

The Political Economy of Immigrant Time: Rights, Citizenship, and Temporariness in the Post-1965 Era

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In politics, temporal measurements are nearly ubiquitous. Youths must wait 18 years for the right to vote; prison sentences punish people in quantities of time; and immigrants who seek to naturalize must undergo a probationary period before becoming citizens. In these and other examples, time serves as a form of political currency that can be exchanged for rights. That is, increments of time are used to represent different values, such as loyalty, civic knowledge, or cultural assimilation; and then these increments are inserted along with other variables into formulae that confer or deny rights. The deployment of time in this way creates a political economy of time in which durations of time are used as currency for states and citizens to transact over rights. This article studies the effects of the political economy of time on immigrants in the United States during the post-1965 era. The article shows that their time has slowly been devalued over the past half century and reveals the potential of actions, such as deferred departure, to create and legitimize a class of permanent semi-citizens.

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For much of U.S. history a formula has been used to confer rights on immigrants. Continuous time-in-residence plus good moral character and civic knowledge equals citizenship. This naturalization formula is replicated in many liberal democratic countries. Yet, for an increasing number of non-citizens in the United States and elsewhere this formula does not apply. The time-in-residence of those registered with deferred departure, of guestworkers, of people with Temporary

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Protected Status (TPS), of undocumented workers, and of others is politically valueless. No matter how long they reside in the country, and no matter how much social or political capital they create and invest, they will not accrue the rights that immigrants and permanent residents enjoy. If the time of a subset of workers in a factory were devalued in this way, we might charge their employer with selective wage theft. Political scientists need an analogous framework for speaking of long-time non-citizens who cannot accrue rights.

Until the 1940s, even virulently anti-immigrant social science studies and policy-making discussions evinced a vocal commitment to the idea that immigrants willing to stay in the United States and naturalize were desirable (particularly compared with those who had no intention of staying and becoming citizens). However, since the introduction of the nation's first official guestworker programs in the 1940s, immigrants increasingly have been permitted to remain in the country for extended periods of time, contingent on their understanding that they cannot seek to remain permanently and naturalize. Aspiring to hold U.S. citizenship is now regarded with suspicion, and an infrastructure to prevent immigrants from either staying permanently or naturalizing has been erected. The trend toward temporary statuses has become so pronounced that immigration scholars now refer to a two-track regime, involving separate permanent and temporary immigration systems.¹ Yet, compared with such topics as family reunification, the theme of temporariness has received relatively little systematic attention.²

To place the significance of the new U.S. temporary immigration system in context, I first elaborate the idea of a political economy of time. I then trace the progression of legislation since the 1940s that devalues immigrants' political time. I conclude with proposals about ways to revalue their time.

The Political Economy of Time

While Benjamin Franklin popularized the aphorism that "time is money,"³ it is equally true that time is power. It is through expanses of measured time that the situated experiences, attachments, and traits of democratic citizens first develop. Durations of time are used to legitimize electoral timing and consent,⁴ to measure when someone is eligible for the vote or for retirement pensions, and to replace

1. Jeanne Batalova, *Skilled Immigrant and Native Workers in the United States: The Economic Competition Debate and Beyond* (El Paso, TX: LFB Scholarly Publishing, 2006).

2. Joseph Carens, *Immigrants and the Right to Stay* (Boston: Boston Review Books, 2010); Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983).

3. George Fisher, *The American Instructor: Or Young Man's Best Companion* (Philadelphia: B. Franklin and D. Hall, 1748), 375–67. Available online at: <http://founders.archives.gov/documents/Franklin/01-03-02-0130>, last accessed on June 1, 2015.

4. Dennis F. Thompson, "Election Time: Normative Implications of Temporal Properties of the Electoral Process in the United States," *American Political Science Review* 98 (2004): 51–63.

those elaborate forms of execution that once dominated systems of punishment.⁵ Most relevant to the present discussion are temporal formulae that confer rights on non-citizens. For many would-be Americans, five years of continuous presence is the most demanding requirement of naturalization, but the requirement is also widely understood to represent something that is central to citizenliness. The formula can be adjusted to value actions that we regard as demonstrating citizenliness, such as marrying a U.S. citizen or serving in the U.S. military. To understand what the temporary immigration system says about American views of rights and citizenship, we need to understand why time has become politically valued.

We can more readily grasp the transactional function of time in politics if we recognize that political time is analogous to time's function in a labor economy. With respect to labor, Barbara Adam writes, "... time is the decontextualized asituational abstract exchange value that allows work to be translated into money."⁶ Work itself could be (and sometimes is) measured in various ways: effort, output, profit, and so forth.

However, measuring work in units of time, often with uniform start and stop times as well as regularized quantities (for instance, the 8-hour day), mediates between the uniformity required by efficient capitalist production and the less regularized lived experience of workers. It would be hard to objectively assess effort or even output and profit in many instances of work. It is relatively simple, however, to measure the number of hours a person works and to describe the amount of work they have done through those durations of time.

Akin to the case of measurement and remuneration of work in the labor market, liberal democratic states translate abstract attributes, actions, and relationships into tangible terms in order to determine who is entitled to which rights. Democratic states must assess loyalty, civic bonds, maturity, the severity of criminal violations, and so on, in a manner that does not appear to undermine the states' commitment to the equal treatment of all persons.⁷ But to persuasively claim to be egalitarian generally requires applying the same standard to everyone. This is difficult because various standards exist for deciding what qualities entitle someone to rights, and, invariably, people will be differently qualified to meet those standards. The diversity of standards and qualifications makes it difficult to objectively create and apply uniform rules about who gets which rights. This poses a profound challenge to any large, diverse liberal democratic nation-state.

5. Norval Morris and David J. Rothman, *The Oxford History of the Prison* (Oxford and New York: Oxford University Press, 1997).

6. Barbara Adam, *Time* (Cambridge: Polity Press, 2004), 28.

7. Robert Dahl explores this dilemma in "The Problem of Inclusion," in *Democracy and Its Critics* (New Haven: Yale University Press, 1989): ch. 9. His formulation of the challenge poses a contingent principle of membership against a categorical principle of membership.

This challenge is often met through a political economy of time in which measured quantities of time function as a currency that allows states to transact with individuals over rights. Societies across the globe exhibit a common reliance on valuations of time in metaphors that ground systems of communication.⁸ Time is particularly a potent means for translating attributes, actions, and relationships into tangible terms within liberal democracies. Temporal measures facilitate commensuration and effectively create “bridges between abstract concepts and empirical realities.”⁹ As it does for work, time connects the abstract standards that entitle people to rights to the concrete reality of political assessment. So, for example, even though the abstract concept of loyalty cannot be objectively measured (people do not even always use the word in the same way), governments can use oaths to demonstrate loyalty. Similarly, periods of time-in-residence are quantifiable measures of loyalty.¹⁰ This quantity of time can then be exchanged for citizenship in the same way that we might exchange units of currency for goods and services. A political economy of time thus emerges in laws that assign precise political value to certain periods of time.

In liberal democratic states, time elegantly translates abstract traits like loyalty and civic virtue into tangible political rights while maintaining the kind of uniformity that is often equated with egalitarianism. Time carries the hallmark virtues of liberalism. It is scientific and rational. It appears to treat all subjects equally, identically, and impartially.¹¹ Everyone exists in time, and time seems to proceed at the same pace for everyone. Time therefore carries far fewer connotations of inequality or unfairness than does property, education, lineage, or other means of translating abstract notions of citizenship into concrete political terms. We do not bequeath time intergenerationally as we do property. Time therefore *seems* more impartial than other ways of conferring and denying rights.

Time, besides being neutral, documentable, and scientifically measurable, is also the medium in which we experience democratic politics, develop as citizens, and forge ties to nations. Historian Lynn Hunt describes the modern notion of time

8. George Lakoff and Mark Johnson, *Metaphors We Live By* (Chicago: University of Chicago Press, 1980): 456–57.

9. Andreas Schedler, “Judgment and Measurement in Political Science,” *Perspectives on Politics* 10 (March 2012): 22.

10. Sanford Levinson, “Constituting Communities through Words that Bind: Reflections on Loyalty Oaths,” *University of Michigan Law Review* 84 (June 1986): 1448, 1459.

11. Rainer Bauböck describes this as the “objective” quality of time in the context of citizenship. Cited in Linda Bosniak, “Citizenship Denationalized,” *Indiana Journal of Global Legal Studies* 7 (2000): 329. Earlier, Walter Benjamin described mechanically measured time as value-free and points to its astonishing malleability. As evidence, he pointed to the post-Revolutionary introduction of a calendar in France that treated January 2nd, 1792, as “Year I” of the Republic. The calendar manipulated time to conform to a set of new measures and markers. See Walter Benjamin, *Illuminations: Essays and Reflections* (New York: Schocken Books, 1968).

as “universal, homogenous, and deep.”¹² Through time, particularistic *attributes*, *actions*, and *relationships* can be translated into rights-bearing statuses because time manages to simultaneously connote impartiality and context-specific meaning.

But impartiality and embeddedness are often at cross purposes. Ascriptive hierarchies endemic in any particular society disrupt even radically egalitarian norms. When this occurs, time ceases to be the great equalizer. Hunt cites Barbara Adam, who points out that while the notions of universality arrived as soon as a temporal frame of reference encompassed all people, “it was and is much harder to stomach the idea that everyone’s time, that literally all experience, has the same ontological weight, as it were.”¹³ Just as there is variation in how people’s labor is compensated, not everyone’s political time actually is treated equally. In 1791, the free white man arriving in the United States had to spend two years qualifying for naturalization. Others who were neither free, nor white, nor male, found their time valued quite differently, if at all.¹⁴

Time thus mediates between the uniformity required by a liberal state and the lived experience of citizens in a particular democracy. It is facially neutral yet embedded in very specific cultural and political contexts. This makes the political economy of time critical in the reconciliation of contradictions between the neutral claims of egalitarian liberalism and the more rooted expectations associated with a *demos*.

In the case of immigration, the probationary period of time between arrival and naturalization can allow an immigrant to demonstrate that she deserves and is capable of citizenship. Time in a territory provides evidence of an immigrant becoming acclimated, investing to acquire and create social capital, learning civic skills, and transforming herself (or being transformed) into a citizen, among other things. Taken as a whole, this culminates in a “lived consent,” through which an individual and a host society agree to that person’s entrance into the *demos*. In theory, requisite development of loyalty and other citizenly traits and skills has taken place.¹⁵ However, this article focuses on persons for whom no amount of time-in-residence will yield an opportunity to accrue rights.

Origins of the U.S. Political Economy of Immigrant Time

For most of U.S. history immigrants have been able to exchange a precise quantity of time—usually 5 years—for the full rights of citizenship. Not only was this

12. Lynn Hunt, *Measuring Time, Making History* (Budapest and New York: Central European University Press, 2008): 25.

13. *Ibid.*, 26.

14. Historian Mae Ngai insightfully refers to the different temporal standards that have been applied to racial minorities. See Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004): 55–64.

15. Elizabeth F. Cohen, “Citizenship and the Law of Time in the United States,” *Duke University Journal of Constitutional Law and Public Policy* 8 (2013): 53–79.

possible, but it was encouraged. Suspicion was cast upon immigrants who spent extended time in the country without demonstrating any intent to naturalize.

During the second half of the twentieth century, these expectations were reversed. The original naturalization formula was joined by a set of formulae in which time-in-residence is not valued in terms of eligibility for citizenship. Multiple visa statuses have been created that limit both the length of time a person can stay in the United States and the extent to which that time is regarded as a mutual investment in future citizenship. This has culminated in a recent executive order that has the potential to place between three and five million undocumented Americans in a legal status that by definition can never yield citizenship. Ultimately, we find ourselves in a climate that denies the value of the time of a sizeable portion of the U.S. population. To understand the causes of this process and to identify possible ways to revalue the time of the nation's "at-will" semi-citizens, it is useful to review how this transition occurred.¹⁶

Both a commitment to becoming a citizen and continuous residence have been regarded as integral requirements for permission to stay in the United States and to naturalize since the nation hammered out its first rules regarding the political status and options of the foreign born in the 1790 Uniform Naturalization Act. According to the Act, the U.S. government would document the intent to stay through a term of residence after which citizenship could be granted. The Congressional debates over the 1790 Naturalization Act offer "originalist" insight into the meaning and import of the probationary period. They suggest the temporal formula that the founders intended to establish for naturalization. The debates were principally over three issues: what qualities citizens ought to have, the appropriate amount of time to judge the someone's qualifications for citizenship, and the fairness of parceling up rights of citizenship (specifically, the right to own land and the franchise) so that different increments of time accorded with degrees of semi-citizenship in a progressive, "step-by-step" fashion rather than in one bundle.¹⁷

Legislators disagreed passionately about which qualities were central to citizenship. Some members of Congress emphasized industry; others loyalty; and still others particular forms of political knowledge. But abstractions like loyalty, valuation, commitment to stay, and civic knowledge or virtue do not naturally lend themselves to scientific measurement. Therefore nearly every legislator proposed time-in-residence as a means to measure the presence of citizenly traits in the nation's immigrants. This was so even in the absence of consensus about which qualities were central to citizenliness. Contemporary policymakers might

16. Elizabeth F. Cohen, *Semi-Citizenship in Democratic Politics* (New York: Cambridge University Press, 2009).

17. George Franklin, *The Legislative History of Naturalization in the United States* (on-line edition: Arno Press, originally published in 1969):1157.

take note: time is more critical to these debates than considerations of immigrants' reasons for immigrating. Then, and for most U.S. history since, someone who came to the country to work temporarily but later decided to remain in the United States would have been neither penalized nor prevented from becoming a citizen. They would be embraced.

However, while early U.S. legislators did not need to agree about the requirements for citizenship in order to choose a probationary period as a measure of citizenliness, they did need to agree about whose time would be considered worthy of citizenship. Unsurprisingly, the legislators never addressed the question of whether excluding Native Americans and African Americans contradicted claims that residency periods demonstrated someone's fitness for citizenship. Women, indigenous persons, and African Americans were not considered qualified for citizenship or for other rights. No evidence of time-in-residence, valor, or political acumen could alter their natural-born state of unfitness. They were not considered the moral equals of citizens or of most immigrants seeking citizenship. As Rogers Smith details, "the comparative moral, material, and political egalitarianism that prevailed at the founding among moderately propertied white men was surrounded by an array of other fixed, ascriptive systems of unequal status . . ."¹⁸

Well after the 1790 law was passed, when the issue of naturalizing blacks born in the United States arose in the discussions leading up to the Missouri Compromise, opponents of naturalizing U.S.-born blacks successfully cited the ineligibility of blacks for naturalization under the 1790 Naturalization Act. To those legislators, if the nation's first legislators had deemed U.S.-born blacks as morally unequal they could not be regarded as anything else.¹⁹ Their political time was treated as valueless. And for much of U.S. history one could easily determine whether someone was considered the moral equal of one citizen by examining the political value assigned to their time.

The Political Economy of Immigrant Time during the Twentieth Century

Waiting, staying, and residing—processes that unfold over time—were viewed for a long time as integral preludes to naturalization. Even though the landscape of immigration and its regulation has changed dramatically since the nation's founding, the formula for naturalization has remained basically the same. This has even been true for those groups who were deemed undesirable immigrants,

18. Rogers M. Smith, "Beyond Tocqueville, Myrdal, and Hartz: The Multiple Traditions in America," *American Political Science Review* 3 (September 1993): 549.

19. Rogers M. Smith, *Civil Ideals* (New Haven: Yale University Press, 1997), 176.

including many European immigrants who were considered as belonging to genetically inferior races. These groups have traditionally been treated with less suspicion if they demonstrated and fulfilled their intent to stay. This was made evident during the passage of the virulently racist 1924 National Origins Quota Act. The Act's supporters sought to measure the desirability of different immigrant nationalities through such variables as rates of naturalization.²⁰ When offered the chance in 1920 to pass legislation that severely restricted the immigration of disfavored nationalities but exempted temporary visitors, Congress rejected the bill. The idea of temporarily admitting people who refused to settle permanently ran against the grain of U.S. citizenship traditions. Congress instead enacted a bill that drastically reduced immigration from particular nations yet gave preference to close relatives of citizens and "intentioners," the appellation for legal aliens who had formally indicated that they planned to naturalize.²¹ After the passage of the 1924 bill, immigration restrictionists approvingly noted that it had increased the number of immigrants who chose to remain permanently in the United States.²² Subsequent legislation included provisions to entirely prohibit the legal immigration of anyone not eligible to naturalize.²³

Even to scientific racists of the early twentieth century, an explicit intent to stay and become a citizen was sufficient evidence to recommend a member of an otherwise undesired ethnic group who was living in the United States. But as the 1924 restrictions were being debated, there were signs that change was afoot. Although earlier laws had permitted very limited admissions of temporary workers, by the 1920s, Filipino and other non-white workers were doing a large proportion of seasonal agricultural work in the Northwest.²⁴ Even though the prevailing view at the time was that the United States should admit people who wished to stay, agribusinesses feared that the 1924 restrictions would reduce the availability of agricultural workers.

Arguing that it would be easy to deport unwanted immigrants from a geographically contiguous country such as Mexico or Canada, growers lobbied Congress to preserve at least one source of cheap labor.²⁵ Congress agreed and kept Mexico off the list of countries for which quotas were enacted.²⁶ Many have cited this decision as the trigger for the trickle of undocumented immigration from Mexico that gradually increased. The initially high return rate of Mexican nationals was partially an artifact of ties to their homeland and of an unfriendly reception in

20. Ngai, *Impossible Subjects*, 33.

21. Aristide Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (New York: Russell Sage Foundation, and Cambridge: Harvard University Press, 2006), 253.

22. *Ibid.*, 254.

23. *Ibid.*, 258. This was intended to suppress the immigration of Korean and Japanese persons.

24. Ngai, *Impossible Subjects*, 106.

25. Zolberg, *A Nation by Design*, 257–58.

26. *Ibid.*, 270.

the United States. This outflow was later augmented by mass repatriations in the Southwest and the Midwest during the early 1930s.²⁷ While unwilling to pass a law forbidding the entry of Mexican migrants, the government was equally hostile to letting them stay. Nonetheless, some Mexicans living in the United States took advantage of the “long-standing provision of the law providing the possibility of legalization after seven years’ well-behaved residence, or by marrying a U.S. citizen or legal resident.”²⁸ And in 1929 Congress created the “registry date,” which allowed anyone who had been present continuously since 1921 to adjust his status. Immigrants could still participate in the political economy of time to acquire citizenship. That, however, would soon change.

Mass repatriations took a toll on the agricultural workforce. In 1936, 1937, and 1941, growers pressed Congress and the Department of Labor to declare an emergency labor situation, which would permit the recruitment of temporary contract workers.²⁹ The growers prevailed in 1942. Scholars of immigration policy history note that “the decision to use foreign contract labor was a momentous break with past policy and practice.”³⁰ Under the Bracero Program, Mexican workers were recruited to perform seasonal agricultural labor. Unlike indentured servants or non-European workers who would never become eligible to naturalize, Bracero workers were recruited on the condition that their employers take responsibility for returning them to Mexico after a very short period of labor. The brevity of the workers’ residence distinguished the Bracero program from previous labor recruitments. For example, Chinese workers in the nineteenth century were never welcomed into citizenship, even though the terms of their entry allowed them to stay in the United States. This arrangement was not generous, nor were its terms always honored after the passage of Chinese Exclusion. Still, the Bracero contracts were different. The contracts were very short, and the mechanisms for returning the workers to Mexico were clearly spelled out ahead of time, along with the implication that employers would be penalized if the conditions of return were violated. The United States needed the labor of the Braceros, but they were not welcome to stay, let alone to become citizens.

In 1943, only one year after the Bracero Program was created, Jamaican workers were recruited to work on sugar plantations under a program called the H2 visa program. Even more than the Bracero Program, the H2 recruitment program signaled the end of the longstanding U.S. consensus that immigrants who wanted to stay in the country were desirable and that naturalization should be encouraged. The conditions of the sugar workers were at least as abysmal as those of the Bracero workers. However, unlike the Bracero Program, which ended in

27. Ngai, *Impossible Subjects*, 72.

28. Zolberg, *A Nation by Design*, 310–11.

29. Ngai, *Impossible Subjects*, 137.

30. *Ibid.*

1964 and has been the subject of strongly worded public apologies, H2 visas became permanently incorporated into immigration law. In 1950, a Senate Subcommittee on Immigration recommended permanent legislation that would permit agricultural workers to be admitted on a temporary basis.³¹ H2 visas still exist, and the two existing H2 programs, H2-A and H2-B, continue to allow the recruitment of guestworkers from certain countries.

A similar process unfolded for non-worker immigration. In 1961 the Fulbright-Hayes program requested the initiation of the J-1 visa for visitors engaged in study and cultural exchange. Not long afterwards, F-1 student visas were created. These programs ensured that people born outside the United States but educated within its borders would not automatically be allowed to stay once they completed their education.

During the first third of the twentieth century, most immigrants who were willing to reside continuously in the United States were eventually allowed to naturalize. During the second third of the twentieth century, a large system of temporary immigration was erected. This replicated what had already happened in many European countries, where post-war reconstruction spurred massive recruitment of short-term workers.³² Legal avenues for temporary immigration proliferated, and temporary immigration became a permanent and pervasive part of U.S. immigration law and the U.S. economy.

Meanwhile, undocumented immigration ticked upward, creating a second precarious pathway for temporariness that paralleled the temporary visa pathway. Connecting most of these temporary statuses was the need within the U.S. labor market for people willing to accept poorly paid and otherwise undesirable work. Once disposable, cheap labor became available, the country and its economy became hooked.

Toward the end of the Carter presidency, unease about undocumented immigration became widespread and a group was assembled to study the problem and identify potential solutions. Between 1981 and 1986, Congress debated a bill that would later be known as the Immigration Reform and Control Act (IRCA) of 1986. Among its provisions, the IRCA offered a complex path to legalization for persons who had been living and working in the United States since 1982.³³ Also legalized were seasonal workers who had been employed for at least three months between 1985 and 1986.³⁴ In addition, in 1986 Congress changed the registry date to 1972, which allowed anyone who had been present without documentation

31. Zolberg, *A Nation by Design*, 309.

32. James Hollifield, *Immigrants, Markets, and States* (Cambridge: Harvard University Press, 1992).

33. <http://www.gpo.gov/fdsys/pkg/STATUTE-100/pdf/STATUTE-100-Pg3445.pdf>, accessed on June 1, 2015.

34. *Ibid.*

since 1972 to adjust his or her status.³⁵ That was the last time Congress updated the registry date, rendering it useless for most immigrants in the U.S. today.

At first glance, the IRCA seems to reaffirm the nation's commitment to its old temporal formula. It permitted people with short-term visas and undocumented workers to regularize. But there is an important difference between the temporal formulae in the IRCA and the temporal formula used earlier in the century. Whereas seven years in-residence had once sufficed for undocumented workers to naturalize, the 1986 formulae required individuals to prove that they had been employed in unskilled occupations for precise periods of time. The 1965 Immigration and Nationality Act had introduced the idea of explicitly prioritizing labor needs in national immigration legislation. After 1965, certain amounts and types of work, measured in precise quantities of time, had become a prerequisite for regularizing one's status. Continuous residence and good moral character were no longer enough to qualify temporary immigrants, documented or undocumented, for rights and naturalization. Now, periods of continuous labor were being invoked. Also gone were the days when an immigrant's desire to reside permanently in the United States was welcomed.

The IRCA was thus a transitional moment in American immigration history. It took the connection between work and immigration that the 1965 INA had enshrined, and made naturalization contingent upon labor rather than presence alone. But, the IRCA did not provide a permanent means to adjust the status of long-term resident workers. After the law expired, the United States once again claimed the time and the labor of its undocumented workers but declined to compensate them politically for either.

The passage of the IRCA ushered in the era of mass "at-will" residency, when the avenues for granting short-term entry into the United States proliferated. The ranks of people living temporarily in the country, dependent on the discretion of employers and government officials, swelled. Two such statuses are worth particular mention: Deferred Enforced Departure (DED) and TPS. The 1965 INA granted the Attorney General the power to defer voluntary departure for aliens whose deportation would cause them extreme hardship. DED was initiated in 1975, and became salient in the 1980s as the Attorney General sought to shelter the throngs of Central American asylees who were being displaced by violence in their home countries. In 1990, TPS partially replaced DED and offered short-term renewable asylum to people fleeing designated natural disasters and specific conflicts.³⁶ Currently, America houses 300,000 persons through

35. <https://secure.ssa.gov/poms.nsf/lnx/0500501440>, accessed on June 1, 2015.

36. Ruth Ellen Wasem and Karma Ester, "Temporary Protected Status: Current Immigration Policy Issues," CRS Report for Congress, 2008.

TPS or DED.³⁷ Even those individuals who are granted full asylum cannot count the time they have spent in the United States toward their naturalization probationary period.

In 1990, the legacy of the short-term work visa program that originally brought Caribbean sugar workers came roaring into the present. Sizeable quotas for temporary guestworkers were set, and new visas for skilled short-term workers, known as H1-B, were created. Between 2001 and 2010, the number of persons admitted to the United States each year to perform temporary labor jumped from approximately 1.5 million to nearly 3 million.³⁸ Many entered with either H1-B or H2-A visas and brought family members with them. The H1-B visa allows a person to reside for a maximum of six years, while the H2-A caps an alien's total stay at three years. However, each visa permits its bearer to reenter the country after her or his maximum stay has been reached, as long as the visa bearer leaves for at least six months (in the case of H-2 A) or a year (in the case of H-1B) or qualifies for a different type of visa. NAFTA professional workers can receive indefinite extensions of their one-year visas.

Contemporary Crisis: Equality Compromised?

We now stand at a crossroads. In June 2012, President Obama issued an executive action—Deferred Action for Childhood Arrivals (DACA)—that deferred the deportation of students or high school graduates (and GEDs) who arrived before they were 16 and were not yet older than 31, and who had lived here continuously since 2007.³⁹ It is an elaborate but important temporal formula that intended to grant just under 600,000 immigrants relief from deportation. Then, in November 2014, President Obama issued an executive action to defer the deportation of undocumented Americans who are either parents of U.S. citizens or Legal Permanent Residents and who have been in the United States for at least five years. Obama also expanded DACA to include anyone who arrived by 2010, regardless age.⁴⁰ It is estimated that between four and five million Americans could be affected by this order.⁴¹

37. <http://www.fas.org/sgp/crs/homesec/RS20844.pdf>, accessed on June 1, 2015. Many of these people have been in the United States for extended periods of time. For example, a grant to a group of Salvadorans was initiated in 2001 and has received 9 extensions since then. <http://www.gpo.gov/fdsys/pkg/FR-2015-01-07/html/2015-00031.htm>, accessed on June 1, 2015. Persons fleeing Liberia were under temporary protection in the United States from 1991 through 2007, and have remained under a DED since 2007, <http://www.whitehouse.gov/the-press-office/presidential-memorandum-deferred-enforced-departure-liberians>, accessed on June 1, 2015.

38. http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2010/ois_yb_2010.pdf, accessed on June 1, 2015.

39. <http://www.dhs.gov/blog/2012/08/15/deferred-action-childhood-arrivals-who-can-be-considered>, accessed on June 1, 2015.

40. <https://www.whitehouse.gov/the-press-office/2014/11/20/fact-sheet-immigration-accountability-executive-action>, accessed on June 1, 2015.

41. <http://jmhs.cmsny.org/index.php/jmhs/article/view/38>, accessed on June 1, 2015; <http://www.pewresearch.org/fact-tank/2014/11/21/how-obamas-executive-action-will-impact-immigrants-by-birth-country/>, accessed on June 1, 2015.

For many reasons it is impossible to predict what will happen to recipients of deferred departure after the actions expire. Equally vexing is the matter of what the actions say about the state of democracy more generally. Like TPS, DED, H1-A, H1-B, H2-A, and H2-B visas, Obama's actions expand and entrench a temporary immigration system, and give highly visible legal sanction to the devaluation of immigrant time within the U.S. democracy. Essentially, the proliferation of multiple temporary residency statuses has created a large population of at-will semi-citizens who remain in the country at the pleasure of a discretionary decision-making apparatus.

The U.S. Census estimates that the undocumented population is 11.5 million persons, which is larger than the population of all but 7 states.⁴² Fifty percent of households headed by undocumented workers pay taxes already.⁴³ All of those individuals are counted in their states-of-residence for the purpose of calculating apportionment in the House of Representatives even though they cannot vote and are therefore not represented. If we add the population of guestworkers, we arrive at a conservative total of 31 million temporary residents who pay taxes without receiving representation or myriad other legal and social protections of citizens.

To shift a portion of the undocumented population into a temporary legal status does nothing to address the larger normative issue of hosting such a large disenfranchised population. If anything, this action lends a veneer of legitimacy to the practice of maintaining a large population of perpetual semi-citizens. In light of the meaning that time has been accorded by those charged with determining policies of citizenship and naturalization, the normative premise for this disparity is troubling. It suggests that some people are not deserving or capable of citizenship. They work and live in the country in observable, documentable ways that are indistinguishable from their peers who will qualify to naturalize. Because time and work and other variables are proxies for demonstrating people's capacities for citizenship, the denial of citizenship expresses the belief that these individuals are *incapable* of citizenship.

Time is supposed to apply to all persons in an identical fashion. It is preferable to measuring fitness for citizenship in terms of property or using subjective judgments of political and social incorporation because time ostensibly allows all persons an equal chance to demonstrate their capacity for citizenship. In light of this valuation of time, to treat someone's time as valueless is tantamount to denying their capacity for citizenship, and hence their moral equality. Immigration is an ascribed status in much the same way as is one's racial classification. The state's refusal to grant credit to the time spent by temporary workers and other non-immigrant foreign-born persons in the U.S. is analogous to both racial

42. http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf, accessed on June 1, 2015.

43. <http://www.immigrationpolicy.org/just-facts/unauthorized-immigrants-pay-taxes-too>, accessed on June 1, 2015.

and gender-based citizenship distinctions whose eradication is celebrated. The suggestion that equally situated persons are differentially capable of citizenship conjures the kind of arguments that were once used to claim that women and racial minorities were incapable of consent, patriotism, or other means of entering the *demos*.

A political economy of time creates a widely accepted process for assessing a person's capability to perform the actions associated with the office of citizenship. The analogy to the use of time in translating labor into monetary value is helpful here. Injustice is evident when the labor of one person is devalued in comparison with the identical labor of another—for example, when men are paid more than women for identical work. In effect, the time of some people is devalued to reflect their diminished social and political status in comparison with others whose normative status has been defined more approvingly.⁴⁴ Likewise, injustice is evident when the political value of time for some people is ignored. If an economic system predicated on extracting free labor from people is considered economically exploitive, then a political system that fails to acknowledge the value of the time that it extracts from people is politically exploitive.

Conclusion

If naturalization is the solemnization of vows between an individual and the country for which she has chosen to leave her homeland, then the political status of millions of persons currently living in the United States resembles a common law marriage that will never receive legal recognition. These are relationships that have no legal standing for the purposes of guaranteeing future residence, rights, or permission to naturalize. Temporary immigrants live from one short temporal increment to another, often for cumulative periods of time that total more years than a legal permanent resident must wait to naturalize. Throughout this experience, they develop the very ties to the United States that were once considered the hallmark of desirable candidates for citizenship. They work, raise children, pay taxes, and reside here continuously with an evident desire to remain and naturalize. Yet this social and political capital is treated as worthless.

The story of immigration in the twentieth century is often relayed as a move from racist and racialized restrictions on immigration and toward a system that privileges family reunification and work. But what also has developed is an exploitive political economy of immigrant time that devalues the time of many immigrant groups in the United States. The devaluation of anyone's temporal

44. Cyril Ghosh, for example, discusses how labor is usually seen as virtuous unless it is performed by specific classes of individuals, such as unauthorized/undocumented migrants. See Ghosh, *The Politics of the American Dream: Democratic Inclusion in Contemporary American Political Culture* (New York: Palgrave Macmillan, 2013):160–64.

currency is cause for suspicion. In the case of immigration to the United States, additional concerns arise because the devaluation of immigrant time has largely occurred to immigrants of color from only a few countries and ethnic groups.

Still, if one considers the elasticity inherent in temporal transactions there may be cause for optimism. Because time attaches to so many meanings for different people and political actors, there are ways in which immigrant time could be revalued. The early American legislators, who crafted the country's first naturalization laws, believed that the immigrant probationary period represented distinct, sometimes even contradictory values, processes, relationships, and traits. Contemporary legislators who are serious about immigration reform could leverage the elasticity of time's meanings to forge a compromise among disparate parties. While some parties seek to punish the undocumented, others wish to create pathways to citizenship. These conflicts in the past have been negotiated through the political economy of time. The successful dismantling of the current temporary immigration system will require entering into such negotiations again.

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