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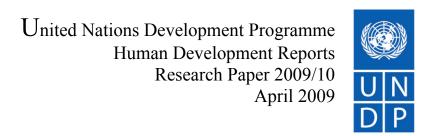Rights of Non-Citizens**

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Precarious Residents: Migration Control, Membership and the Rights of Non-Citizens

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Abstract

This paper examines the situation of a subgroup of non-citizens found in virtually all contemporary states, what I call "precarious residents". Precarious residents can be defined as non-citizens living in the state that possess few social, political or economic rights, are highly vulnerable to deportation, and have little or no option for making secure their immigration status. The archetypal precarious resident is the undocumented (or unlawful) migrant. However, there are many other barely tolerated individuals who also fit the appellation, such as asylum seekers (including ones whose claims have been rejected), guest workers, and individuals with temporary protection from deportation. I begin this paper by exploring the nature of precarious residence, discussing its dimensions, causes and manifestations in different national contexts. I move then to consider the human development consequences of precarious residence before exploring the question of the responsibilities of states to protect the rights and, in some cases, recognize the membership claims of these non-citizens.

Keywords: immigration, citizenship, non-citizens, rights, undocumented migration, temporary workers, ethics, human rights, asylum, integration, internally displaced persons.

Introduction

Most migration is driven by inequalities between states or regions. People move because they seek better economic opportunities for themselves and their families or, as with refugees, they seek a country in which they can enjoy basic rights and security. But migration is not simply a *consequence* of inequality in a world where life chances, security and economic opportunities are unevenly distributed across states, it is also a *cause* of inequalities.

Migration may create internal inequalities in a number of different ways. It can introduce to a state people who have spent most of their lives in a poorer country with little opportunity to accumulate the capital or resources commonly held by established residents. Alternatively, the act of migration itself may be expensive, making new arrivals relatively poorer and debt-laden than citizens. But some of the most important inequalities generated by contemporary migration are not economic but political. The movement of people between sovereign jurisdictions usually (with the exception of dual nationals) involves migrants moving from a country where they hold full membership, to one where they do not. Migration thus creates *non-citizens*: people who live under the authority of a state of which they are not a member and thus not entitled to the rights reserved for citizens.

Every one of the world's states—from the richest to the poorest; from the most democratic to the most authoritarian—is constituted at any moment by a mixture of citizens and non-citizens. Ironically, the significance of this distinction may be greatest in the world's wealthiest states because they provide the most wide-ranging entitlements to members (including social protection, access to welfare, etc.) The more developed the country, then, the more consequential it may be, in relative terms, to be a noncitizen.

The inequalities generated by migration are perhaps most obvious in the case of *international* movement. However, in many situations, moving across internal jurisdictions *within* a state can also transform a citizen into a guest, or, perhaps more accurately, into a second class citizen, resulting in the reduction of their rights, either temporarily or permanently. In some Nigerian provinces, for example, only indigenous members may run for office, a situation that excludes

citizens who move there from other parts of the country (Bach 1997). On a much larger scale, many of the world's internally displaced persons (IDPs) find that some of their basic rights are no longer recognised or protected when they move within their own country to avoid persecution or conflict (See, for example, Forced Migration Review, 2005).

Whilst movement out of a country of citizenship creates non-citizens, the consequences for the rights, capabilities and human development more generally of migrants, vary greatly amongst different groups and in different national contexts. Some non-citizens, such as highly skilled migrants moving to Western countries or EU citizens transferring between EU states, may be granted an array of rights, entitlements and privileges upon arrival that make them difficult to distinguish legally from citizens. Rights to welfare, to bring members of one's family, to work, to choose one's employer, to secure residence, and even the right to vote in local elections may be available. The existence of such an extensive array of formal rights does not, of course, guarantee that a migrant will be able to shape his or her own destiny in the new country. But these rights provide a set of tools and a firm social and political standing that makes rapid and successful social integration more likely.

By contrast, some non-citizens may, upon entering a state, find themselves with hardly any rights at all, including the right to reside legally in the state. As well as possessing a lowly social and political status, these migrants may be socially segregated from other members of society with few opportunities for transferring their status to one with more extensive rights and entitlements. Migration, in this case, may still bring some benefits, like new earning opportunities, but it may also lead individuals into exploitation, abuse, and diminished economic and social opportunities in the longer term.

Such non-citizens are the subject of this paper. I will call them "precarious residents". They can be defined as people living in a state that possess few social, political or economic rights, are highly vulnerable to deportation, and have little or no option for making secure their immigration status. The archetypal precarious resident, found in virtually all contemporary states, is the undocumented immigrant, someone who resides in state territory unlawfully. However, there are many other barely tolerated individuals who also fit the appellation, such as asylum seekers

(including ones whose claims have been rejected), guest workers, and individuals with temporary protection from deportation.

In its most extreme manifestations, the precarious resident is a modern variant of the stateless men and women that Hannah Arendt so eloquently described in the late 1940s in her work, the *Origins of Totalitarianism*. In *Origins*, Arendt described the stateless, a category which for her included refugees, as "the most symptomatic group in contemporary politics" (1986, 277) because their dire plight revealed the emptiness of human rights (what she called "the Rights of Man") for those who lacked effective or formal membership in an actual nation state community. The stateless were effectively expelled from humanity because the global spread of the nation state had made "belonging to the community into which one is born no longer a matter of course and not belonging no longer a matter of choice" (1986, 296). The issue of *de jure* statelessness has receded in significance since Arendt wrote[1], but globalising forces, revolutions in transportation and communications, and the development of human rights law in the last few decades, have made many of the world's richest societies unwilling or ambivalent hosts to large numbers of migrants who enter as temporary workers, undocumented migrants or asylum seekers. These migrants are rarely formally stateless and are, in many cases, not refugees. The problems they face stem not from the lack of a nationality; they cannot be said, unlike Arendt's stateless, to have been expelled from humanity altogether. Rather, they lack security, basic civil, political and economic rights, and opportunities for membership *in the countries to which they have migrated*. Their day to day experience may involve a kind of statelessness in the sense of an effective absence of state protection that is linked to their being outside their country of citizenship.

These "precarious residents" are some of the most vulnerable migrants in the world today. Practically, they may have little or no standing to claim even basic rights because in the eyes of state officials (and large sections of the public) they are *trespassers* with no right to be present in the state in the first place or *barely tolerated guests*, people whom the state is willing or legally obliged to host for a limited period (guest workers or asylum seekers) but who may not be seen as fit for full membership. The rights they have are limited in order to ensure their departure now

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[1] Importantly, it is has not disappeared altogether though. See Blitz (2006).

or at some point in the future. In either case, their human development is profoundly shaped by their immigration status. While they may formally possess a range of basic rights in relation to the state, their ability to claim these rights is undermined by vulnerability to deportation. To put in the terms of Amartya Sen (2001), their immigration status (or lack of one) becomes a key constraint upon their development towards freedom and their ability turn the experience of migration into one that expands their capabilities.

In this paper, I will explore the nature of precarious residence. As well as considering its dimensions, causes and various manifestations in different national contexts, I will examine two major questions: first, what are the implications of precarious residence for human development? And, second, what rights are owed to non-citizens in this type of situation?

This paper is divided into eight parts. In the first, I explore the distinction between citizens and non-citizens, considering recent developments in Western countries that have lessened the division between the two; in the next, I look at philosophical or normative basis for this distinction as it relates to border control. In the following section, I draw upon a range of examples from around the globe to consider who precarious residents are, and what features they share in common. In Section IV and V, I consider the dimensions and political and economic uses of precarious residence for states. Next, I turn to examine the human development consequences of precarious residence, drawing from the cases of particular groups discussed earlier. In section VII, I look at different arguments for incorporating precarious residents into citizenship in the countries where they live. This paper concludes with a discussion of the measures that might be implemented to improve the situation precarious residents.

I. The practical significance of citizenship

It has been widely noted by scholars that in many Western countries, the gap between the rights of citizens and non-citizens has greatly diminished in recent decades (Soysal 1994, Joppke 1999, Hansen 2000). In Western European countries, like Germany, France, and the UK, many rights once granted solely to citizens are now available to noncitizen residents, including full access to social security and welfare systems, protections against deportation, rights of family

reunification, and the ability to vote in local elections. This development has led to some to argue that citizenship is waning as a source of rights and entitlements (Soysal 1994). As citizenship's role as a distinctive source of rights has decreased, so arguably has its attractiveness. It is unclear why resident non-citizens should desire citizenship when the status carries few privileges or rights that now cannot already claim.

How should we explain the decreasing significance of citizenship? According to the scholar Yaesmin Soysal, the closing of the gap between citizen and noncitizen rights is attributable to the influence of post-national human rights norms. International and regional treaties, signed up to by Western states, have been a powerful force in leading national courts, civil society, and ultimately governments to expand the rights of non-members. For Soysal, it is personhood not membership that is now the most important source of entitlements and protections in many modern European states. We have moved into an era of what she calls "postnational citizenship" (1994). A more modest interpretation of recent developments is found in the work of scholars like Christian Joppke (1999) and Randall Hansen (2000 & 2009). They concede that there has been a closing of the rights gap between citizens and non-citizens across Western states in recent years but attribute it to factors *internal* to these states, the force of a kind of "embedded liberalism". The internal liberal logic of Western states as manifested through civil society, domestic constitutions and municipal courts has driven an expansion in noncitizen rights. International law and treaties have been influential in expanding rights, however, only when they have incorporated into municipal law. In their view, the movement towards noncitizen rights does not reflect any decrease in the significance of the sovereign state, still less the end of citizenship; it is a product largely of an internal shift in power in liberal states from the executive control of the rights of foreigners to the judicial activism and constitutional constraints (Hansen 2009).

The narrowing gap between citizen and noncitizen rights is an important development even if it is one confined largely to Europe, North America and Australasia. However, its significance should not be exaggerated. One gets only a limited picture of the realities faced by immigrants (non-citizens) by examining their *formal* legal entitlements or official discourses of legitimation (Zolberg 1995). Racism, economic inequality, social segregation, can make the many of the

rights nominally possessed even those who hold full formal membership in the state (citizens) nugatory in practice. The consequences of these social realities may be even harsher for noncitizen residents because their lack of status may itself act as a catalyst for hostile, inequitable and exclusionary treatment.

Furthermore, even if many of the *privileges* once available solely to citizens are now legally available to permanent residents in some countries, like green card holders in the US or those with indefinite leave to remain in the UK, two other major citizenship goods, what I will call *voice* and *security*, are usually enjoyed by them only on attenuated terms. *Voice* (Shachar 2004) involves the right to air in public *fora* views about the use and abuse of government power and the direction of society, and to participate in (or to be elected to) political organisations that fashion society's direction and government policy. The *sine qua non* of citizenship is often thus seen as embodied in key rights associated with voice, namely rights 'to vote, hold elected and appointed government offices, to sit on various sorts of juries, and generally to participate in debates as equal community members' (Smith 2002: 105). Again, of course, in some countries, specifically, non-democratic ones, these goods are not necessarily available even to citizens. The good of *security*, by contrast, is typically available to citizens even in poor or undemocratic states. This good is evident in the fact that the possession of citizenship offers a unique level of security of residence or presence in a state. Citizens, unlike non-citizens, typically cannot be deported or expelled, making to their access to other goods enjoyed in the state uniquely robust (Gibney and Hansen 2003; Goodwin-Gill 1978). Moreover, they may leave and reenter the state at will, and have a right to consular protection abroad.

Finally, it's important to note that these changes have impacted unevenly on non-citizens, even in advanced liberal democracies. Those included in the inner circle of rights have tended to be permanent residents or green card holders, or very long term residents and their offspring (such as the Turkish former guestworkers in Germany). At the same time as these groups have been incorporated into citizen-style rights, the use of detention and deportation for other groups of non-citizens (unlawful migrants, asylum seekers, etc.) has expanded across Western states (Gibney 2009, Bosworth 2008). While many non-citizens certainly enjoy greater security and have been granted more rights, for many other non-citizens deportation and detention are ever

present realities, threatening to take away the little they may have gained by residence in the host country and any hopes they may have had for the future.

II. The morality of citizenship

While the practical significance of recent gains in the rights of non-citizens *vis à vis* citizens can be exaggerated, an important normative issue is raised by recent developments: is it morally justifiable for citizens to have more extensive rights than non-citizens? Defenders of immigration control have offered a range of different arguments for citizen control over borders, and correspondingly control over the status and presence of non-citizens within the state. One influential one derives the legitimacy of entrance control from the right of peoples to preserve or maintain their ethnic, cultural or national identity (Walzer 1983, Miller 2008). In this view, the sovereign state offers national groups a space in which they can shape together their common destiny over time, largely free from the influence of outsiders. It is argued that people's personal projects, relationships, their very sense of self are shaped in large part by the cultural and national community in which they are born and live. Indeed, many of the responsibilities and attachments incurred through cultural membership are so integral to one's individual personality that to "divest ourselves or such commitments would be, in an important sense, to change our identity" (Miller 1990). By allowing distinct cultures to flourish, sovereign states in which members control the admission of non-citizens thus protect an integral part of our selves.[2]

Another argument sees the collective right of border control as stemming from the entitlement of groups to exercise their right of freedom of association. As Christopher Wellman argues, "just as an individual has a right to determine whom (if anyone) he or she would like to marry, a group of fellow-citizens has a right to determine whom (if anyone) it would like to invite into its political community." (Wellman, 2009) To demand that a state open its borders to outsiders is effectively to force it members to associate with others, violating the key liberal principle that we should be

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[2] More instrumental arguments, on the other hand, stress that liberal egalitarian principles and the institutions associated with them (e.g., the welfare state) can only be realized in communities characterized by solidarity and trust or certain shared understandings. These special relationships and understandings rely on border control because they tend to emerge gradually over time, require a feeling that citizenship is of significance, and may be jeopardized by large, short term changes in membership. See Gibney (2004).

free to choose with whom we associate. Moreover, such forceful association goes against what it is usually seen as legitimate to ask of states: few would think it right to compel Slovenia join the EU or Canada join NAFTA. The decision on membership is such organizations is rightly seen as lying within the prerogative of the individual state itself. In this view, the right to freedom of association is not necessarily absolute. There are circumstances when the right of individuals to associate freely might justifiably be curtailed. But there are powerful reasons why the right should not be lightly disregarded. Entrance decisions can profoundly shape the character of states by shaping the constitution of their membership with huge ramifications for current citizens. The admission of new members can influence a state's public culture, and impact upon questions of public policy, the environment and demographic development.

Not all moral and political theorists find these arguments for border control convincing. Some, like Joseph Carens, challenge the freedom of association argument with an individual right of free movement. Carens argues that those who see the free movement as a key human liberty *within* states should support the freedom of people to move between states because "every reason why one might want to move within a state might also be a reason for moving between states. One might want a job; one might fall in love with someone from another country; one might belong to a religion that has few adherents in one's native state and many in another" (1992, 27-28). Moreover, in the current global context, characterized by great inequalities between countries, the case for free movement is even stronger. For membership in a state does a great deal more than allocate living space; it largely determines the standard of living, public goods and the amount of political security an individual will enjoy over the course of his or her lifetime. By virtue of its powerful consequences, citizenship in the modern world is "a lot like feudal status in the medieval world. It is assigned at birth; for the most part it is not subject to change by an individuals will and efforts; and it has a major impact on that person's life chances" (Carens 1992, 26). Just as liberals first banded together to attack the restrictions and inherited inequalities of feudalism, so liberals must now challenge "modern practices of citizenship and state control over borders that tie people to the land of their birth almost as effectively" (Carens 1992, 26-27)

Developing the view that there is something morally arbitrary about state borders, Blake and Risse have recently questioned the territorial appropriations of states (2009). Arguments that stress the right of communities to preserve their culture or to exercise freedom of association assume that states are simply membership organizations, groups of people analogous to clubs. However, states don't simply control membership, they also control territory, dividing up all of the world's inhabitable space exclusively between them. What gives states the right to territory they current possess? (Gibney 2004). Taking this question as their starting point, Blake and Reiss (2009) explore the moral implications of the ancient view that that the earth is originally held in common by mankind and thus the joint property of all the world's denizens. The assumption of common ownership, they argue, does not necessarily ground an international right of free movement. But it does provide a reason why states in possession of underpopulated or underutilized territory have a weaker claim to exclude migrants exercising their right of joint ownership than states with overpopulated or overutilized territory (2009). There remains, of course, the tricky issue of determining what constitutes under (or over) utilization of a particular territory's resources. Nonetheless, it's apparent that if exclusion from entrance is to be justified, the issue of the justice of the distribution of territory needs to be addressed.

Clearly, the nature and scope of the (moral) right of states to control the admission of non-citizens to their territory is a controversial one. But the question of what obligations are owed to those who have *already arrived* in the state is perhaps even thornier. While entrance controls *prevent* individuals from realising their goals, those who have arrived already live under the authority of the state, and this will shape their destiny in unique and profound ways. Deportation, for example, typically *deprives* non-citizens of goods that they were already enjoying, including proximity to family, friends, the use of property, and access to employment (Gibney 2009). In section IV below, I will return to the normative debate over the moral responsibilities of states to consider the issue of when resident non-citizens, like precarious residents, should have a right to membership in the state in which they reside. But I will turn now to the question of what a precarious resident is and why this status may have important consequences for human development.

III. Who is a precarious resident?

For my purposes, the term precarious resident describes non-citizens that share the following four characteristics: 1. they hold fewer rights than citizens or permanent residents in the countries in which the live; 2. they have a high level of vulnerability to deportation or expulsion; 3. they have no (or only extremely limited) opportunities for transferring to a more secure immigration status (like citizenship or permanent residence); and 4. they are residing in the state in question, rather than simply visiting or transiting through it.

These four characteristics pick out a diverse array of noncitizen groups not in terms of circumstances that motivated departure (like "forced migrant" or "economic migrant") but with reference to the conditions in the country to which they have moved. Precarious residents are typically highly vulnerable to exploitation (sexual, economic, and social) and abuse, and to expulsion from the state. Even so, not all of those who meet the above criteria are typically thought of as vulnerable. Foreign students (like those studying a medical schools in the US) are seen by many as a kind of elite, yet their stay in the state in which they study is often subjected to stringent limitations (e.g., they may not be able to work, they will have to leave at the end of their studies, they may not be able to transfer status). To get a clearer picture of the nature of precarious residence it is helpful, then, to draw upon some specific examples. In what follows I will look at some non-citizens in the UK, Dominican Republic, the US, and the United Arab Emirates.

Asylum seekers in the United Kingdom
Around 27,500 people from countries that included Iraq, Somalia, Sudan and Zimbabwe arrived in Britain to claim asylum under 1951 Refugee Convention or other human rights instruments in 2007. They entered a hostile and suspicious political climate in which asylum seekers are commonly viewed in the media and the general public as economic migrants exploiting the country's refugee system. Applicants for asylum are put through a process of status determination that may take many months (on average around six), and over a year if appeals are involved, to reach a decision. During this process, asylum seekers have "temporary admission" to the UK, a status that "means that although their physical presence is recognised and not

unlawful, they are legally considered not to have entered the country." (Sawyer and Turpin 2005). This liminal status enables officials to expedite the removal of an applicant if his or her claim is rejected.

Asylum seekers possess very limited rights. They face constraints on their place of residence, freedom of movement, right to appeal decisions on movement, and access welfare benefits associated with their status. They may be detained in centres equivalent to jails for the period during which their claims are determined and pending their removal from the state. If they wish to receive welfare benefits, they will have to live in parts of the country determined by state authorities, often far from ethnic compatriots and sources of migrant support and assistance (Schuster 2003). If they are not detained, asylum seekers are obliged to report regularly to government centres in order to show they have not absconded. They are not allowed to undertake paid work (Gibney 2009).

If their asylum or humanitarian claim fails (as it does for around 60 per cent of all applicants), an asylum seeker has to leave the country. Welfare benefits cease twenty one days after an unsuccessful decision, as does free access to the National Health System in all but emergency situations. The government has recently trialed a system of placing into state care the dependent children of parents made destitute by the withdrawal of welfare as way of encouraging failed applicants to return home. Such practices may be counterproductive. There is some evidence that use of detention and more certain deportation simply encourages asylum seekers to disappear into the community to live as an undocumented migrant. While most applicants face a situation where they will either be granted or refused asylum, sometimes the British authorities refuse to grant an applicant refugee status but refrain, for humanitarian reasons, from deporting them. This has recently been the case with Zimbabweans, whom the government stopped deporting in 2005. In such cases, the individuals find themselves (temporarily) protected against return but lacking any right to work or access welfare to support themselves (Webber 2008). They are placed in an agonizing and ongoing limbo that prevents them from getting on with their lives.

Haitian migrants in the Dominican Republic

There is estimated to be between 500,000 and one million migrant workers from the impoverished and conflict-wracked Caribbean country of Haiti in the Dominican Republic (Amnesty International 2007). Workers from Haiti have been crossing to the porous border between the countries since the 1920s, mostly to undertake seasonal work in the Dominican Republic's agricultural sector on sugar plantations. However, in the last decade, migrants have increasingly found employment in other parts of the economy including construction, tourism, and domestic work. Many of these worker migrants enter and remain in the country without official permission.

Haitian migrant workers typically face appalling labour and residence conditions, partly due to their lack of legal status, but also because of racist and discriminatory attitudes toward them at both official and demotic level (Amnesty International 2007). For example, many of the *batayes*, the settlements around the Dominican Republic in which many Haitians working in the plantations have long resided, lack any formal medical services (Santiago 2008). Migrants who labour in the shadow economy face a situation where worker rights, including the right to organize a trade union and be paid for work done, are "virtually non-existent" (Amnesty International 2007). Such exploitation, as well as generally low wages, exists partly because of the extremely poor state of the Haitian economy and also because the threat of deportation dampens collective activity in search of better conditions.

While state officials are largely absent in terms of protecting the rights of Haitian workers, they have demonstrated a repeated willingness to enforce arbitrary and collective deportation of both unlawful and lawfully resident Haitian migrants in response to public concerns about crime, unlawful labour, and outbreaks of xenophobia. Intergenerational exclusion from citizenship and the benefits of legal residence is ensured by the government's practice of not registering births to children of parents who do have a national registration card (*cedula*). The lack of a card has "a direct effect on one's education, ability to find employment, and access to social benefits - particularly government programs aimed at improving access to healthcare" (Santiago 2008). Indeed, the government and public attitude to the Haitians is summed up in the view that illegal or unregistered Haitian non-citizens are "in transit" through the country rather than as residents. This categorization, which stands in stark contradiction to the reality of the country's reliance on

a Haitian labour force and that fact that many Haitians have been residing for years or decades, provides a Constitutional rationale for continuing to do little to protect the rights of Haitian migrants and excluding them from citizenship (Amnesty International 2007).

Undocumented Mexicans in the United States

There are an estimated to be some 12 million undocumented migrants living in the US, of which some 57 percent are from Mexico with the largest proportion of the rest from Latin America (Escobar 2006). These migrants have either overstayed their legitimate visas or have unlawfully entered the US, often across the Mexican/US border. The largest numbers of undocumented migrants are estimated to live in California, Texas, and Florida. They have no legal right to work in the US, but are hired by employers across a large swathe of the American economy, primarily in agriculture, construction, manufacture, and the service industry, including restaurants and cleaning.

The rights of undocumented migrants are very limited. Their illegal residence makes them eligible for deportation upon apprehension by the authorities. If they have manufactured false documents in order to gain work, they have committed a separate crime. They have no right to access welfare provisions, unemployment benefits, or receive public housing. They may be held in custody for long periods if it facilitates their deportation. Once deported, they face bars and restrictions on their ability to return to the United States (Kanstroom 2007). Undocumented migrants can access emergency health care and their children have a constitutional right to attend public schools. Moreover, children of illegal migrants born in the US are, by virtue of the US constitution, citizens of the United States, a fact that prevents the creation of second generations of unlawful migrants.

In recent years, the Immigration and Customs Enforcement Bureau in the Department of Homeland Security has undertaken vigorous new efforts to locate and deport undocumented migrants, adding to a new wave of insecurity amongst unlawfully present populations that has forced many to limit interaction with the authorities even further (New York Times, May 1, 2007.) Between 1997 and 2007, the number aliens removed or returned from the United States grew from 114,432 to 319,382. The difficulties associated with departure can have huge personal

(as well as economic consequences). Many migrants unlawfully in US have spent many years residing in the country and are part of families in which at least one member holds US citizenship (Escobar 2006).

South Asian Worker Migrants in the United Arab Emirates
Some 95% of the workforce the United Arab Emirates (UAE) is made up of foreign migrants, around 2.7 million workers in total. Most are from South Asia, including Pakistan, Sri Lanka, Bangladesh and Nepal (Human Rights Watch 2006, 7). These migrants typically go into debt to pay the worker agencies visa, travel and government costs and fees that enable them to take up job contracts in unskilled sectors of the UAE economy, such as construction, domestic service and agriculture. The conditions of work and residence of temporary contract labourers is of a very low standard, leaving employers in the country open to charges of economic, physical and (particularly in the case of female domestic workers) sexual exploitation.

National law in UAE requires regular breaks, maximum working hours, annual leave, severance pay, overtime, and the right to leave one's job if an employer does not fulfil his or her contractural or legal obligations. However, these regulations are rarely enforced (Human Rights Watch 2006, 11) The immigration status of the workers creates a huge power differential between them and their employers that the state shows little interest in balancing. In the UAE, collective action to improve pay and conditions by migrant workers is illegal, and likely to result in detention and deportation. Deported individuals may still owe money to recruitment agents lent to them so that they could take up their original contract. Migrant workers, moreover, cannot change jobs, except with the permission of the previous employer. They can lawfully be paid lower rates than UAE citizens, and often find themselves earning less than they were originally promised (Human Rights Watch 2006). Migrant workers often live in spartan workers' accommodation on the outskirts of major cities and face curfews and limits on the ability to move freely around these cities. If they are domestic workers, they may live in the households where they work, exposing them to a range of other vulnerabilities (like sexual abuse, long working hours and underpayment) that are shielded from public view (Chammartin 2005). Migrant workers are not permitted to bring family members with them to the UAE and the

country offers them no avenues for the acquisition of citizenship, regardless of their length of stay. The children of foreign citizens born in the UAE are not eligible for citizenship.

These four examples from different countries paint a picture of non-citizens made vulnerable by their immigration status. A summary of their situation can be found in Table 1 below.

Table 1.

Protections and rights available to various types of residents

	Citizens (in Western Countries)	**Worker Migrants (UAE)**	**Undocumented (Mexican) Migrants (US)**	**Unregistered (Haitian) migrants in the Dominican Republic**	**Asylum Seekers in the UK**
Legality of Residence	Very High	Very High (for contracted period)	Very Low (Unlawfully resident)	Very Low (Unlawfully resident)	High. (Temporary freedom from deportation.)
Social and Civil Rights	High (typically full legal rights to welfare, to work, to move freely about the country)	Low (generally no access to welfare; limited ability to move about the country; Right to work, but no automatic	Very Low. (No rights to welfare, to work, to move about freely; may be detained.) Limited rights to emergency health care, children have access to public	Very Low. (Few if any state protected rights; lack of state provision for health care needs)	Low. (Minimal access to welfare, housing, health care.) No right to work, may be detained, no right to choose place of residence

		right to change jobs)	schools)		(if wishing to receive welfare benefits.
Vulnerability to Deportation	Low (Protected by international and domestic norms against citizen expulsion	High (freedom from deportation depends on continuation of contract and appropriate behaviour)	Very High	Very High (though practical possibility is limited by state capacity and economic advantages of continued residence.)	High. (Will be deported if asylum claim is unsuccessful, though generally will be granted residence if determined to be a refugee.)
Opportunities for moving to citizenship or permanent residence status	Not applicable	Low. (While some possibilities of extending contract, virtually no possibility of citizenship)	Low. (Dependent on regularization, though offspring if born in the US will be citizens.)	Low.	Low (unless receive refugee or other humanitarian status.)

A number of observations about precarious residents can be drawn. First, precarious residents can be found in Southern countries (the Dominican Republic) and Northern ones (the USA) and

in liberal democratic states (the UK) and more authoritarian ones (UAE). Precarious residence is generated less by the style or character of a particular kind of government (though elites unconcerned with human rights may certainly exacerbate the level of exploitation, abuse, or insecurity experienced by non-citizens) than by the ubiquitous tension between the state's right to determine who resides on its territory (the right to border control) and its responsibility to provide protection to everyone residing in its sphere of its authority (the guarantee of human rights).

Second, the precariousness of these non-citizens stems not simply from the limited rights they have (though this certainly makes them vulnerable to a range of social, economic and political hazards), but also from the fact that their continuing residence in the state is under threat. The insecurity of residence deprives precarious residents of the kind of firm footing in society necessary to lobby or militate for the protection of the rights that they have by law or to expand their rights and opportunities. The interaction between deportation and a low level of rights is clearly apparent in the cases of the UAE and the Dominican Republic where political mobilisation is likely to be punished with expulsion. It is evident, too, in the United States, where accessing putative rights (e.g., right to access the police) is likely to bring one to the attention of the authorities increasing the prospect of deportation.

Third, precarious residents include people who have lived in the state in question for varying periods of time. It is a category that may include the asylum seeker who have arrived in the UK yesterday and the undocumented Mexican who may have lived in the US for decades. While, as we shall see, distinct moral issues are raised by the existence of long term precarious residents, the category includes newly arrived and long standing non-citizens.

Finally, in all the cases discussed, deep inequalities in the provision of economic opportunities (or the provision of basic rights and security) play a key role in creating and perpetuating precarious residence. Abject conditions are tolerated or even embraced by migrants because circumstances in their own country are (or are perceived to be) worse. If seeking asylum in the UK is a disempowering experience, returning to Iraq is a life-threatening one; if the working conditions in the Dominican Republic are poor, the chances of finding work in Haiti may be

impossible. These conditions provide one ground upon which we might distinguish precarious residents from other forms of temporary migrants, like foreign students. In the case of the latter, return to the country of origin is often a genuine option because, as desirable as staying in the host country may be, conditions in state of origin are unlikely to result in economic deprivation or the violation of basic rights.

Citizens as Precarious Residents?

The above examples deal with non-citizens made vulnerable by migration. But citizens can also lose rights and protections by migrating within their own country in ways that are closely analogous to precarious residents. Sometimes the loss of rights is fairly minor and temporary. For example, under federal systems, like the US, it is not uncommon for certain privileges or entitlements, such as discounted university education or access to local welfare benefits, to be dependent on residence in a particular state or province for a certain period of time. However, in other cases, the impact of movement on rights and entitlements may be more severe and long lasting. The experience of internally displaced persons (IDPs) in Azerbaijan powerfully illustrates the point.

IDPs in Azerbyjan

The conflict over the disputed Ngorno-Karabakh region of the Caucasus has produced some 500,000 internally displaced persons scattered throughout Azerbaijan. These IDPs, prevented from returning home because of the conflict, live in an array of temporary and semi-permanent accommodation arrangements, often staying with relatives, or in public buildings schools, kindergartens, and housing provided by international organisations. Forced movement has made them second-class citizens, limiting their access to the rights citizens typically enjoy.

A key reason for their second class status stems from the residual effects of the so-called *propiska* system. The *propiska* was a system of control over internal movement used in countries making up the Soviet system. It required citizens to possess an internal passport that linked them to a particular place of residence and made the provision of various social goods (e.g., housing, and work permits) dependent upon staying in that place of residence (IDMC 2008). Under the system, settling in a part of the Soviet Union different from that specified in one's *propiska* was

unlawful. The system was used in particular to prevent people from moving to the cities. While Azerbyjan, like most former Soviet bloc countries, officially abandoned the *propiska* system after the collapse of the Soviet Union, informal forms of residence controls live on, partly to prevent people moving to the capital, Baku (IDMC 2008). These controls have important implications for IDPs.

Many IDPs find their place of official residence and thus a range of benefits, entitlements and privileges (permission to work, welfare benefits, etc.) tied to an area that was simply the first place they arrived after fleeing conflict. While the area concerned may be far from employment opportunities, social networks, or family members, attempts to change it may be very difficult. A housing contract in the proposed new place of residence may be required, something next to impossible to obtain without selling one's previous house. Moreover, substantial bribes may need to be paid to officials. In response, family bread winners often head to big cities in search of work, resulting in divided families and precarious streams of income (IDMC 2008). Such close linking of residence and key citizenship entitlements is common problem for IDPs generally. Displacement can mean long term political disenfranchisement as the right to vote may be exercisable only in the place where an individual was originally enrolled (IDMC 2007; Mooney and Jarah 2005).

The case of IDPs shows that even citizens may find themselves in a situation similar to precarious residence. To be sure, citizens typically cannot be deported and are thus spared a defining feature of this group. Nonetheless, internal movement may disenfranchise citizens or render them acutely vulnerable to a range of social and economic hazards. If migration does not necessarily make citizens stateless, it may turn them into second class members.

IV. How many precarious residents are there?

There are tens of millions of people in the world today who fit the description I have provided of a precarious resident. Getting to a more exact number is, however, extremely difficult. "Precarious resident" is not an official category, but, as we've seen, is made up of people in a range of different migrant groups, notably undocumented migrants, asylum seekers, and

temporary migrants. Perhaps the tightest fit occurs between undocumented migrants because their complete lack of lawful immigration status. Estimates of undocumented migration, however, are notoriously unreliable because these migrants go to great length to hide their presence and because state officials have no incentive to trumpet the degree to which they are failing to control their borders. That said, the Migration Policy Institute has estimated "the share of unauthorized immigrants in the world's immigrant stock might put it at between 15 and 20 percent of the total", a figure of "between 30 and 40 million immigrants" (Migration Policy Institute 2005). This is clearly a conservative estimate because another by a reliable body has put the number of "irregular migrants" (those without formal status) at 20 million in India alone (GCIM 2005, 85).

The volume of "temporary migrants", a group that one would expect to include a substantial number of precarious residents, is not much easier to discern. OECD countries recorded the number of migrants who remain in their countries for less than a year, a group divided between working holiday makers, seasonal workers and other types of worker migrants, at around 2.5 million entered (about three times the number of permanent migrants entering) in 2006 (OECD 2008, 134-135). By contrast, most non-OECD countries keep few reliable records as to temporary migration numbers.

Arguably the soundest figures available relate to asylum seekers, who tend to make officially registered claims. According to UNHCR figures, some 647,000 asylum claims were made either to governments or directly to UNHCR worldwide in 2007. This number, like the volume of recognized refugees, is lower than that which pertained in the early 2000s. In 2003, for example, some 855,000 applications for asylum were received. Some have attributed these falling numbers to the success of restrictive entrance policies rather than a decrease in people needing protection (UNHCR 2008). Certainly, statistics show that the number of internally displaced people has increased rapidly in recent years to 26 million in 2007, though this may have to do with better reporting (UNHCR 2008).

A partial insight into the trajectory of the numbers of precarious resident numbers is gained by looking at the specific groups considered above. In the UK, the number of asylum seekers has

fallen quite dramatically since the early 2000s from a peak of 84,130 in 2002 to 23,430 in 2007. A combination of factors seem to have contributed to the drop including the government's extensive use of non-arrival policies, a worldwide fall in refugee applications, and more people to seeking a kind of informal asylum in the UK by becoming illegal immigrants rather than declared asylum seekers. In the US, the rate of increase (though not the total number) of illegal immigrants seems to be falling, partly as a result of the international global downturn and partly due to more vigorous enforcement practices. According to Pew Research (2008), in March 2008, 11.9 million undocumented workers were living in the US; in 2005, it was 11.1 million, and in 2000, 8.4 million. In the UAE, the rate of migrant workers in the construction industry boomed throughout much of the 2000s, rising to some 1.2 million, according to government figures, on the back of a huge building boom. Recent reports, however, are that the boom is now over and jobs are falling away at a rapid rate. One cited estimate is that around 1500 work permits and visas are being cancelled daily in Dubai (Zawya 2009). The situation in the Dominican Republic is more difficult to ascertain. This is partly because baseline estimates as to the Haitian migrant worker population are unreliable, varying between 500,000 and 1 million. That said, while there is some evidence that increased seriousness in the use of deportation by the government of the Republic has made a small dent in the number of Haitians, the overall trend over the last decade has been towards growing numbers of new settlers.

In sum, all available figures suggest that huge (though ultimately indeterminate) numbers of people worldwide live in a situation of precarious residence. While the pressures of government policy and global economic recession may diminish these numbers by pushing people back home, this is in no way guaranteed. Restrictive entrance and deportation policies may encourage asylum seekers to avoid contact with the state by living illegally in the countries they enter. The non-renewal of employment contracts for temporary workers due to recession may equally turn legal migrants into unlawful ones, thus boosting the ranks of precarious residents.

V. The novelty and uses of precarious residence

Precarious residence is not a new phenomenon. Political communities, dating back at least as far as the ancient Greeks, have often put stringent conditions on the residence of foreigners,

exploiting their labour while freezing them out of membership. More recently, the guestworker (or *gastarbeiter*) policies of European countries during the 1950s and 1960s operated on broadly similar principles. But precarious residence as a contemporary matter is closely linked to economic globalization and, paradoxically, thae development of the international human rights regime.

Particularly since the end of the Cold War, economic globalization (and the revolution in transportation and communications) have freed up the movement of capital, goods and services globally without lifting of restrictions on the movement of labour. This contradiction has been reduced in practice by the movement of undocumented migrants between countries facilitated by trafficking and smuggling networks. Undocumented workers, emanating primarily from Africa, Asia and South America, have served as an informal and unacknowledged labour source of many countries both in the South and North. Indeed, most observers agree that illegal migration has grown faster than any other type of international migration in recent years (Migration Policy Institute, 2005), both through the design and incapacities of states, creating a steady stream of new precarious residents.

Globalizing forces have also played a role in facilitating legal temporary migration that results in precarious residence. From the perspective of sending states, citizens working overseas can remit billions of dollars to the national economy. The Philippines, for example, had more the 7.7 million of its citizens living overseas in 2003, earning an estimated US$8.5 billion in remittances (GCIM 2005). This kind of contribution gives states a strong interest in ensuring that labour continues to be accepted by labour importing countries, even if it is under conditions of precarious residence. From the perspective of receiving states, developments in transportation and communication that enable speedy intercontinental travel makes states looking for labour no longer dependent on the conditions and pay acceptable to workers in their immediate geographical region. States can scour the globe looking for workers who may, because of the desperate conditions they face in their own country, be prepared to accept conditions that most would consider substandard.

Another, very different, factor contributing to the existence precarious residence was evident in the case of the UK's treatment of asylum seekers discussed above. Human rights law in the post-1945 world has placed strong constraints on states returning refugees and other categories of migrants to countries where they might be persecuted or face human rights violations. But the expansion of these protections has not always been accompanied by clarity in the social, civil and political rights (beyond temporary freedom from deportation) that those whose claims for protection are being adjudged or are granted forms of (non-Refugee Convention) humanitarian status should have (McAdam 2007). In the absence of clarity, many governments withhold rights from these (temporarily) non-deportable groups in order to deter others from coming or to enable the speedy removal of people who have protection once things improve in their home country, creating precarious residents.

While large scale social and economic forces contribute its existence, state practices at the individual level in terms of integration, rights protection, and expulsion also shape precarious residence. Notwithstanding its negative consequences, precarious residence persists in large measure because states find it useful. What purposes does it serve? It can have economic benefits to the host state, or it may assist states in achieving their broader migration control objectives by either deterring illegal migration or facilitating the departure of unwanted migrants.

Economic Benefits
Individuals with few rights can serve as an easily exploitable labour force for countries with worker shortages in various areas but do not wish to encourage immigration for permanent settlement. Foreign workers may be cheaper (because they can be hired informally without costs associated with pensions, sickness benefits, etc.); more disciplined and responsive to economic downturns (because they can be deported if not needed, or threatened with deportation); and more receptive to doing dirty, dangerous, or humiliating forms of work (because they are likely to come from countries where opportunities for gainful employment are virtually nonexistent). In some countries, the nature of the economic exploitation of precarious residents is explicit and lawful. In the UAE restrictions, open worker migration programmes exist and are accompanied by laws restricting the ability of migrants to change jobs, allow lower rates of pay, etc. In other countries, the economic use of precarious residence can be inferred from state behaviour. The

mass and brutal deportation of Indonesian foreign workers from Malaysia in 1998, fittingly code-named "Operation Go-Away", began after the Asian economic crisis had reduced the country's labour demand. Forms of highly vulnerable, and in some cases illegal, labour were tolerated only whilst the economy needed labour. Sometimes, however, state responses are more subtle. While US governments have long expressed hostility to the presence undocumented migrants, the enforcement of laws tends to tell another story. There is evidence that the degree of immigration enforcement varies amongst different sectors of the economy depending on the need for labour and the sensitivity of the sector labour prices. According to one researcher, "increases in the relative production price for an immigration intensive industry is associated with a decrease in border enforcement six to ten months into the future." (Hanson.) Precarious residents may be unwanted but also economically necessary.

Deterrence

Precarious residence may serve border control objectives by demonstrating to potential entrants that life will be very unpleasant for them. While the deterrent value of precarious residence is probably impossible to measure, there is little doubt that state officials see restrictions on the rights of certain categories of unwanted or illegal migrants as influencing migration decisions. In the UK, for example, policies towards asylum seekers became increasingly tough in the early 2000s in response to rising numbers of applications (Gibney 2004). The government expanded the use of detention, reduced access to welfare benefits, tightly controlled the residence of asylum applicants and steadfastly refused to grant asylum seekers the right to work largely because it believes such actions deter those with weak refugee claims. According the then Home Secretary, David Blunkett, "We are an open, trading nation, and we will continue to meet our obligatons…to provide a safe haven… But we will not be seen as a safe touch… we are tightening our rules and deploying every possible measure to deter and detect [illegal immigrants]" (quoted in Malloch & Stanley, 2005)**.** The goal of deterrence is also a perennial feature of debates over the introduction of amnesties for illegal migrants that would legalise their status. A San Francisco Chronicle columnist captures the core of the concern: "No matter what Bush and Senate members wanted to call it, they were pushing for amnesty last year. And the biggest problem with amnesty is the magnet effect… A law that puts … [illegal immigrants] on a path to citizenship would send a message to would-be immigrants across the globe that they can

sneak into this country, break our laws and be rewarded." (Saunders 2007) The value of the deprivation of rights, then, is that it may repel unwanted entrants.

Return

A third reason for the continued existence of precarious residence is the belief that it encourage unwanted migrants to return home. Just as precarious residence may be used to deter arrivals, so too it makes returning home for those already in the state a more desirable option. By making life so uncomfortable as to encourage return, are spared the practical, logistical and moral difficulties associated with deportation. There are many reasons why a state may want certain groups off its territory: it may want to assert the integrity of its borders, to preserve an exclusive national identity, or possess hostility towards various foreign groups. Precarious residence militates against integration into the host country by depriving migrants of right to work or, through detention, connection to the broader community (Gibney 2008). The UAE's policies are explicitly designed to prevent integration because migrant workers cannot bring their families with them, are spatially segregated from the domestic population, and avenues for citizenship are blocked off by citizenship policies based on descent (*jus sanguinis*). Britain's policies towards asylum seekers, which make destitution a real possibility, have been described by one NGO as an attempt by "the government …to starve people out of the country" (*The Guardian* 2009). In addition, to using collective deportation practices from time to time, the Dominican Republic's approach has been actively set about preventing proper legal integration of Haitian and other worker migrants by defining them unlawful residents "as people 'in transit' and imposing limitations on their ability on their right to Dominican nationality" (Amnesty International 2007). Many measures that restrict migrant rights are aimed at ensuring that the state becomes like a cheap hotel, bearable perhaps for a short amount of time but not the kind of place one would want to stay for long.

VI. Human Development Consequences

What are the consequences of precarious residence for human development? The situation of precarious residents shows clearly that immigration status plays an important role in determining an individual or group's vulnerability to a range of social, economic and political hazards. While

all residents of a state (legal and illegal) may possess a range of rights in name (if only human rights), their ability to exercise or to be protected by these rights is shaped by their status, and in particular, by their right to remain legally present in the state.

I want highlight now some of the most important vulnerabilities associated with precarious residence by drawing upon the examples of the cases discussed above. Necessarily, I will paint only a very partial picture. Precarious residents, as we have seen, are a very diverse group, occupying different points along a hierarchy of rights-bearers, and the costs they bear are often hidden from view. As I shall suggest later, expanding the capabilities and entitlements of precarious residents poses special challenges in an international context where states claim wide-ranging powers to control migration.

Economic exploitation

Most migrants move between countries in the search for jobs or levels of income unattainable at home. As we have seen, however, the tools used by states to prevent integration (the threat of deportation, limited social, economic and political rights, etc.) can make migrants vulnerable to exploitation, particularly at the hands of employers, turning foreign residence into an economically detrimental experience. This is clear in the case of guest worker migrants in the UAE. Numerous reports by independent bodies on the conditions of these migrants illustrate that non-payment or underpayment of wages is common practice. Some 20,000 migrants filed complaints about the nonpayment of wages and conditions of employment in 2005 alone, according to the UAE's own (far from complete) records (Human Rights Watch 2006, 54). Efforts by workers, both individually and collectively, to challenge the denial of what is rightfully theirs is hampered by weak enforcement of employment practices, restrictions on collective bargaining, and the powers of employers to make workers eligible for deportation or arrest. This presents workers with a tragic dilemma. They can continue working under exploitative conditions or they can initiate actions (strikes, complaints to employers, or a return home) that may result in the violation of their contract. If they take the latter course and lose their job, they are likely to return home worse off financially than when they started because they now owe money to the agencies that financed their original trip.

The situation faced by unlawful migrants is typically worse. A common complaint revealed in studies of this group is non-payment by unscrupulous employers (Gibney 2000). Workers are unlikely to have any authorities whatsoever to which to appeal without exposing themselves to deportation. Furthermore, there is a close correlation between illegal work and non-payment of wages and poor working conditions. Employers who are willing to hire illegal labour (particularly in large numbers) are unlikely to be concerned about the niceties of labour laws or workers rights more generally. Hence, migrant workers are usually employed under the worst conditions of any employees, as in sweatshops, or in areas of the economy that demand dangerous, poorly remunerated, and taxing labour. Migration status (or lack of it) thus shapes not only the question of whether one will be paid but also the kinds of employment one will undertake and the conditions therein.

Sexual Exploitation

While precarious residence may have negative economic impacts, it may also be a risk to one's bodily integrity. The power differentials created by a liminal status commonly lead to sexual exploitation. Women are particularly vulnerable in this regard, in part because they tend to be employed in domestic realm (as household help or childcare) and thus are isolated from sources of assistance or protection. The link between sexual exploitation and immigration status was highlighted in a recent International Labor Organization study in which interviews were conducted with domestic migrant workers in the UAE, Bahrain, Kuwait, and Lebanon (Chammartin 2005). As well as experiencing, like their male counterparts in more public sectors of the economy, wages arbitrarily withheld or not paid, substantial numbers of female workers (over 50 percent in Kuwait) interviewed complained of "physical (including sexual), psychological and verbal abuse", with most workers mentioning vulnerability to sexual abuse at the hands of their employer or employers friends or relatives as an issue (Chammartin 2005). The long term consequences of such exploitation are difficult to measure, but they are real and negative.

Similar kinds of sexual exploitation and withholding of wages has been reported in many studies of undocumented migrant populations across the globe with experiences cited that range from individual cases of abuse to more systematic examples organized trafficking into prostitution. In

the Dominican Republic, for example, Haitian migrants often take up opportunities for work in the sex trade because they offer one of the few jobs open to those barred from the formal economy (Santiago 2008). The economic and sexual exploitation of migrants are diverse phenomena with a range of different causes and manifestations but they can often be traced back to poverty or vulnerability created by immigration status.

Poor Health

The health of migrant has a profound effect on their ability to provide for themselves and their families as well as the overall quality of life of the sick individual and unpaid carers. Health problems can interrupt employment and wage earnings and add health care costs to the regular expenses of people with few financial resources. Precarious residence has important health consequences both for the individual migrants and for the broader society.

In most Western countries, everyone—including undocumented migrants—has the right to emergency health care regardless of immigration status. For example, even the U.S's Personal Responsibility and Work Opportunity Reconciliation Act of 1996 which curtailed the rights of undocumented (and other) migrants to access state welfare benefits and provisions, excluded health care items and services "necessary for the treatment of emergency medical conditions" (Kullgren 2003). Nonetheless, the access of undocumented migrants to health care tends to be lower than that of other US residents. Health care is expensive and for most individuals is paid for through employment related insurance schemes. As undocumented migrants work in informal and largely unregulated sectors of the economy, they will not be able to access insurance. However, even their access to *emergency* medical treatment is poor. A recent US study found that undocumented migrants with tuberculosis "have symptoms longer before seeking care than documented migrants…, resulting in more severe symptoms and more opportunities for transmission" (Infectious Diseases Society of America, 2008). While turberculosis has been declining in recent years amongst citizens, rates amongst immigrant populations in the US are still substantial. This has given rise to concerns that tuberculosis may reemerge as a health issue across US society. Low levels of access to emergency treatment can be attributed to a number of factors, including ignorance of eligibility for health care but concerns about expulsion plays a large role as well. Recently, legislation that would have made it mandatory for hospitals to report

the immigration status of those seeking health care was debated in the US Congress (Immigration National Law Centre 2004). While the legislation was ultimately defeated, the link between health care and immigration control was firmly established.

Precarious residence is also linked to poor health because migrants in this situation are more likely to work in areas of the economy where injuries and illnesses are common, such as construction and the sex trade. In the Dominican Republic, the role of young women in sex industry has led to extremely high rates of HIV and sexually transmitted diseases within the Haitian community generally, as diseases gained at work are passed on. The situation is worsened further by the government's failure to deliver health services in the *batayes* in which many of the affected Haitians live (Santiago 2008). In this case, it is evident that poor health and lower life expectancy is part of a cycle engendered by marginalization and lack of recognition of the reality of residence.

Difficulties with integration and return
The human development of migrants is heavily shaped by their ability to integrate successfully (find employment, establish social connections, acquire the language, etc.) into their new societies or reintegrate back into their country of origin upon return. Precarious residence may profoundly affect integration or reintegration. It is helpful here to consider the situation of asylum seekers in the UK. They typically find themselves waiting for a period of six months to a year for their asylum claim to be processed during which their lives are on hold. They may not work, they may be held in detention, they have no right to be unified with any family outside the country, where they live and how much money they will have will be determined by the state. If they are allowed to attend an educational course, they do so in the knowledge that they may never complete it because deportation is an option at any time; they are likely to be close to destitute (*The Guardian* 2009).

What are the consequences of this period of state-organised limbo? It may provide the individual with a powerful incentive to seek informal asylum by disappearing into the community to become an undocumented migrant. One experience of precarious residence is thus swapped for another (Gibney 2008). For those that remain in the asylum system, however, the long term implications may be very negative. A recent report of asylum seekers in two English boroughs

suggested that asylum seekers who go on to attain refugee status find it difficult to integrate because of their experience as asylum seeker has weakened their ability to establish the kinds of social connections crucial to establishing themselves as a member of society (Refugee Council & University of Birmingham 2007). The study found that lack of right to work, and lack of access to social and economic resources inhibited both the willingness and the ability of asylum seekers to establish the kinds of personal and social connections necessary for successful incorporation into society (Refugee Council & University of Birmingham 2007). The consequences for asylum seekers who are detained are even more likely to be negative (Keller et al. 2003). A wealth of research evidence shows that they can face psychological problems (especially if their period of detention was for a substantial period) that reverberate long after detention is over.

The period of limbo also has consequences for precarious residents who return (or are returned) to their country of origin. Long periods without any right to work may prevent migrants from accumulating the financial and psychological resources to be able to start afresh. Skills may have atrophied and huge debts may still be owed from the passage in search of asylum. For example, until recently, the Australian government charged immigration detainees for days spent in detention, leading many deported migrants to return home with significant debts (Danby 2008). In one of the few studies to track asylum seekers back to their countries of origin, the Australian scholar David Corlett interviewed twenty eight asylum seekers who had been held in immigration detention in Australia and removed to Iran, Pakistan, and Afghanistan. According to Corlett, for almost all of the returnees "the implications of Australia's detention policies continued to affect …[them once] they had been returned. People spoke of ongoing sleep difficulties, continuing nightmares, headaches that were persistent. They spoke of…losing their dignity, of having lost their humanity, and they also spoke of being institutionalised in Australia's detention regime." (Corlett 2005). A key implication of Corlett's study is that Australia's detention policies undermined people's long term ability to make decisions (Corlett 2005) with far reaching consequences for those concerned.

I have presented here only a sample of the consequences that may flow from precarious residence in terms of economic and sexual exploitation, health, and social integration and reintegration. It's clear that the negative implications for human development fall not just on

precarious residents themselves but, in many cases, on their families and on the broader communities of which they are a part. When precarious residents don't receive treatment for infectious diseases, society as a whole may suffer; when precarious residents find it difficult to integrate because of their experiences, society is worse off. There are, then, powerful self-interested reasons why states have an interest in addressing the plight of precarious residents. As I now want to show, however, there are also important moral reasons for incorporating precarious residents into the community of rights-holders.

VII. Human Rights or Membership Rights?

How should we conceptualise the moral claims of precarious residents? It is clear that they owed all rights that accrue to individuals as humans, that is, independent of their immigration or citizenship status. Everyone, regardless of their background or official status, should have the right not to exploited, assaulted, tortured or held in custody without reason. They should have the right to access emergency health care treatment, police and emergency services, and the courts. They should have a safe working environment and be paid for work undertaken and have the right to bargain and even strike for fair working conditions. Such rights may be basic but, as we have seen, they are in no way trivial to the day to day lives of precarious non-citizens who are often particularly vulnerable to exploitation and abuse. They represent a kind of moral minimum that is owed to anyone in the territory of the state, including the tourist passing through on holiday or the passenger in transit.

We have seen that for undocumented migrants, in particular, even these most basic rights may be hollow. Ruth Rubio-Marin has written that the "absolutely precarious residential and working status" of undocumented migrants "places them in a vulnerable and exploitable position from which even the enjoyment of these rights and guarantees theoretically granted to them is often practically impossible" (2000, 81). Many precarious residents face what might be called a "rights trap": in order to claim rights and state protections, unlawful migrants must bring themselves to the attention of state authorities (they must, for example, call upon the police or judicial authorities). In this case fundamental human rights are neutered not directly by government inaction or inability but as an indirect result of migration control practices. The state's right to

deport undermines the conditions necessary for the realization of human rights for all those on its territory.

I shall say more about how states might guarantee human rights while retaining deportation powers below. But before doing so it is important to ask, do human rights capture the limits of what states owe precarious residents? An obvious virtue of the human rights approach is that it offers exactly the same answer to the question of what is owed to each and every non-citizen in the state. But this is also one of its major deficiencies. Human rights pick out only what is owed to all who enter the state from the permanent resident to the tourist. This lack of discrimination does not do justice to the deep reliance that some non-citizens on state protection and assistance by virtue of their residence. It ignores the fact that a key problem raised by precarious residents is that, morally, they often have a deep stake in the societies in which they live. One needs to consider not just what is owed to precarious residents by virtue of their humanity, but also the rights they have as *members* of the states in which they have come to reside.

Of course, states rarely consider precarious residents as members. As I have shown, precarious residence exists largely because states want to prevent the merging of some non-citizens into membership. In their attempts to exclude non-citizens, international and domestic law is often on the side of the state. Despite much national variation, where one will receive citizenship in the contemporary world is determined almost entirely by three principles: the principle of *jus soli*, whereby individuals born on the territory of the state are entitled to citizenship in the state; the principle of *jus sanguinis*, whereby individuals gain citizenship by being born to a citizen, i.e., through descent; and, through the process of *naturalisation*, whereby state officials define, through some political process, the requirements of foreigners being admitted to citizenship.

There has been some disquiet over these principles in recent scholarship. A key concern is that they make the distribution of citizenship dependent upon caprice or the luck of birth. Citizenship has thus been described as "arbitrary" (Schacar 2002, 8), a quasi "feudal status" (Carens 1992, 26), or as resting upon "historical contingencies" (Benhabib 2004). Without challenging birthright citizenship as *one* basis for membership in the modern state, some scholars have

argued that this principle needs to be supplemented by others which offer pathways to membership for non-citizens residing in the state.

Precarious residents as subjects

One way of conceptualising precarious residents involves emphasizing their situation as *subjects* of state power; as people who live under the laws of a particular state. According to Michael Walzer, "men and women are either subject to the state's authority, or they are not, and if they are subject, they must be given a say, and ultimately an equal say, in what that authority does" (1983, 61). The key idea in the approach is that any state that rules (i.e., exercises coercive force) over a group of people is legitimate only if they consent to such rule.

This position is common to a range of different liberal and democratic theories of politics. Classical liberal theorists, like John Locke, used hypothetical consent theories to legitimate the coercive power of the state. Contemporary liberals, like Michael Blake (2006) and Stephen Macedo (2008), use the coercion argument as a way of justifying *exclusive* practices towards foreigners, particularly as an argument against open borders. Michael Blake, for example, has recently argued that liberals "value internal mobility and voting rights as part of the package of justifications for political *coercion*. We have no equivalent reason to extend these rights to individuals who are not part of the political community in question, but who merely seek to become so subject" (2006). But while these authors use the argument from subjection to justify preventing foreigners from entering the state, the principle has more inclusive implications for non-citizens who have already arrived. For *everyone* living *in* the state is subject to the state's coercive power, including precarious residents. Indeed, it could be argued that precarious residents are subject to state authority in uniquely powerful ways. As Walzer suggests, these non-citizens "experience the state as a pervasive and frightening power that shapes their lives and regulates their every move—and never asks for their opinion."(Walzer 1983, 59). Since the state's power is territorial in nature, the argument from coercion grounds special rights not simply for members but for everyone *residing* (and perhaps even *present*) in the state.

Democratic theorists have offered a slightly different perspective on the moral issues arising from subjection by emphasising the issue of tyranny. The presence of large numbers of people,

like precarious residents, living in a democratic state but lacking rights of political participation jeopardises not just the rights of non-citizens, but also the overall health of democratic society. "We ought not to subjugate immigrants", the legal theorist Owen Fiss has written, "not because we owe them anything but to preserve our society as a community of equals" (quoted in Bosniak 2006, 128).

The democratic objection to individuals living in the state but outside the demos has been subtly explored by Michael Walzer (1983). Walzer has argued that it was unjust for European states to take in immigrants on short term contracts while forbidding them access to citizenship to encourage their eventual return home, like the Turks recruited for work in Germany during the 1950s and 1960s. The so-called "guestworker system", which was closely analogous to the UAE's current guestworker programme, involved migrants to living in the state not only as "guests but also [as] subjects" and ruled by a "band of citizen-tyrants" (Walzer 1983, 58). Moreover, even the fact that the immigrants concerned consented to the terms of their residence did not make the state's restriction of their rights legitimate. Walzer argues that simple consent "given at a single moment in time, while it is sufficient to legitimise market transactions, is not sufficient for democratic politics."

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. (1983, 58)

Taking democratic principles seriously means that "[p]olitical justice is a bar to permanent alienage—either for particular individuals or for a class of changing individuals." (Walzer 1983, 61)

Similar conclusions to Walzer's can be found in the work of other political theorists who valorise democracy. Writing on immigrant integration, the philosopher David Miller has suggested that "on democratic grounds it appears anomalous for someone whose interests are chiefly impacted by the policies of a particular state to have no say in determining those policies." (2008)

"*Whatever the formal terms of admission*", Miller says, modern states must ultimately offer citizenship to all individuals who "build their lives in the new country." (Miller 2007, italics added)

Precarious residents as societal members

A different way of reconceptualising membership is through the principle of *societal membership* (Bauböck 1997). In this view, the membership of a state should be composed of everyone who has a significant stake in the development and direction of the society in question, a category that typically extends beyond citizens. While the principle of subjection concentrated on the injustice of not recognising individuals as *political* agents, the societal membership principle tends to attach weight to men and women as *social and economic* agents even regardless of formal status (Lane 2006, 132). For the societal membership principle, the test of membership is the depth of one's roots into a particular society, and the personal, social and economic costs of depriving them of that society.

The societal membership principle is compatible with a range of different political approaches. More nationalist accounts can see in the principle a way of defining what membership means—as social and economic belonging—that is not reducible simply to liberal rights. Joseph Carens, the liberal egalitarian, has also appealed to the principle in non-ideal mode. He argues that it is unjust for a state to deport any legal or illegal resident who has lived in the state for five years or more (2005). The time period he suggests simply acts as a proxy for the kinds of emotional and personal connections and social and economic roots that individuals can be expected to have established in a society over time.

Perhaps the most developed account of societal membership is offered by Rainer Bauböck with his *stakeholder principle.* Bauböck's approach aims to fuse together an inclusive account of membership in the state consistent with liberal approaches with a view of the value of citizenship as a key human good distinctive of republican political thought (2005, 686). The result of this fusion is an approach to membership that sees the subjecthood (or "affected interest") principle as, on its own, problematic grounds for access to membership. One reason for this is that, if consistently applied, it would seem to require that at the same time as a non-citizen gains

membership in their state of residence, they should lose citizenship in their country of origin because they are no longer subject to its laws or affected by its democratic decisions (2005, 686). This result would, however, be inattentive to the deep connections that individuals may still possess to their country of origin.

In the place of subjecthood, Bauböck proposes that non-citizens should be offered membership on the grounds that they have "an interest in membership that makes the individual's fundamental rights dependent upon protection by a particular polity; and that ties an individual's well-being to the common good of that polity."(2005, 686) According to the principle, citizenship, including voting rights, would be liberal and inclusive enough to accommodate the reality of societal membership as well the right to hold multiple memberships simultaneously (in some cases). However, it would not be so inclusive as to rule out some requirements (e.g., a length period of residence to demonstrate a stake in society) for the gaining on citizenship (2005, 686).

The principle of societal membership, expressed in various ways, provides a powerful account of why it is wrong to exclude long term resident non-citizens, including precarious residents, from access to citizenship. Moreover, it is a principle that implicitly forms of a part of most practical calls to regularize unlawfully resident immigrants or long term asylum seekers: most amnesty programmes are informed by the idea that the state has a special responsibility to migrants that have been in the state for an extend period (be it five, eight or ten years). The principle demands an alignment between the reality of people's social existence—their level of effective integration or reliance on a particular society—and their legal status.

Neither the principle of subjection nor the principle of societal membership as outlined here tells us exactly the full panoply of rights that are owed to non-citizens and at what exact point a state incurs responsibilities to precarious residents similar to those it has to its citizens. Tellingly, however, both of these principles conclude that, over time, non-citizens become deeply reliant on the state in which they live and which governs their lives and that this reliance demands a different and more extensive set of rights to shape the power of the state (and to be protected from it) than are owed to foreigners in general. To treat certain migrants on state territory

permanently as guests or as trespassers rather than as members (or members in the making) is morally dubious, not least for democratic states.

Table 2.

Principles of Inclusion into Membership and their Consequences for Precarious Residents

	Basis of Inclusion	**Implications for Precarious Residents**	**Popularity of use**
Jus Sanguinis	Descent (typically citizenship is passed on through parent, though the process may be generationally limited by combining it with *jus soli*.	Exclusionary	Virtually universal (though supplemented in most countries by *jus soli*, procedures for naturalisation. Some countries more reliant on it than others, e.g. UAE)
Jus Soli	Birth on national territory. Different countries have different rules on whether or not children have to be born of parents *legally* present in the country.	Inclusionary (particularly if, like the US and unlike the UK, right to citizenship is not dependent on legal residence).	Very widespread, though varying in importance (relative to *jus sanguinis*) across different states.
Subjection	All those (territorially present) and subject	Highly inclusionary (though as usually presented lacks	Extremely rare

	to the state's authority and laws should have a right to membership.	specificity on what kind of membership those who are subject to state authority should have and how long one needs to be present.)	
Stakeholder	Everyone who has a significant stake in the development and direction of the state.	Inclusionary. (Would seem to provide a strong basis for including long-term precarious residents into citizenship regardless of legal standing.)	Rare (though regularisation campaigns based implicitly on stakeholder type principles have occurred in many states at different times targeted at general illegal resident populations or specific groups.)

Reducing Precariousness

It is clear that the problem of precarious residence admits of no single solution simply because precarious residence has a range of different manifestations and correspondingly a range of different causes. There is no magic bullet in a world where states claim wide-ranging rights to control the access of non-citizens to their territory. Nonetheless, there are a range of steps that states can take that may positively impact upon the lives of precarious residents. I will conclude by drawing upon the discussion above to outline three specific reforms.

The first is the *erection of firewalls* between the provision of emergency services to migrants and immigration authorities. One recurring problem for unlawful migrants is that in accessing basic state provide services (emergency health treatment, police protection, etc.) they risk advertising their illegal residence in the state. In response, Joseph Carens has suggested that if states and their citizens are serious about everyone's access to basic rights, they should build a "firewall" between the authorities that act to guarantee these rights (or provide these services) and those whose job it is to enforce immigration laws (Carens 2005). A key aspect of any firewall approach is that its existence should widely publicized to those who would benefit from its use. Unless precarious residents can feel confident that such firewalls exist, it is unlikely to rectify the problem it was designed to solve.

To undertake this reform would in many respects be to tread the opposite direction to that being pursued in some Western states, where non-immigration authorities are being recruited in the fight against illegal migration. But unless such firewalls exist, even the most basic of human rights (such as the right not be physically and sexually assaulted) may simply be empty or out of reach for certain categories of migrants. It has been evident in this paper, moreover, that there are also strong pragmatic reasons, stemming from the interest in reducing the spread of communicable diseases and apprehending dangerous criminals, why it is important for migrants to be able to approach doctors and police authorities.

A second reform is the provision of *help and resources to assist those migrants wishing to return* to their countries of origin with some dignity. The only way of truly judging whether precarious residence is a choice is by offering migrants genuine options for returning home that enable successful reintegration back into the country of origin. Here, there is something to be learnt from programmes for the return of refugees at the end of wars in the Former Yugoslavia. Many of these programmes provided start up funds to returning refugees, "look and see" or preparatory visits, and a more general involvement in the process of return (Black and Koser, 1999). In recent years, the UK government has offered such a scheme, the Voluntary Assisted Return and Reintegration Programme, (in conjunction with the IOM). This programme provides help with the organising passage, and offers assistance to help returnees set up a business, gain an education; get a job placement; or attain job training (Home Office, 2005; IOM 2008). But the

UK's start up and reintegration provisions have been geared solely to returning asylum seekers and not to undocumented (or irregular migrants.) Of course, the success of any such program will ultimately depend on the quality of support given and its ability to make a difference to real lives, and for this the British program can be faulted. Trusted sources of information about conditions and opportunities in the country of origin may also be of crucial importance if people are to provided with an incentive to return (Black and Koser 1999) Nevertheless, there remains untapped potential in return programs because they can offer precarious residents escape routes out of exploitative situations while satisfying the desire of states to reduce the number of unwanted residents on their territory.

A third and final reform is to open *up avenues precarious residents to transfer to legal migration status and, ultimately, citizenship*. This reform would go along way to addressing the fact that precarious residence (with its vulnerabilities and indignities) may drag on indefinitely. The case for undertaking this reform emanates both from the need to find ways to avoid the exploitation of precarious residents by unscrupulous employers (and others) and the recognition that states have moral responsibilities to long term residents on their territory according to the principles of subjection and societal membership.

There is nothing new about regularisation. Many countries have had such campaigns in the last few decades including the US, Canada, Bulgaria, France, Italy, Spain, Greece and Portugal (Arango & Jachimowicz, 2005). The effect and successes of such schemes in terms of reducing levels of unlawful migration and creating a new start for border control are highly contested. But these practices have provided observers with a range of practical policy lessons about what features may be essential to successful regularization programmes. It is important, for example, that regularization campaigns are not operated in isolation from other migration control measures. In Spain, for example, the 2004 regularization campaign was accompanied both by "strengthened immigration enforcement mechanisms (border enforcement, workplace inspections, and removals) and "expanded and more flexible legal avenues for economic immigration" (Arango & Jachimowicz, 2005). It is important also that regularization is an ongoing possibility rather than a one time only opportunity. For example, Demetrios Papademetriou (2005) has drawn from wide-ranging knowledge of regularization campaigns to argue that new approaches should incorporate the idea of "earned legalization" whereby migrants

acquire points for meeting certain criteria, such as number of years in the country, have a stable job, paying taxes, not having a criminal record, etc.

An approach liked that of "earned legalization" falls short of addressing all of the moral problems of long term precarious residence identified in stakeholder and subjecthood theories of membership acquisition. It would seem to allow for some long term residents to be excluded from membership even if they had lived in the state for many years (for example, if they had a criminal record or were out of work). They are far stricter than automatic requirement of five years residence advocated by Joseph Carens. Nonetheless, earned citizenship would certainly offer an improvement over recent practices of regularization that have tended to be somewhat arbitrary and one-off affairs. They may well appeal to a skeptical audience of citizens, worried that unlawful activity will be rewarded in regularization campaigns. Importantly, they are a mechanism for (albeit partly) dealing with precarious residence as an ongoing problem created by forces like globalization that are beyond the ability of any state to control.

Conclusion

I have shown in this paper that precarious residence may lead to a range of negative economic and social effects for migrants, their dependents, and the broader societies in which they live. I have suggested furthermore that treating some migrants simply as guests in the state violates their moral rights to membership. Is there anything positive to be said in defence of precarious residence?

It could be argued that limitations on access to rights, citizenship and continued are necessary if richer states are to open their borders to migrants from developing countries. If states are not permitted to place restrictions on the rights of these groups entering, they will simply close their borders further and to operate measures to prevent arrivals. A precarious status in society might thus be seen as part of a trade off for entrance and access to protection or (legal or illegal) work. This trade-off is clearest perhaps with guestworker migrants in the UAE. Why would these migrants continue to enter the UAE unless their present (or future) economic condition was improved by the work on offer (cf Martin 2008; Ruhs 2004)? The benefits of precarious residence are also evident in the other cases we considered: a life on the margins in the UK may

be undesirable but it's better than fearing for one's life in Iraq. Life as an undocumented person in the US may be hard, but it offers the opportunity of better wages than in Mexico.

There are limitations to this trade-off argument. As I've shown, precarious residents often find themselves facing forms of exploitation and abuse they are unlikely to have anticipated before they left their country of origin, leaving them worse off—economically, socially or psychologically—as a result of their experience. It needs to be noted also that some of the costs of precarious residence are felt not just by the migrants themselves but also by the broader societies in which they reside. When exploitation in various forms flourishes, medical conditions go unchecked, and long term residents are excluded from political recognition, it is folly to believe that citizens can be insulated from the social consequences.

There is, however, more than a grain of truth in the trade-off argument. What makes precarious residence a reasonable choice for many migrants is the appalling conditions on offer in the developing countries in terms of economic opportunities or rights protection from which they originate. If one wants to help these migrants one needs policies and practices that address these conditions. These policies and practices need, however, to be complemented by serious steps to make the experience of migrants less precarious, less exploitative and less dangerous.

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