are made permanent and put on a path to citizenship? Before attempting to answer this question, let us deploy a second argument to bolster the claim that such a time threshold must be determined. This is the argument of absorption.

Absorption

In his memoir of migration, *Leave to Remain*, environmental engineer Abbas El-Zein describes his initial arrival in Australia in transactional terms: “From the outset, the terms of the implicit contract were economic rather than cultural: the ‘system’ had decided that my skills as a scientist were needed and had therefore granted me a visa.” (El-Zein 2009, 143) Though he experiences migration, and the loss of his Lebanese homeland, as both a “mutilation” and “a symbolic death”, El-Zein goes on to build a new life in Australia, marry an Australian, and father Australian children. He may still feel ambivalent about the country of his adoption—many citizens, migrants or otherwise, feel the same way—but he has become deeply connected to it nonetheless.

Migration—even temporary migration—is always more than a transaction. “The air people breathe, the streets they walk, the buildings in which they live and work, the money they use, the taxes they pay, the laws they must obey, the language in which most social institutions function—all these are concrete realities linking the lives of immigrants to the new society where they live” (Carens 2013, 167). The longer a migrant stays in a country, the more the putatively contractual nature of the original arrangement recedes into the background and the more the sense of attachment and engagement with the host nation tends to grow.

We might describe this as the capacity to belong or as “social membership” (Carens 2013, 50). It sits alongside, but is not identical to, the principles of liberal democracy that require full membership of the political community to be extended to all migrants after some period of time. It is necessarily more subjective, and therefore less easily defined. Since it is harder to measure, we must take physical presence within the boundaries of the state and the passage of time as “proxies for richer, deeper forms of connection” (Carens 2013, 165). These more subjective ideas also find expression in the language of officialdom.

Michael Pezzullo, Secretary of the Australian Department of Immigration and Border Protection, celebrates the ways in which global mobility and movement “work well for connecting the world, and generating prosperity” (Pezzullo

2016). Yet he simultaneously warns that a nation “cannot simply be an arbitrary spatial construct which happens to be inhabited by individuals who lack any civic connections and common allegiances. The very idea of ‘the nation’ implies bonds of mutual regard, trust and allegiance” (Pezzullo 2016). It would be heroic to assume that these mutual bonds can fully flourish in a context in which one segment of the population is kept at arms length on temporary visas and constantly reminded in subtle and less subtle ways that they do not fully belong.

This concern has also been expressed in Australia’s highest court in various cases involving the status of long-term residents who are not citizens. The cases of *Te* and *Dang* (heard together in 2002) involved men who had come to Australia as teenage refugees from Indochina. Both were convicted of drug offences as adults. Since neither had become a citizen, the High Court found that their deportation as “aliens” under Section 51 (19) of the Constitution was valid. In reaching this decision, however, questions were raised about the extent of this power and whether it could apply to non-citizens who had been “absorbed” into the Australian community. (The finding of the court was that *Te* and *Dang* had not been so absorbed). Justice Michael Kirby raised the theoretical “spectre of a ninety year old non-citizen, proposed for expulsion as an ‘alien’, although she had lived peacefully in Australia virtually all her life” (Prince 2003). In 2001, the High Court had reached a different decision in *Taylor*, a case concerning a citizen of the United Kingdom, who also came to Australia as a child, did not become a citizen and was convicted of serious criminal offences as an adult. In this instance the High Court found that *Taylor* could not be deported because he had been absorbed into the Australian community. Justice Mary Gaudron argued in *Taylor* “the power of the Federal Government to regulate and control ‘aliens’ is only part of the intricate and involved question of who is entitled to full rights as a member of the Australian community” (Prince 2003).

The idea of absorption is also reflected in legislation. In 1983, the Australian parliament passed amendments to the Migration Act that sought to make it impossible to deport a non-citizen after 10 years lawful residence on a permanent visa, even if that non-citizen had been convicted of a serious crime. Even though subsequent governments have found a way around this legislation, parliamentary debates at the time show that the intention was to give legal force to the recognition that living within the boundaries of the state for an extended period of time changes the relationship between the state and a non-citizen. “This legislative background is highly significant as it indicates that ... the Parliament recognised that long-term residents (denizens) were entitled to be effectively equated with citizens in such a fundamental respect” (Foster 2009, 507).

The point here is not to pursue the legalities of citizenship and deportation under the Australian Constitution and the Migration Act, but to note that the concept of “absorption” implies that migrants can become members of society even without legal authorisation. “People who live and work and raise their families in a society become members, whatever their legal status”. (Carens 2013, 150)

Putting a Time Limit on Temporariness

Let us then return to our primary question. What is the upper threshold of temporariness? Carens opts for a five-year threshold for a transition to full membership of the host society (Carens 2013, 104) though he admits that he can offer no concrete justification for a particular number:

Why five years rather than four or six? No one can pretend that the answer to this question entails any fundamental principle...But if one asks why five years rather than one or ten, it is easier to make the case that one is too short and ten too long, given common European understandings of the ways in which people settle into the societies where they live(Carens 2008, 422).

I have proposed elsewhere (Mares 2016a) that anyone who has lived in Australia lawfully and with work rights for a continuous or combined period of eight years should qualify for permanent residence. The type of temporary visa, or combination of temporary visas, that person has held would be irrelevant. The critical response to this policy suggestion has been to ask how I can justify such a figure. There is no mathematical formula to help us out here. As Carens says, the argument that time has moral force—that the longer a migrant stays in a country, the stronger their claim to membership—does not provide clear demarcation points: ‘The extremes will be clear; the middle will be fuzzy.’ (Carens 2008, 435)

Yet opting for a particular number of years must be a reasoned decision rather than an arbitrary one, and it should take into account other political considerations and established norms and standards. So to justify my eight-year pathway to permanent residence, I begin by taking into account the fact that as a nation, we have already set time thresholds in relation to a raft of other migration questions in Australia.¹⁰ In order to apply for citizenship, a migrant must have been living in Australia on a valid visa for four years, including the last 12 months as a permanent resident. In 2016, the Australian government introduced a limited pathway to permanent residency for New Zealanders who had been living in Australia for the past five years provided they earned a sufficient income (Mares 2016b). Crossing a 10-year residence threshold gives New Zealanders on special category visas limited access to government benefits and, if they came to Australia as children, enables them to access the concessional loans scheme for tertiary study (rather than pay upfront fees). A child born in Australia to parents who are not citizens or permanent residents gains an independent right to citizenship after living here for 10 years. As noted above, the Migration Act contains provisions that had the intent of enshrining the principle that non-citizens should be immune from deportation after 10 years permanent residence, regardless of their criminal convictions.

Based on the 10-year time threshold in the last three examples cited above—

¹⁰ Though it must be noted that these thresholds are subject to change. Between 1949 and 1986, for example, all children born on Australian soil were automatically Australian citizens, regardless of the visa status of their parents. Since 1986, children born in Australia are only citizens from birth if at least one parent is an Australian citizen or permanent resident.

for access, respectively, to government support, citizenship and protection from deportation—it seems reasonable to argue that established standards and current legislation already set an upper boundary of 10 years as an acceptable limit to temporariness. After that time, a temporary migrant should gain permanent status.

An objection may be that this 10-year time frame is reasonable in the case of a “dedicated” migrant worker, but less convincing when the migrant in question has been in Australia on a succession of different types of visas, including working holiday and student visas. Should the types of temporary visas that migrants hold during their stay be taken into account? Does an international student, for example, have less moral claim on the host nation over time than a migrant worker?

Reilly (2016) marshals an impressive array of theoretical perspectives to make the case that work provides a particularly strong basis for membership. Drawing on Locke’s theory on the origins of private property (that labour creates ownership) he argues “the relationship between toil and entitlement has the same logic when applied to an entitlement to live and reside in the territory of one’s work” (Reilly 2016, 286). The state’s invitation to an outsider to work within its territory, he says, contributes to entitlement because it shows that a migrant’s work “is considered a valuable contribution” that locals are unwilling or unable to make (Reilly 2016, 287). Reilly references Kant to argue that human dignity requires that any inequality in membership status “can only be tolerated in the short term to secure the dignity of the worker in the medium and long terms” (Reilly, 289). If states do not extend membership to migrant workers over time, he points out, then this serves to maintain and entrench “inequality between nations and people” (Reilly 2016, 278).

Reilly’s arguments are compelling, but they do not necessarily justify a conclusion that migrants on other types of temporary visas (such as international students and working holidaymakers) accrue fewer rights and entitlements over time. For a start, most international students and working holidaymakers also work—though generally for fewer hours or for less extensive periods than “dedicated” labour migrants. Secondly, they contribute the economic life of the nation in other ways: in the case of international students, by paying significant study fees that generate the jobs and revenue to sustain Australia’s tertiary sector; and in the case of working holidaymakers, by filling essential seasonal positions in the agricultural sector that locals are unwilling to take up. The offer of a second visa for undertaking such work constitutes an invitation of the type Reilly describes. When it comes to questions of human dignity and inequality, the visa status of the migrant would seem irrelevant. This supports the argument for an upper threshold on temporariness of 10 years, regardless of visa status.

For Carens, a limit of 10 years moves beyond the fuzzy middle to an unacceptably distant edge. So is it possible to mount compelling arguments as to why this 10-year threshold should be further reduced? One consideration that arguably gives weight to reducing the limit is the age at which a migrant arrives in Australia. This is most obvious in the case of children. “People who spend all or most of their formative years as children in a country have powerful ties and a powerful moral claim to remain there” (Carens 2013, 103). There is no logical

or ethical defence of current arrangements where children born in Australia to foreign parents are automatically included in the life of the nation as citizens after 10 years, whereas children who arrive when they are a few days, weeks, months or years old can remain permanently excluded, no matter how long they stay. Indeed, “a child who comes to a country as an infant is virtually indistinguishable, in moral terms, from one who was born there” (Carens 2013, 103).

I extend Carens’ position to argue that the teenage and early-adult years are also formative stages in shaping a person’s sense of place and belonging. This is the time when we separate from our parents, shape our own direction in life, form identities and put down independent roots as autonomous human beings. The vast majority of temporary migrants who first come to Australia as working holidaymakers and students do so as teenagers and young adults.

On this basis, I propose that the 10-year limit on temporariness should be reduced to eight years. As Carens puts it (2013, 31): “Home is where one lives, and where one lives is the crucial variable for interests and for identity, both empirically and normatively.” My argument is that Carens’ “crucial variable” of where one lives has greater impact in the formative teenage and young adult years than in later life, and therefore the obligation on the state to fully include these temporary migrants is greater.

Setting an eight-year threshold on temporariness and creating an automatic pathway to permanent residence after that time would have unintended consequences. Two main consequences can be noted: an incentive structure to remain for eight years, and the problem of exploitation. These are briefly discussed below.

Firstly, it would give temporary migrants a target to aim at and the incentive to find a means to stay in Australia for at least eight years, motivating some migrants to hop from visa to visa in order to clock up the qualifying time for permanent residence. But if the value of temporary labour migration and international education to Australia’s economy and society is so great that we create a system that enables (and even encourages) migrants to transfer between different visa categories over extended periods of time, then this is a consequence we have to countenance. The alternative, creating a subclass of migrants who are indefinitely temporary, is not morally defensible in a liberal democracy.

A second unintended consequence could be that an eight-year threshold would encourage temporary migrants to remain in exploitative or abusive employment relationships in order to win the right to live permanently in Australia. This is a legitimate concern that has particular relevance to the 457 skilled worker visa. Currently, the major pathway from a 457 visa to permanent residence runs via employer sponsorship. The ability to withhold or provide sponsorship gives employers leverage over workers, and makes temporary migrants with “aspirations towards permanent residency” particularly “vulnerable to exploitation as a consequence of their temporary status” (Deegan, 2008, 23). There is, however, another way to resolve this issue: rather than giving employers *the option* of sponsoring 457 visa holders after two years, employers should be required to offer sponsorship after this time when the position is ongoing.¹¹

¹¹ If the employer no longer needs the migrant worker, then the visa would end, but the business would then be prevented from employing another 457 visa holder in an equivalent position.

Requiring sponsorship after two years would reduce employer leverage over migrant workers by creating a clearer pathway to permanent residence. While directly linking 457 visas to sponsorship would not curtail the abuse of working holidaymakers and international students in the labour market, exploitation experienced by those categories of visa holders does not arise because of the leverage of employer sponsorship on the pathway to permanency. International students and working holidaymakers suffer abuse under existing arrangements; it is hard to see how a prospective pathway to permanent residency would make their situation any worse.

My proposal for an eight-year threshold acknowledges the reality of mobility in a globalised world, but aims to swing the policy pendulum back towards an assumption of migration-as-settlement as the basis for an inclusive citizenship-based democracy, and away from purely contractual and temporary approaches to migration.

The eight-year threshold proposed here is certainly open to challenge. Some will think it too long, others too short. The point of putting forward such a specific proposal is to provoke debate that moves towards concrete and achievable policy outcomes. If we are to live consistently with the claim to be a liberal democracy, then we cannot shirk the ethical question of the limits to temporariness, because citizenship in a democracy is not earned or bestowed, but gained over time: “People acquire a moral right to citizenship from their social membership and the fact of their ongoing subjection to the laws” (Carens 2013, 59).

Conclusion

The future direction of Australia’s temporary migration regime is fluid and uncertain. While this article was being finalized, the Australian government announced that the subclass 457 temporary skilled work visa would be replaced with a new two-tiered Temporary Skills Shortage (TSS) visa (Mares 2017). The “short-term” TSS visa is open to a relatively wide range of occupations but is strictly time limited to a maximum stay of four years with no pathway to permanent residency. The “medium term” TSS visa has a more restricted eligible occupation list, can be indefinitely renewed and does have a potential pathway to permanent residency via employer sponsorship (but only after three years work rather than two years as under the 457 visa). TSS visas of either sort will only be granted to applicants with two years’ full-time work experience “relevant” to the job for which they are recruited, which will make it hard for international students to “graduate” to a TSS visa. The government is also seeking to amend legislation so that the transition from permanent residence to citizenship takes longer and requires a much higher level of English language competency. These moves run counter the policy recommendations made in this article. While their full impact is hard to predict and will only unfold over time, two outcomes are likely. On the one hand, by narrowing the pathway to permanent residence and citizenship, the changes could produce an even more extended experience of temporariness for many migrants. On the other hand, the introduction of the strictly time-limited “short-term” TSS visa with no pathway to settlement

Mares: Locating Temporary Migrants

moves Australia closer to a traditional “guest worker” system and heralds the creation of a cohort of subordinate, always-temporary migrants who are continuously swapped out before they can build up the rights and entitlements that accrue with membership of the political community. Neither development is consistent with the principles of liberal democracy that Australia claims to hold dear.

References

- ABS (Australian Bureau of Statistics). 2017. "6250.0: Characteristics of Recent Migrants, Australia, November 2016." Government of Australia: Canberra. www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6250.0Main+Features1November%202016?OpenDocument (accessed 24 January 2017).
- Carens, Joseph H. 2014. "An Overview of the Ethics of Immigration." *Critical Review of International Social and Political Philosophy* 17 (5):538-559.
- . 2013. *The Ethics of Immigration*. New York: Oxford University Press.
- . 2008. 'Live-in Domestic, Seasonal Workers, and Others Hard to Locate on the Map of Democracy', *Journal of Political Philosophy* 16 (4):419-455.
- Dauvergne, Catherine and Sarah Marsden. 2014. "The Ideology of Temporary Labour Migration in the Post-Global Era." *Citizenship Studies* 18(2):224-242.
- Deegan, Barbara. 2008. "Visa Subclass 457 Integrity Review Final Report." Canberra, Department of Immigration and Citizenship, Australian Government, Oct.
- DIBP (Department of Immigration and Border Protection). 2016a. "Temporary Entrants and New Zealand Citizens in Australia as at 31 December 2016." Canberra: Australia. www.border.gov.au/ReportsandPublications/Documents/statistics/temp-entrants-aus-31-dec-2016.pdf (accessed 27 June 2017).
- . 2016b. "Fact Sheet: New Zealanders in Australia" (online resource) www.border.gov.au/about/corporate/information/fact-sheets/17nz. (accessed 30 August 2016).
- . 2016c. "Genuine Temporary Entrant" (online resource) www.border.gov.au/Trav/Stud/More/Genuine-Temporary-Entrant. (accessed 30 August 2016).
- . 2016d. "Student Visa and Temporary Graduate Visa Programme Quarterly Report: Quarter ending at 30 June 2016." Government of Australia: Canberra www.border.gov.au/ReportsandPublications/Documents/statistics/student-temp-grad-programme-report-2015-16.pdf, (accessed 24 January 2017).
- . 2016e. "2015-16 Migration Programme Report: Programme Year to June 30 2016" Canberra Australian Government www.border.gov.au/ReportsandPublications/Documents/statistics/2015-16-migration-programme-report.pdf, (accessed 24 January 2017).

Mares: Locating Temporary Migrants

———. 2016f. “New Zealand Citizens” www.border.gov.au/Trav/Life/New- (accessed 27 January 2017).

———. 2015 “Labour Agreements: Information about Requesting a Labour Agreement”, Government of Australia: Canberra, December www.border.gov.au/WorkinginAustralia/Documents/requesting-labour-agreement.pdf, (accessed 21 December 2015).

DIAC (Australian Department of Immigration and Citizenship). 2006. “Immigration Update July-December 2006” Canberra: Australia.

DOE (Department of Employment). 2016. Annual Report 2015–16, Canberra Australian Government docs.employment.gov.au/system/files/doc/other/final_department_of_employment_annual_report_2015-16_accessible.pdf, (accessed 24 January 2017).

El-Zein, Abbas. 2009. *Leave to Remain: A Memoir*, Brisbane: University of Queensland Press.

Foster, Michelle. 2009. “‘An “Alien” by the Barest Threads’ - The Legality of the Deportation of Long-term Residents from Australia.” *Melbourne University Law Review* 33 (2):483-541.

Kaldor Centre for International Refugee Law. 2016. “Temporary Protection Visas and Safe Haven Enterprise Visas” (resource published 17 May) www.kaldorcentre.unsw.edu.au/publication/temporary-protection-visas, (accessed 31 August 2016).

Mares, Peter. 2017. “The 457 Visa is Dead! Long Live the TSS?” *Inside Story*. 20 April.

———. 2016a. *Not Quite Australian: How Temporary Migration is changing the Nation*. Melbourne: Text Publishing.

———. 2016b “Who Gets to be Australian?” *Inside Story*. 22 February. insidestory.org.au/who-gets-to-be-australian, (accessed 31 August 2016).

———. 2014 “A Special Category.” *Griffith Review* 43, griffithreview.com/articles/9677/, (accessed 31 August 2016).

———. 2013. “We Know about the 457. What about the 485?” 28 March insidestory.org.au/we-know-about-the-457-what-about-the-485, (accessed 31 August 2016).

Migration, Mobility & Displacement, Summer, 2017

———. 2010 “From Pool to Queue: Skilled Migration gets a Makeover.” *Inside Story*. 10 February. insidestory.org.au/from-queue-to-pool-skilled-migration-gets-a-makeover. (accessed 24 January 2017).

Pezzullo, Michael. 2016. “Keynote Address at Mobility Symposium 2016.” 21 March Australian National University. Canberra. www.border.gov.au/about/news-media/speeches-presentations/keynote-mobility-symposium-2016. (accessed 31 August 2016).

Prince, Peter. 2003. “The High Court and Deportation Under the Australian Constitution.” Current Issues Brief No. 26. 15 April. Canberra. Parliament of Australia. www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/CIB/. (accessed 4 August 2016).

Reilly, Alexander. 2016. “The Membership of Migrant Workers and the Ethical Limits of Exclusion.” In Howe, Joanna and Rosemary Owens. eds. *Temporary Labour Migration in the Global Era: The Regulatory Challenges*. London: Hart Publishing.

Robertson, Shanthy. 2013. *Transnational Student-Migrants and the State: The Education Migration*. Nexus. Melbourne: Palgrave Macmillan.

———. 2011. “Student Switchers and the Regulation of Residency: the Interface of the Individual and Australia’s Immigration Regime” *Population, Space and Place* 17:103–115.

Roberston, Shanthy, and Anjena Runganaikaloo 2014. “Lives in Limbo: Migration Experiences in Australia’s Education–migration Nexus” *Ethnicities*, 14(2):208–226.

Ruhs, Martin. 2013. *The Price of Rights: Regulating International Labour Migration*. Princeton: Princeton University Press.

Tham, Joo-Cheong Iain Campbell and Martina Boese. 2016. “Why Is Labour Protection for Temporary Migrant Workers So Fraught? A Perspective from Australia.” In Howe, Joanna and Rosemary Owens. eds. *Temporary Labour Migration in the Global Era: The Regulatory Challenges*. London: Hart Publishing.

Trump, Donald J. “Trump asks his Supporters to Weigh in on Deportation Policy.” August 24 2016, transcript, www.foxnews.com/transcript/2016/08/24/trump-asks-his-supporters-to-weigh-in-on-deportation-policy/. (accessed 30 August 2016).

Mares: Locating Temporary Migrants

Walzer, Michael. 1983. *Spheres of Justice: A Defense of Pluralism and Equality*. New York: Basic Books.

Wright, Chris F. 2012 “Immigration Policy and Market Institutions in Liberal Market Economies” *Industrial Relations Journal* 43(2):110–136.