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**A Made in Canada Strategy for Non-citizen Voting**

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## **A Made in Canada Strategy for Non-citizen Voting**

### **Abstract:**

Integration of new immigrants into their new democratic homes is a major issue in a now globalised world. The degree to which non-citizens integrate, or not, has become an issue of concern for democratic countries. To enhance integration, some countries have adopted the strategy of giving voting rights to non-citizens. This research paper will examine whether Canada could or should adopt a similar strategy of extending voting rights to non-citizens at different electoral levels. Since Canada continues to accept high numbers of immigrants, an exploration of extending voting rights to non-citizens who are residing in this country could be useful. The paper discusses the arguments for and against, as well as examines the outcomes in other countries which have extended voting rights to non-citizens.

### **Introduction:**

Who should have the right to vote in a polity? Some would say that everyone who is subject to the rules of the governing structure should have the right to vote. But who is “everyone”? Who should be excluded from voting? This paper discusses the exclusion of non-citizens from voting rights in Canada.

This paper examines the issue of non-citizen voting in Canada by looking at current trends in voting participation, the experience of other countries who have non-citizen voting, the legality of giving such rights to non-citizens and the relevance of different policies towards citizenship. Non-citizen voting could be argued to be an important element in promoting civic integration. My purpose is to present an analysis of the question in the current Canadian context while also contributing to the literature on non-citizens voting. By doing the analysis to

determine whether Canada can or should extend voting rights to non-citizens, I hope to foster discourse on the issue of alien suffrage in Canada and in other countries.

After identifying definitional issues and detailing the methodology that I have adopted (Part I), I will describe David Earnest's categorization between "nationalist" and "internationalist" nations with respect to the issue of voting rights for non-citizens (Part II)<sup>1</sup>. I will then describe the current Canadian thinking as a "nationalist" country (Part III). In Parts IV and V I discuss the major arguments on both sides: (Part IV) why Canada could become an internationalist state, including both the legal and the policy arguments in favour of the expansion of voting rights to non-citizens, to then (Part V) the counter-arguments of why Canada should remain a nationalist state. I evaluate the arguments that the expansion of voting rights to non-citizens is unnecessary to their ultimate integration, and that it could undermine the notion of citizenship. I then complete a comparative analysis with countries that have extended the right to vote to non-citizens (Part VI) to conclude that on balance the expansion of the right to vote to non-citizens could be a positive development for Canada (Part VII).

## **Part I – Definitions and Methodology:**

This section explains the different parts of the methodology used in this research; I start by setting out definitions of basic concepts, including integration and non-citizen. The second part will focus on the methodology, the analysis strategy and the use of triangulation of qualitative studies.

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<sup>1</sup> Earnest, David, *Old Nations, New Voters: Nationalism, Transnationalism, and Democracy in the Era of Global Migration*, Suny Press, 2008, P.14

## ***Definitions***

“Alien Suffrage” is the right to vote accorded to resident immigrants in a country. I will use the term “non-citizen voting”<sup>2</sup>. Non-citizen voting encompasses people who are not citizens and who reside in a different country other than their country of citizenship or people who are not citizens of any country.

The “right to vote” and “suffrage” are equivalent terms, in that it is the right to vote in public political elections. We will be talking about the strict active suffrage which is the act of voting. This paper does not look at passive suffrage, which means the right to run for the elections.

In this paper, we will use integration in the following sense: providing opportunities for immigrants to become familiar with the host country’s language, basic values and customs. The term also infers that immigrants exhibit a determination to become part of society. Integration is a two way process of mutual accommodation by immigrants and residents of the host country<sup>3</sup>. Integration policies are about the successful incorporation of immigrants in the host country institutions and in society at large. I will emphasize the participation of immigrants in such civic institutions as public elections at different levels of government and active citizenship<sup>4</sup> other than in public elections.

Enhancing immigrant integration also means promoting active citizenship. Thus, we suggest that civic engagement in associations and political parties can be a significant form of

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<sup>2</sup> <http://www.encyclopedia.com/politics/encyclopedias-almanacs-transcripts-and-maps/alien-suffrage>

<sup>3</sup> Ahokas, Laura, Promoting immigrants’ democratic participation and integration, Epace Theme Publication, 2010 P.10

<sup>4</sup>Ahokas, Laura, Promoting immigrants’ democratic participation and integration, Epace Theme Publication, 2010 P.10

civic integration into the host country's democratic norms. It also includes the electoral participation of immigrants (in central institutions such as parliaments and elections at different levels<sup>5</sup>. However, there are other distinctions and questions about integration that need to be understood in order to properly determine if non-citizen voting would truly work for the non-citizen and for Canadian democracy. A question that can be asked is whether immigrants or non-citizens behave like citizens? Will non-citizen voting distort citizen preferences? Another aspect of integration that needs to be considered is that integration does not happen overnight<sup>6</sup>. It is a slow process that may, in certain cases, take multiple generations<sup>7</sup>. The fact that integration can take considerable time makes it hard to measure results. Also, it makes it difficult to design and maintain programs that can be pursued effectively in a way that demonstrably shows results.

### ***Methodology -Qualitative triangulation:***

My research strategy was to triangulate multiple sources of data of different kinds in order to grasp a larger picture of the issue of according voting rights to non-citizens and how that can work in the Canadian context. Triangulation of multiple sources of data is most appropriate because data on non-citizen voting is scarce. This paper should enhance the available resources on non-citizen voting by adding a triangulation of information about the experience of other countries and its possible application to the Canadian context. This section will explain my methodology in a number of ways by detailing major sources of information, its timeframe and

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<sup>5</sup> Kees Groenendijk, Local Voting Rights for Non-Nationals in Europe: What We Know and What We Need to Learn, University of Nijmegen, 2008, P.12

<sup>6</sup> Ahokas, Laura, Promoting immigrants' democratic participation and integration, Epace Theme Publication, 2010 P.8

<sup>7</sup>Ahokas, Laura, Promoting immigrants' democratic participation and integration, Epace Theme Publication, 2010 P.8

what I mean by the use of triangulation. This is initially approached via the use of multiple sources of data that range from literature reviews, policy documents, political debates and some newspaper articles.

### ***Sources of information:***

This analysis will focus on the literature review to the extent that there are sources on this issue. . There is a lack of available data and as a consequence, I will triangulate data that comes from different sources. The main secondary sources for this paper are studies by Ravi Pendakur and Pieter Bevelander that provided a study that looks at the impact of citizenship on probability of voting, immigrants, and non-citizen voting patterns, and a major study on Toronto for a more inclusive society, a constitutional and legal perspective. The use of newspaper articles in this analysis will include the articles on the process by which the City of Toronto came to pass the motion to ask the province of Ontario to grant non-citizens the right to vote in municipal elections. Different council members envisioned different visions of citizenship and argued why or why not non-citizens should be allowed the vote.

### ***Timeframe:***

The timeframe of most of these studies is within the past 20 years. The phenomenon of non-citizen voting is indeed older than that but it has resurfaced more recently in connection with immigration trends, participation rates, and integration trends in both Canada and other countries.

### ***Triangulation:***

Triangulation is the technique that I will use to analyse my sources and data in order to explore the phenomenon of non-citizen voting. Triangulation is a technique that validates data

via cross verification from two or more sources. Triangulation will permit me to make links and explore the issue further by analysing different examples, theories and arguments to better evaluate the positive and negative aspects of permitting non-citizen voting.

### ***Analysis strategy:***

For this qualitative analysis, all documents were used according to their association to non-citizen voting rights and linkages to ways of dealing with migrations and citizenship in a globalized era. The information was treated to identify the normative reasons and practical outcomes on both sides of the argument. The different perspectives on this subject range from legal, normative and comparative. They were all looked at in relation to the concept of non-citizen voting.

One of the main arguments in support of according the right to vote to non-citizens is, allegedly, the improvement of integration opportunities for immigrants and permanent residents living in Canada<sup>9</sup>. It is argued that active civic participation should start earlier to facilitate the integration process. This could be important to Canada because immigration plays an ever larger role in the future of Canada. As a settlement country, Canada enjoys massive intakes of different peoples from different cultures. Integration strategies coalesce with decisions on multicultural policy and sense of identity. How to properly manage the civic potential of non-citizen residents is an issue of growing concern, especially in the larger metropolitan cities, where they are in larger numbers. When there are large numbers of people residing in a space without a voice in the political process, there are risks to ignoring them.

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<sup>8</sup> <http://www.write.com/writing-guides/research-writing/research-process/data-triangulation-how-the-triangulation-of-data-strengthens-your-research/>

<sup>9</sup>The Municipal Franchise and Social Inclusion in Toronto: Policy and Practice: Myer Siemiatycki, 2006, P.11

The counter-arguments include the fear that non-citizen voting would undermine the importance of citizenship. Also, those non-citizens would not likely exercise their right to vote, so that giving them the right to vote is not a very useful tool of integration. We begin by looking at this debate at the international level.

## **Part II – Transnationalist v. Nationalist Countries**

Many countries extend the right to vote to non-citizens. Some do so in order to share their vote with nationals of the same culture, for example giving the right to vote to British citizens in Commonwealth countries, or to Portuguese immigrants in Brazil<sup>10</sup>. Other countries extend basic rights given to residents as a tool of integration to. Integration has been a key objective of nation states in the last century. The pace of migration in all democracies has increased both in Europe and in the Americas. The EU extended the right of third country national residents to vote in municipal elections to facilitate the civic integration of those nationals living in member states<sup>11</sup>.

David Earnest studied the issue of non-citizen voting in 2003<sup>12</sup>. His initial work offered a categorization (internationalist vs nationalist states) which highlighted the important link between voting rights and the identity of a country. Nationalist countries require a commitment to the idea and identity of the nation before they extend the right to vote, typically by requiring the adoption of citizenship. Others offer voting rights to non-citizens because they see their

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<sup>10</sup> Earnest, David, *Old Nations, New Voters: Nationalism, Transnationalism, and Democracy in the Era of Global Migration*, Suny Press, 2008, P.27

<sup>11</sup> *The Municipal Franchise and Social Inclusion in Toronto: Policy and Practice*: Myer Siemiatycki, 2006, p.10

<sup>12</sup> Earnest, David, "Noncitizen Voting Rights: A Survey of an Emerging ..." N.p., n.d. Web. 13 Mar. 2017.

country as an internationalist state, a state that welcomes immigrants: “the identity itself is linked to its international persona as a host state”<sup>13</sup>.

David Earnest analyzed all countries that had adopted some form of non-citizen suffrage. The study showed that 22 states offer at least some form of voting rights for non-citizens. He found that voting rights for non-citizens were often couched in discriminatory language: for example, the United Kingdom permits citizens of Commonwealth nations to vote in national elections, but is non-discriminatory at the local level, where all non-citizens can vote. Ireland also provides non-citizen voting at the local level<sup>14</sup>. Earnest suggests that the objective of extending voting is to promote the political socialization of non-citizens.

Ernest also looks at the status of non-citizen voting rights on a comparative basis at the international level... Some countries have permitted alien suffrage, and then rescinded it. He did a survey of all the countries that allowed forms of alien suffrage, at different points in time. He found twenty-six countries that historically had had non-citizens voting rights. It is important to understand the distinctions of the levels of alien suffrage that were allowed. He establishes distinctions on the basis of different election levels; local, regional and national. He also divided it on the basis of discriminatory and non-discriminatory regimes, where some nations discriminated based on nationality, as in the example of the commonwealth countries.

Ernest identifies two different schools of thought about the state’s political incorporation of its resident aliens: the school of nationalism and that of transnationalism. The nationalists emphasize that the nation is the sole driver of the state’s organization of its polity and its

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<sup>13</sup>C. Earnest, David, *Old Nations, New Voters: Nationalism, Transnationalism, and Democracy in the Era of Global Migration*, Suny Press, 2008, P.39

<sup>14</sup>Earnest, David, *Old Nations, New Voters: Nationalism, Transnationalism, and Democracy in the Era of Global Migration*, Suny Press, 2008, P.27

treatment of resident aliens<sup>15</sup>. The historical relationship between the state and the nation are shown via culture, institutions, and practices. In the nationalism school, both collective action and political culture underlies citizenship politics. The political culture derives from the simple conception of citizenship arising from birth (*jus soli*), as in France, or from ancestry or descent (*jus sanguinis*), as in Germany<sup>16</sup>. The relationship between the state and the nation is different in those two examples, as the state and nation each emerged differently in those countries. The state of France came before the nation and in the case of Germany, the nation before the state, thus showing the differing importance attached to cultural variables. These arguments show the importance of ethnic vs political and national vs multinational conceptions of the state. Cultural variables show and reflect the historical path of the nation and state's evolution, and this affects the understanding of the political membership and incorporation of new members.

The transnationalism school, however, states that citizenship policies are a result of transnational and global trends that effectively undermine the state's historical link with the nation<sup>17</sup>. It transforms the politics of citizenship in a way to accommodate their demand for workers and thus creates institutional alternatives to citizenship. The belief in universal personhood is considered and is enshrined in international human rights and institutions that are now the sources of civil protections for citizens and aliens alike. For example, the Universal Declarations of Human Rights, as well as the new concept of Plural nationality that enables

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<sup>15</sup> Earnest, David, *Old Nations, New Voters: Nationalism, Transnationalism, and Democracy in the Era of Global Migration*, Suny Press, 2008, P.48

<sup>16</sup> Earnest, David, *Old Nations, New Voters: Nationalism, Transnationalism, and Democracy in the Era of Global Migration*, Suny Press, 2008, P.49

<sup>17</sup> Earnest, David, *Old Nations, New Voters: Nationalism, Transnationalism, and Democracy in the Era of Global Migration*, Suny Press, 2008, P.50

citizens to hold multiples citizenships. As a consequence, with the appearance of non-governmental organizations (NGO's) resident aliens are able to make economic, social and political claims on the nation state by using international law<sup>18</sup>.

Will Kymlicka is an acknowledged expert in the field of citizenship and he has written extensively about nation-states and their evolving relationship with globalisation. According to him, transnationalism and nationalism are fundamental tensions in how liberal nation states face challenges. The liberal model of citizenship references a package of rights and responsibilities as well as boundaries in national terms<sup>19</sup>. Citizenship has been used to help promote a common sense of national membership and identity, providing a source of national unity, loyalty and a common culture and heritage<sup>20</sup>. Extending citizenship, including social rights, would be seen as nation building, bringing in different classes, races, genders moving towards the common culture of the elites<sup>21</sup>. As such, the old model of citizenship is the combination of a process of nation building to create common culture moving downwards towards different classes of people, and a

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<sup>18</sup> Earnest, David, *Old Nations, New Voters: Nationalism, Transnationalism, and Democracy in the Era of Global Migration*, Suny Press, 2008, P.52

<sup>19</sup>Kymlicka, Will; *Nationalism, Transnationalism and Postnationalism*, Kis, János, and Ronald Dworkin. From liberal values to Democratic transition: essays in honor of János Kis. Budapest: Central European U Press, 2004. Print, P.229

<sup>20</sup>Kymlicka, Will; *Nationalism, Transnationalism and Postnationalism*, Kis, János, and Ronald Dworkin. From liberal values to Democratic transition: essays in honor of János Kis. Budapest: Central European U Press, 2004. Print, P.231

<sup>21</sup>Kymlicka, Will; *Nationalism, Transnationalism and Postnationalism*, Kis, János, and Ronald Dworkin. From liberal values to Democratic transition: essays in honor of János Kis. Budapest: Central European U Press, 2004. Print, P.231

process of liberalisation and expansion of civil, political and social rights<sup>22</sup>. One of the main challenges to this model of citizenship is transnationalism, in particular, immigrant transnationalism<sup>23</sup>. The old citizenship model dictates that those immigrants abandon their previous national identity as it understands nationalities as mutually exclusive. However, due to technology, immigrants can stay connected to their homeland and in many ways become more nationalistic than their counterparts in their homeland. Immigrants are still expected to integrate into their new community. But with the acquisition of dual nationality and the acceptance of diaspora politics, immigrants are as committed as anyone else to the view that politics should remain organised through bounded national political communities, in both their new country and their country of origin<sup>24</sup>. This explains why by in large the nationalism model persists and is resistant to transnationalism. This has implications for the idea of giving political rights to non-citizens that have not substantially bounded themselves to their new nation. It certainly suggests that politics should be bounded at the national level with citizenship. But, the theory does not quarrel with the acquisition of voting rights at the local level. However more studies are needed to fully analyse immigrant preference of voting and at what level.

Both Ernest and Kymlicka confront the real dilemma of articulating meaningful democratic participation for immigrants who arrive in larger and larger numbers to democratic

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<sup>22</sup> Kymlicka, Will; Nationalism, Transnationalism and Postnationalism, Kis, János, and Ronald Dworkin. From liberal values to Democratic transition: essays in honor of János Kis. Budapest: Central European U Press, 2004. Print, P.234

<sup>23</sup> Kymlicka, Will; Nationalism, Transnationalism and Postnationalism, Kis, János, and Ronald Dworkin. From liberal values to Democratic transition: essays in honor of János Kis. Budapest: Central European U Press, 2004. Print, P.249

<sup>24</sup> Kymlicka, Will; Nationalism, Transnationalism and Postnationalism, Kis, János, and Ronald Dworkin. From liberal values to Democratic transition: essays in honor of János Kis. Budapest: Central European U Press, 2004. Print P.252

countries. Earnest's work identifies the interplay between nation formation and the right to vote, while Kymlicka's analysis explains why some immigrants may not support the expansion of the right to vote in their new country because they continue to want to engage in politics in their country of origin. To the extent that nationalities continue to be understood as mutually exclusive, that is, that one can only be loyal to one country at the time, there may be resistance to expanding the right to vote to people holding dual citizenship or participating fully in the politics of another country (diaspora politics). Nevertheless, the democratic deficit of having large numbers of people unable to express their choices while being subject to taxes and legislation remains. I now proceed to analyse how the nationalism – transnationalism debate takes shape in Canada.

### **Part III – Canada as a Nationalist Country**

Non-citizen voting existed in Canada when Canada was a colony of the United Kingdom. Because it was part of the empire, Canada allowed residents who were British citizens (and immigrants to Canada) to vote in elections because they were part of the Commonwealth. However, this has changed over the slow pace of independence for Canada, and its desire to achieve and acquire its own identity<sup>25</sup>. In attempting to forge new conceptions of identity, the past can be rejected to make way for the new identity to take hold. Up until the 1970s, British subjects had the right to vote, but this was reversed with the new Elections Act<sup>26</sup> in 1975. However, even today, Saskatchewan has a provision that allows a person, who was a member of

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<sup>25</sup> <http://www.thecanadianencyclopedia.ca/en/article/canadian-identity/>

<sup>26</sup> The Municipal Franchise and Social Inclusion in Toronto: Policy and Practice: Myer Siemiatycki, 2006, p.11

the electorate before 1971, to vote as a British subject in provincial elections<sup>27</sup>. In most of Canada, one needs to be a Canadian citizen to be eligible to vote in elections. In essence, the process of creating the Canadian citizenship took precedence. But the construction of Canadian citizenship and identity is not finished with independence. It is a continuing and evolving concept where policy makers must adjust and adapt to continue to promote attachment to Canadian civic life and to accommodate future generations of Canadians.

The expansion of voting rights to non-citizens could be argued to confirm and enhance Canada's multicultural policies and their goal to integrate immigrants faster into the country. By giving voting rights, a country provides to people residing in Canada who, up to now, did not have the ability to participate in the process the opportunity to be heard. The argument suggests that without the ability to vote, possibilities to integrate for people who are committed to contributing or are already contributing, lessen. A new policy that gives a chance for people who are residing in Canada for a number of years the ability to vote in municipal, provincial and/or federal elections would enhance the commitment to integration. This would be compatible with the new multicultural national identity of Canada.

In a way, Canada followed its own path to choose the nationalist thesis. Canada as a colony<sup>28</sup> did not have full control over its citizenship and immigration policies. The "nationalist school" explains Canada's preference in accommodating the influx of population that came from Europe. Colonial Canada, the Dominion of Canada and Britain as well wanted a preference for western European populations to not only preserve a cultural idea but also make it much easier to

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<sup>27</sup> <http://www.elections.sk.ca/voterregistration/special-eligibility/>

<sup>28</sup> <http://ccrweb.ca/en/hundred-years-immigration-canada-1900-1999>

manage its own affairs, if the populations spoke English or French in the French areas<sup>29</sup>. This natural preference to their own was particularly racist and was intended to create a culturally similar and easier to manage colony. Residents living in Canada would be British subjects, and all British subjects from the British Empire (Commonwealth) would have the ability to vote if residing in Canada. As the colony became more self-reliant, and, after its participation in the two world wars, sentiments of nationalism rose in Canada and the nationality and identity of Canada was born. Once the creation of their identity was set on both French and English cultural affinities (albeit continuing to ignore indigenous populations), united in one Canadian nationality, the emphasis was on promoting and preserving it from others. As stated before, Canada did allow a type of discriminatory non-citizen voting right at the national level to British subjects. Now that the Canadian polity was being born, the suggestion was that the new nation should take control of its own course. Such actions included the repatriation of the Constitution from Britain as well as the Act to rescind voting rights for resident aliens who were citizens of the Commonwealth in 1975<sup>30</sup>. These actions were clearly intended to diminish its British identity to move forward as a full Canadian polity. The legislative changes to the Elections Act provided that only Canadian citizens may vote and not British subjects. This logic made sense for most Canadians. However the reality for certain provinces is that their population had a lot of those British subjects still present. All of Canada has established 18 as the minimum age to vote and restricted voting to Canadian citizens, with the exception of Saskatchewan and Nova Scotia. Nova Scotia enfranchised British subjects and Saskatchewan allowed British subjects to vote if

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<sup>29</sup> <http://ccrweb.ca/en/hundred-years-immigration-canada-1900-1999>

<sup>30</sup> Earnest, David, *Old Nations, New Voters: Nationalism, Transnationalism, and Democracy in the Era of Global Migration*, Suny Press, 2008, P.32

they were eligible on June 23, 1971<sup>31</sup>. To construct its own identity, the state focused on construction of the nationality based on both French and English cultures, based on the emerging nationalist trend that distanced itself from others, including British subjects. The nationalist school was the way Canada envisioned itself in the past. However, there are emerging trends that could suggest a transition to a transnational approach in the future.

#### **Part IV: Should Canada Become a Transnational Country?**

Canada's initial adventure with the nationalist perspective made sense as its initial beginnings were revolving on building its own identity and nation. This experience is familiar to many countries. However, as globalization started in the mid-70s, we see patterns and transitions happening in many other countries around the world<sup>32</sup>. Adopting international standards and ideas lessen the authority and powers of the states. In addition, large migration flows from all across the world <sup>33</sup> challenge certain foundational and historical notions.

With globalization, migration flows have expanded with the rise in transportation and communication lines. The internet allows people from across the world to see the other instantly. The idea of a better life cannot only be seen, but is also within the means to get there. Canada is a great beneficiary of such flows, with many people from across the world seeking a better life by choice, or by flight from more dire circumstances. As a settlement country, Canada, has a

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<sup>31</sup> Paul Howe, André Blais, Richard Johnston, Strengthening Canadian Democracy, IRPP, 2005 P.281

<sup>32</sup> Many claim that we are now witnessing the end of globalization with the election of protectionist governments, Trump in the U.S., the Brexit win in the United Kingdom.

<sup>33</sup> Stephen Castles, Mark J. Miller, The Age of Migration: International Population Movements in the Modern World, The Guilford Press, New York, 1998, P.5

longstanding tradition of recognizing the importance of immigration, needs immigration to sustain itself, not just to replace older generation members, but to continuously grow, as was argued by Prime Minister Mackenzie King<sup>34</sup>. Canada formerly had a discriminatory immigration policy for people coming in between the early 1900s to the 1950s<sup>35</sup>. Since then, Canada has committed itself to becoming a multicultural country by being open to all. It has opened its doors to all migration flows. This has had a dramatic change in our demographics, where, since the 1950's, although we have the same proportion of people that were not born in Canada, the origin of the people coming in to Canada has changed<sup>36</sup>. This has created great diversity in the country compared to the previous immigration policy. Canada is also a major player in the establishment of international law<sup>37</sup>. It participates in international peacekeeping and is committed to the respect for human rights. Canada promotes human rights across the world and supports peoples who are suffering, with funding and personnel. Canada has emerged and found a purpose on the international stage and is fully committed to human dignity for all, Canadian or not<sup>38</sup>. This means that government officials are open and value discussion about protecting everyone's rights. The same can be said for responding to non-citizens who are asking for their wishes and rights to be respected in their new host country. The Canadian state cannot stop people living in Canada from asking to have their rights respected, whether at the national, local or provincial levels.

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<sup>34</sup> <http://ccrweb.ca/en/hundred-years-immigration-canada-1900-1999>

<sup>35</sup> <http://www.statcan.gc.ca/pub/11-630-x/11-630-x2016006-eng.htm>

<sup>36</sup> <http://www.statcan.gc.ca/pub/11-630-x/11-630-x2016006-eng.htm>

<sup>37</sup> 2008 Canada's World Poll, P.36

<sup>38</sup> 2008 Canada's World Poll, P.36

This is precisely what happened when a long time Toronto resident non-citizen asked to allow the right of non-citizens to vote in municipal elections, due to their lack of representation<sup>39</sup>. This wish was supported by the mayor and city councillors, but was denied by the province of Ontario<sup>40</sup>. Many non-citizen minorities felt that their lack of services stemmed from a lack of understanding and respect for their essential needs by elected officials, due in part to funding shortages, but also because they did not matter in the eyes of public elected officials<sup>41</sup>. This led to problems in those communities and in turn those communities raised the issue at the international level. Vulnerable people such as non-citizens cannot voice their opinions through the vote, and therefore cannot demand fair treatment under the law of the nation state. This is a new phenomenon where NGO's and transnational communities voice their concerns about state issues at the international level. The historical model of the state, of the nationalist school is unprepared to deal with this new argument and in fact cannot contain it. The construction of a truly multicultural democracy that respects all may be a point of transition toward the transnationalism school for Canada.

There are three arguments generally advanced to suggest that voting rights should be extended to non-citizens: first, that the Charter of Rights and Freedoms mandates it; second, that it would enhance integration of immigrant populations; and third, that it would increase the legitimacy of decision-making. I review all three.

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<sup>39</sup> <http://reviewcanada.ca/magazine/2013/06/making-politics-more-welcoming/>

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[https://www.thestar.com/news/queenspark/2013/06/12/kathleen\\_wynne\\_open\\_to\\_noncitizens\\_voting\\_in\\_toronto.html](https://www.thestar.com/news/queenspark/2013/06/12/kathleen_wynne_open_to_noncitizens_voting_in_toronto.html)

<sup>41</sup> The Municipal Franchise and Social Inclusion in Toronto: Policy and Practice: Myer Siemiatycki, 2006, 12

**a. *The Constitutional Argument***

The Canadian Charter of Rights and Freedoms is a unique document that states that rights and freedoms are accorded to people on Canadian soil. To be clear, the Charter provides for a minimum level of rights that the government must recognize; the Charter does not prevent the government from extending rights to others, such as non-citizens. Extending the right to vote to the non-citizen resident in Canada is certainly legally possible. Section 3 of the Canadian Charter of Rights and Freedoms guarantees the right to vote to Canadian citizens in federal and provincial elections<sup>42</sup>. It is important to note that there is nothing in the Charter that would preclude Parliament from changing voter eligibility requirements to allow non-citizens to vote in federal elections. Section 3 contains only a single statement about rights of citizens when it concerns the vote<sup>43</sup>. It only establishes that governments may not infringe on citizens voting without reasonable justification; it is silent and does not state that it cannot extend voting right to others. As well the “citizen” is nowhere defined in the Charter, rather it is Parliament that decides who is, or is not, a citizen and Parliament can amend that definition from time to time... The fact that Parliament may change the definition suggests that nothing is sacred about citizenship and it is naturally subject to change. This means Parliament and provincial legislators have the ability to change the laws to allow non-citizens voting for both federal and provincial elections.

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<sup>42</sup><http://laws-lois.justice.gc.ca/eng/Const/page-15.html>

<sup>43</sup> Cara Faith Zwibel, Non-citizen Voting Rights: A Constitutional Perspective, p.2

The Canadian constitution is generally interpreted in a progressive manner (the “living tree” doctrine<sup>44</sup>), which allows for an interpretation that adapts to new environments and new social realities. The extension of voting rights in statute and under the constitution can evolve in the same way that other rights have evolved, such as, recognizing the right to end life. Today, Canada is a more multicultural nation than ever before. Legal norms must reflect Canada’s social values as well as its reality. There is no definition of citizenship and there is no reason why the concept of citizen should be limited to a statutory definition that can clearly change. There is a new debate about the meaning of citizenship where the idea of a stakeholder citizenship is modified to represent a more contemporary definition of citizenship. Cara Zwibel argues that this more contemporary meaning could be used by the court to better reflect the commitment to multiculturalism found in section 27 of the Charter.

This constitutional perspective would suggest that it is not only possible to give non-citizens voting rights at the municipal, and possibly the provincial and federal levels, but it may be required under the equality guarantee enshrined in the Charter.

Denying non-citizens the right to vote in municipal elections may be discriminatory within the meaning of section 15(1) and unjustified under section 1 of the Charter. The provinces and the federal government have the statutory authority to grant non-citizens voting rights if they chose to do so.

### ***The Equality Argument***

Section 15 of the Canadian Charter of Rights and Freedoms provides the following:

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<sup>44</sup> <http://policyoptions.irpp.org/magazines/free-trade-20/interpreting-the-constitution-the-living-tree-vs-original-meaning/>

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability.<sup>45</sup>

Under section 15, discrimination on the basis of nationality, which is the case for non-citizens, is and has been an inseparable companion of discrimination on the basis of race, national, or ethnic origin. Which are listed? The exclusion from voting rights creates political powerlessness, marginalization, and exclusion among a group of individuals. In *Andrews v. Law Society of British Columbia*<sup>46</sup>, the Supreme Court of Canada considered that denying non-citizens the right to practice law is analogous to listed grounds under section 15(1). Thus began the denouncement of discrimination on the basis of citizenship. The court comments on the fact that non-citizens are a group lacking in political power, which leads to their interests being overlooked, as well as their rights being violated. Discrimination on the basis of nationality is usually associated with discrimination by race, and ethnic origin, as set out in section 15. However, in *Lavoie v. Canada*<sup>47</sup>, a ruling on the right of non-citizens to apply for public service employment, the Court ruled that discrimination of non-citizens in employment in the public sector was constitutional. In doing so, it reflected on the philosophy of citizenship. It presented the idea that Canadian citizenship is nourished by discrimination against non-citizens. The intended goal of the legislation was to enhance citizenship; however, the legislation undermines that goal by presenting citizenship as benefiting from, as nourished by, discrimination against

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<sup>45</sup> Canadian Charter of Rights and Freedoms, Section 15

<sup>46</sup> Cara Faith Zwibel, Non-citizen Voting Rights: A Constitutional Perspective, P.4

<sup>47</sup> Cara Faith Zwibel, Non-citizen Voting Rights: A Constitutional Perspective, P.5

non-citizens<sup>48</sup>. This reasoning is not compatible with the definition of citizenship arising from equality, tolerance, and respect for all individuals. The dissent in the *Lavoie* decision could become the majority in a case involving the exclusion of non-citizens from the right to vote, according to constitutional lawyer Cara Zwibel. She notes that the dissenting judges' opinion is more in line with evolving case law. In particular, it is clear that the fact that a person could avoid discrimination by modifying his or her behavior (for example, by applying for citizenship) does not negate the discriminatory affect<sup>49</sup>. Denying the right to vote for non-citizens in municipal elections is, in fact, discriminatory within section 15(1) and to be constitutional, it would have to be justified under section 1. Otherwise, it would be declared null and void as unconstitutional.

Under section 1 of the Charter, the government (which would support the current exclusion from voting rights) could make the point that the objective of the discrimination is to enhance citizenship and encourage naturalization. As well, according to Zwibel, the government could argue that denying non-citizens the right to vote is appropriate because voting should be linked to a long commitment or loyalty to Canada and that citizenship is the best proxy for the embodiment of such loyalty. Zwibel suggests that the preference to citizens taking public service employment could be distinguished because those positions are limited and finite. In the context of the right to vote, one does not lose out to the other, there is no zero-sum game. Increasing the pool of voters will benefit the government by being more representative and more responsive to society, which in turn will benefit all people residing in Canada. Zwibel also says that the potential argument of the government that citizenship should be reserved to those who will make

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<sup>48</sup> Cara Faith Zwibel, *Non-citizen Voting Rights: A Constitutional Perspective*, p.7

<sup>49</sup> Cara Faith Zwibel, *Non-citizen Voting Rights: A Constitutional Perspective*, p.8

a long-standing commitment to Canada would be dismissed as irrational. There are many people who can vote who do not have a long-standing commitment or loyalty to the country, for example, many Canadian citizens are not born in this country and some may not reside in it. As well some provinces, such as Ontario, grant the right to vote to citizens in municipalities who do not reside there, but own property in that municipality. Also to be considered are the positions of people who reside in Canada but are not yet eligible for citizenship, and those people who cannot become citizens, for many reasons. According to Zwibel, the idea of section 1 in holding the government to a high standard is to oblige governments to justify rationally their discriminatory choices. When there is a lesser measure, for example, a minimum residency requirement that would satisfy the objective, courts should consider that the complete exclusion from voting is unreasonable and find it unconstitutional. A minimum residency requirement would meet the government's objective of ensuring that voters are informed and have some familiarity and commitment to the jurisdiction of where they vote. Indeed, she comments that Chief Justice McLachlin noted that the delegation from voters to legislators gives the law its legitimacy or force<sup>50</sup>. According to Zwibel, the denial of the right to vote to non-citizens is probably contrary to the Charter: it can be argued that it is discriminatory under the Charter because it creates an exclusionary group without power that can be easily marginalized and ignored because they cannot vote.<sup>51</sup>.

### ***International law:***

In addition to the Canadian constitutional analysis, international law also discusses non-citizen voting. There are two main documents that talk about non-citizen voting: the Amsterdam

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<sup>50</sup> Cara Faith Zwibel, Non-citizen Voting Rights: A Constitutional Perspective, p.13

<sup>51</sup> Cara Faith Zwibel, Non-citizen Voting Rights: A Constitutional Perspective, p.13

Treaty of 1997, and the Universal Declaration of Human Rights of 1948. Article 19(1) of the Amsterdam Treaty commits member states of the EU to establish voting rights for municipal elections for all citizens in the EU states who are non-citizens in their territory. As such, all non-citizens are granted the same municipal voting rights as EU national citizens. The Amsterdam Treaty is not applicable to Canada, but it gives an indication of the recognition of non-citizens voting rights in the legal realm.

However, article 21(1) of the Universal Declaration of Human Rights of 1948 states in vague terms that “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives”. Because it states everyone rather than citizen, Raskin’s argument shows that it is written in such a way to leave open the possibility that non-citizens will have the right to vote<sup>52</sup>. However he also states that the International Covenant on Civil and Political rights of 1966 confined the right to vote exclusively to citizens. With international law being vague on how states should approach non-citizen voting, it is no surprise that individual states have tackled the issue in various ways.

### ***b. The Policy Argument***

Canada finds itself dealing with a growing segment of the population that is without status, without attention, and without rights. The problem with that many people without voting status, non-citizens, is that they are invisible to public officials and that their demands, needs and rights are not taken seriously by municipalities, provinces and maybe even the federal government. First, we need to look at the problem.

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<sup>52</sup> Jamin B. Raskin Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage, 141 U. Pa. L. Rev. 1391 (1993). P.1458

The *Municipal Franchise and Social Inclusion in Toronto: Policy and Practice* is the original article that convinced the mayor of Toronto to support the initiative and pass it on to the province of Ontario for approval<sup>53</sup>. This paper is focused on the municipal experience of civic engagement and social inclusion. Myer Siemiatycki explores the link between broadening municipal voting rights and social inclusion and looks at multiple ways to improve the experience in multiple Canadian cities. This is a report about the municipal franchise, urban citizenship and social inclusion and ways to improve the situation. This is the original study that endorsed the idea of giving non-citizens the right to vote in Toronto. On that basis, Toronto city council proposed that the province gives that right to the municipalities. It recommends revoking the non-resident municipal voting rights, lowering the municipal voting age and extending the municipal voting rights for non-Canadian urban residents. This encompasses the situation in Toronto in which 1 in 6 people in Toronto are non-citizens, and each year around 50 000 people immigrate into the city<sup>54</sup>. It argued that because many non-citizens are concentrated in certain poor minority neighborhoods, it is important to extend the franchise. These neighborhoods would receive fewer services or be less likely to have their voices heard because they are composed of many people who are not eligible to vote and thus do not get the attention of city councillors. It argues that extending the right to vote to non-citizens is a way of signaling recognition and belonging to new-comers who would feel more inclined to participate, giving a new way to see political culture in Canada. With Toronto encompassing 43% of all immigrants in Canada and the 3 regions (Montreal, Toronto, and Vancouver) 73%, <sup>55</sup>urban life has changed substantially,

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<sup>53</sup> The Municipal Franchise and Social Inclusion in Toronto: Policy and Practice: Myer Siemiatycki, 2006, p.1

<sup>54</sup> The Municipal Franchise and Social Inclusion in Toronto: Policy and Practice: Myer Siemiatycki, 2006, p.10

<sup>55</sup> The Municipal Franchise and Social Inclusion in Toronto: Policy and Practice: Myer Siemiatycki, 2006, p. 12

faced with these immigration trends. It vouches that urban citizenship for newcomers will make them feel more integrated and that municipalities will succeed by gaining the new-comer's global experience, networks and knowledge. By promoting respect and recognition for immigrants in Toronto, immigrants feel less dismissed. While certain provinces allow non-Canadian British subjects to vote, Saskatchewan and Nova Scotia. Ontario dealt with a campaign for the right for non-resident Canadians the right to vote in Toronto, it seems there are fewer arguments against permitting non-citizens the right to vote in communities where they are currently living and want to stay.

As detailed below, the literature on non-citizens voting can be summarized around three issues to substantiate the reasoning of non-citizen voting: the first is the stakeholder principle, which views citizenship as giving the vote to residents for matters that directly affect them, like a stakeholder. The second is that voting determinants and conditions between nationals and non-citizen voting are far more similar than different. The third is the idea that non-citizen voting gives a chance at civic integration when it is specially needed in a voiceless community.

Stakeholder citizenship puts an emphasis on defining and explaining the benefits and validities of the stakeholder principle of citizenship as opposed to citizenship by birth. It suggests that all who have a stake in the future of a politically organized society have a moral claim to be recognized as its citizens and to be represented in a democratic self-government. It argues that all long-term residents can be seen as sharing an interest because of their permanent subjugation to a territorial political authority. It further discusses the impacts of birthright citizenship as it creates the proliferation of multiple citizenship and Denizenship (resident non-citizen)<sup>56</sup>. The

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<sup>56</sup> Stakeholder Citizenship: An Idea Who's Time Has Come? Rainer Baubock, European University Institute, 2008,

Stakeholder paper creates arguments for a rethinking of citizenship in the interest of governments in a new modern migratory world. The stakeholder principle is incompatible with viewing citizenship as a special reward for individual people. A more territorial way or stakeholder view of citizenship supports the view for non-citizen voting by giving a right to participate in their country. The stakeholder view supports voting rights for residents that have stayed and committed to their newly established home. The stakeholder view also avoids a growing democratic deficit and helps domestic security as it deals with immigrants who stay long term but cannot be citizens. According to this conception of citizenship, not including these long term residents will harm social cohesiveness and will bring a growing legitimacy deficit for democratic governments. There is a moral argumentation of rethinking citizenship to the benefit of settlement countries in dealing with immigration trends. Giving the right to vote for non-citizen, (local, provincial national), will help alleviate those concerns by thinking of multilevel citizenship to reinforce pre-emptive integration. For this reason, the concept is argued to familiarise non-citizens to their civic environment and political culture as well to integration more into their host country. The idea is that by emphasising the vote for non-citizens, you give them the chance to participate and through this civic/electoral participation, you increase their integration prospects in the host country.

So the hopes of the people who argue in favour of the stakeholder principle such as Rainer Baubok are about creating a more inclusive society and more responsive to all residents. However, it is important to evaluate whether this is in fact the case. This can be looked at closely by looking at the comparison of voting rates between nationals and non-citizens. The study by Pendakur and Bevelander shows a difference between personal characteristics, ethnic

characteristics, and social capital attributes and voting<sup>57</sup>. This is a study that establishes clear determinants of voting in a field where there is still much research to be done. The authors suggest that minority and immigration status are not the prime indicators of likely voting but are in fact socio-demographic and social capital attributes. This study indicates that as much as minority status could be considered in lower voter turnout of minorities in Canada, it is not as important as other standard prime attributes to voting such as age, education, and level of civic engagement. Not to say that either minority or immigration are not negative factors to voting but they are not as strong as the main ones for the general population. However, this study indicates multiple other factors that are useful indicators in determining voter participation such as level of income, gender, political culture, years of residence and formal interactions. Minority status is thus not huge determinant of voting<sup>58</sup>. According to both Bevelander and Pendakur: immigrant status and being born outside Sweden definitely decrease the probability of voting and getting citizenship increases the probability<sup>59</sup>. This reduces the difference between minority status and majority populations in democratic societies according to this study. It suggest that younger populations either born in Canada or not, minority or not, vote less than older generations. This study can be used as a sample of data to use to prove that levels of education, income, and age are more important factors of voting. The similarities and differences, among non-citizens and nationals voting determinations will make the argument that both groups would be influenced by their various socio economic conditions, age, and education in exercising their right to vote.

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<sup>57</sup> Minorities, Social Capital and Voting, Pieter Bevelander, Ravi Pendakur, July 2007, p.1

<sup>58</sup>Catherine Simpson Bucker, From Immigrant to Naturalised Citizen, LFB Scholarly Publishing LLC, New York, 2006. P.46

<sup>59</sup> Minorities, Social Capital and Voting, Pieter Bevelander, Ravi Pendakur, July 2007, p.11

Simpson Bucker argues that voting rights may be a good way to help the integration process into democratic life but also to avoid radicalism, political exclusion, and isolation<sup>60</sup>. She suggests that giving opportunities to participate in the decision-making process helps encourage the development of deliberative capacities and democratic commitments of potential citizens<sup>61</sup>. According to Bevelender and Pendakur, the main differences between non-citizens and citizens are mainly their lower socio-economic status and lower language proficiency that lowers their chances of voting, thus giving understandable reasons for lower participation rates. However this claim can be hard to identify, having regard to the fact that lots of non-citizens are rich and well off. Depending on the particular country, whether or not the immigrant arrives as a refugee, or with a visa to have a new life, can have an impact on voting participation. Further studies of migrating populations and their incomes could substantially help explain different participation trends. If one considers their disadvantage, from an economic and language deficiency point of view, and yet still sees a marginal but meaningful participation rate, it demonstrates that coming from different cultures is not a serious impediment to participation in elections. There is no negative impact to granting voting rights to non-citizens.

Alien suffrage, as a democratic norm, is spreading and it will accentuate the link between electoral/civic participation and integration. The case can be made for non-citizen voting at different levels as a means to facilitate and direct pre-emptive integration of newcomers in Canada. Both the policy argument of aiming for the integrational aspects of voting and the

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<sup>60</sup> Kaldur, Kristjan, Fangen, Katrine and Sarin, Tara; *On the Margins of the European Community: Young Adults with Immigration Background in Seven European Countries: POLICY BRIEF no. 6: Political inclusion and participation, EUROPEAN COMMISSION WITHIN THE SEVENTH FRAMEWORK PROGRAMME (2007-2014)*, p.3

<sup>61</sup> *Integration through participation: non-citizen resident voting rights in an era of globalization*, Daniel Munro, 2008

constitutional legality of that policy could lead to the same conclusion. However, some people remain opposed.

## **VI: Canada Should Not Become a Transnationalist Country**

Kymlicka, Martin, Munro argue against changing the concept of citizenship, or disrupting the idea of voting by giving the right to some who are not committed to it<sup>62</sup>. The arguments against such a policy can be summarized in two main points: First, some deem it unnecessary. Second, some say it will be detrimental to the idea and willingness to acquire citizenship.

### **A. *Unnecessary***

Munro considers the expansion of the right to vote to be unnecessary to accomplish the objectives of integration<sup>63</sup>. He argues three points. First, there are other ways to integrate non-citizens into society. Second, the demand for voting rights is a temporary issue. Third, it is not demanded or practiced by the intended beneficiaries.

#### **I. Other Ways to Integrate and Even Participate**

There are many forms of civic integration and participation that are available to non-citizens. The argument is made that non-citizen suffrage should be initiated because without it they would have no way to exert their voices and concerns. However, there are many forms of political participation available to non-citizens. Our basic political liberties allow a form of political participation: freedom of speech, which grants the right to voice your opinions and

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<sup>62</sup> <https://plato.stanford.edu/entries/citizenship/#2.2>

<sup>63</sup> Daniel Munro; Extending the Franchise to Non-citizen Residents: is a democratic deficit really all that bad? , 2008, P.1

concerns in the public forum; the freedom of association and assembly which grants the right to form associations and voice concerns in public spaces and at public officials. As well, there is the conventional understanding of political participation which consists being able to contact a politician or government official, being able to join and participate in an organization, association, action group or political party<sup>64</sup>. The unconventional behavior of political participation includes wearing campaign badges or stickers, signing a petition, taking part in a lawful public demonstration, boycotting certain products. All of these actions matter as a principle of participation and are evidence of not just participation but of civic integration as well.

The question can become, why is there a need to give a right to vote, if the non-citizen already has the ability to so participate in civil society. Where does the additional need arise from? The democratic deficit is rather minimal in a liberal country like Canada. However, the salience of the democratic deficit is comparatively higher in Romania<sup>65</sup>, where non-citizens have no means to form associations or join political parties, in that situation the need for non-citizen voting would resonate more deeply where there are no other means for non-citizens to voice their opinions and preferences to decision makers.

## ***ii. Temporary Disenfranchisement***

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<sup>64</sup> Özge Bilgili (CIDOB & MGSOG), Thomas Huddleston (MPG), Anne-Linde Joki (MPG), The Dynamics between Integration Policies and Outcomes: a Synthesis of the Literature, March 2015, p.

<sup>65</sup> <http://www.mipex.eu/romania>

Unlike the other groups that were denied suffrage and later achieved it, such as women or indigenous peoples who would not have received the right to vote without legislative intervention, permanent residents can obtain the right to vote with time. Daniel Munro argues that there are a number of tools available to countries to boost participation rates and different tactics to improve integration. He argues that the action to look at allowing non-citizens the right to vote should not be a priority because it is a temporary disenfranchisement<sup>66</sup>.

The fact is that the acquisition of voting and political rights is a temporary issue because voting rights are given to immigrants after naturalisation, which means staying in Canada for a minimum of four years as a permanent resident and then applying for citizenship. Munro questions the salience of the democratic deficit of non-citizen voting: “To fully understand if the non-citizen vote should be considered a valid democratic deficit to tackle, we should look on it as a temporal issue and thus analyze if this type of democratic deficit is worth acting on and whether action should be taken compared with alternatives. There is a weighting of the democratic deficit and expectations of success in eliminating the deficit, implicit or explicit, against the cost that will be faced in advocating for change”<sup>67</sup>. So, having regard to the temporary nature of the issue, any saliences and motives for action become less important.

With respect to the period of time of residency required for a citizenship application, Canada is one of a few outliers where non-citizens are actually in a much better position than other countries in the world. The cross-national variance that exists on the matter is a crucial

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<sup>66</sup> Extending the Franchise to Non-citizen Residents: is a democratic deficit really all that bad? , Daniel Munro, 2008, P.17

<sup>67</sup> Extending the Franchise to Non-citizen Residents: is a democratic deficit really all that bad? , Daniel Munro, 2008, P.15

argument that does not just reduce the salience of the democratic deficit of non-citizens in Canada but is more of an argument for other countries to adjust<sup>68</sup>. According to the Migrant Integration Policy Index (MIPEX), many European countries have significant residency requirements before non-citizens can even apply for citizenship, at least five years in the case of France, and even ten years, in the case of Austria.<sup>69</sup> If the length of time is more than five or ten years then the salience of the democratic deficit is no longer considered a temporary issue because it is possible that multiple generations of non-citizens may find themselves unable to vote<sup>70</sup>. This is especially the case in some European countries that do not give non-citizens the right to vote at any level and have a high residency requirement time limit. This should mean that there would be more campaigns for non-citizens voting where residency requirements are high and fewer campaigns in some that are low, such as in Canada. In essence, Munro argues that other reforms should be done first before giving the right to vote to non-citizens and he questions whether every democratic deficit an injustice? In his view, since the non-citizen issue is by nature a temporary issue, it should not be treated as salient and society should not be concerned with a problem that will solve itself after 3 to 5 years, that is the time that it could take for individuals to acquire citizenship.

### ***iii. New Immigrants Do Not Vote***

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<sup>68</sup> Extending the Franchise to Non-citizen Residents: is a democratic deficit really all that bad? , Daniel Munro, 2008, p. 18

<sup>69</sup> <http://www.mipex.eu/austria#/tab-access-to-nationality>

<sup>70</sup> <http://www.mipex.eu/france>

Another argument in support of the proposition that it is unnecessary to provide non-citizens voting rights in Canada is the fact that even when they receive the right to vote, the same migrants do not vote. According to Statistics Canada, immigrants vote for a number of reasons and their voting rates are affected by the same reasons as nationals. It is surprising that even though it is well established that acquiring citizenship is a prime motivator to vote, for immigrants, it still shows that recent immigrants vote at a far less degree than nationals and even well-established immigrants<sup>71</sup>. According to the Table 1: Voting rates by immigrant status and country/region of birth at the federal level, the voting rates were 51% for recent immigrants, 66% for more established immigrants and 67% for the Canadian-born<sup>72</sup>. So even with the acquisition of the right to vote, a great many recent immigrants have lower voting rates. The question is, why the urgency of giving them the right to vote if they will not actually use it until they seem to be established. This pushes the question too far, as it is still a fairly significant proportion that do in fact vote. From a policy point of view, further tools and strategies would need to be developed to enhance the integration that does in fact take place.

For people who are against the expansion of the franchise, the issue is more fundamentally about views about citizenship. That is a debate that must be addressed. Some would rather not have to let go of the idea of showing loyalty first before being able to vote. Is it wrong?

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<sup>71</sup> Livianna Tossutti, *The Electoral Participation of Ethnocultural Communities*, Elections Canada, 2007, P.37

<sup>72</sup> <http://www.statcan.gc.ca/pub/75-001-x/2012001/article/11629-eng.htm#a3>

## ***B. Diminishment of the Notion and Rights of Citizenship?***

Munro and Kymlicka express the fear that allowing voting rights to non-citizens will alter the status of citizenship. It is about the possibility of remaking the concept itself and alters who we view as a part of the national community. This might lead to an additional fear that it reduces the interest of requesting citizenship if the vote can be so freely taken away. Notions of citizenship imply membership in the political community. McMillan calls traditional republicans that see the link between citizenship and political community as based on formal membership: voting should be the exclusive privilege of citizens; permanent residents who wish to vote should seek naturalization<sup>73</sup>. This is the idea about loyalty to the community you just joined by following its values and practices. Others may call it the norm of singular allegiance, meaning you can only have one nationality: if aliens wish an allegiance to a foreign power then they lose their qualification to be an elector. It raises the issue of knowing if the non-citizen has the best interests of the country in mind or that of another country.

In terms of bringing minorities into the fold, nationhood can be understood in “thin” terms, or “thick”, where there is a sentiment of loyalty or solidarity. Kymlicka says that an appropriately thin conception of nationhood also discards assumptions that “members of the nation should share the same [...] life-style”<sup>74</sup>, which means that the understanding of nationhood should be recognised at a minimum and very much necessary. Once immigrants are citizens, they can participate in the collective conversation in which citizen’s debate and communicate and constantly reinterpret the nation’s identity. This is the same deal given to

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<sup>73</sup> McMillan, Kate, National Voting Rights for Permanent Residents: New Zealand's Experience (April 24, 2014). P.10

<sup>74</sup> Kymlicka, W., “New Forms of Citizenship”, in *The Art of the State: Governance in a World Without Frontiers*, T. J. Courchesne, D. J. Savoie, IRPP (Institute for Research in Public Policy): Montréal, 2003, 265–310., P.273

immigrants and non-citizens before they become citizens: they must share a willingness to accept current political structures and to engage with the host community so that a new common identity can be forged<sup>75</sup>. The need for non-citizens to acquire the new nationhood concept of the host country is needed first, in order to make proper changes to the country's identity. The "thin" conception of nationhood is exemplified by the non-citizen acquiring citizenship and becoming true citizens of the host country via legal and cultural methods.

Another theory that links itself to the progress of non-citizen voting is the "all affected interests" theory postulated by Dahl, which holds that anyone who is affected by a political decision is part of the demos and should have a say in the process<sup>76</sup>. This argument, which can be understood to have no physical boundaries, is thus incompatible with the nation state. Since certain decisions may affect people beyond borders, it can have a limitless end and is deemed over inclusive to the nation state. That is why the nation and the demos should include members who are a part of the society that can act on behalf of its members that commit to it, such as citizens. The discussion on non-citizens voting rights would expand the demos too far, without first knowing if they want to become members.

However there are also direct empirical concerns as well: The political arguments against extending the right to vote to non-citizens are summarized as follows: "foreign governments may attempt to influence the domestic politics of countries where their expatriate citizens are enfranchised; immigrant minority groups could establish ethnic or single issue political parties, weakening existing political parties; existing power balances may be disrupted

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<sup>75</sup> Miller, D., 1995, *On Nationality*, New York: Clarendon Press.,P.129

<sup>76</sup> Dahl, R.A., 1990a, *After the Revolution? Authority in a Good Society*, New Haven: Yale University Press. P.64

with some parties benefiting more than others from the immigrant vote, and incentives for naturalization are reduced”<sup>77</sup>.

All of these reasons may help diminish the notion and the rights of citizenship and might even rationally create a trend of decreasing interest in signing up for citizenship. If voting, the core right of citizenship is detached from it then the question becomes what is the point of citizenship or even the reward in it. These societal questions and its implications need to be addressed in the hopes of understanding if the expansion of the franchise may discredit and complicate our citizenship policy. Would wanting integration for the new residents alter voting patterns and diminish citizenship?

## **VII: Comparisons with New Zealand, Sweden,**

### **And the United States**

To fully understand the issue, it might be helpful to compare the experience of other countries. By making a comparative analysis of different countries’ history and current integration rates and naturalisations, we can get an understanding of why they have or do not have non-citizen voting rights and of how countries are influenced by the expansion of such suffrage. We review three different analyses of the expansion of voting rights to non-citizens in New Zealand, Sweden and the USA<sup>78</sup>. First, we will analyse their history on how voting rights came to be and how it affected their political development.

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<sup>77</sup> McMillan, Kate, National Voting Rights for Permanent Residents: New Zealand's Experience (April 24, 2014). P.11

<sup>78</sup> Much more is needed to confirm the findings of the three analyses and draw from the conclusions to apply them to the Canadian situation. For example, is the example of New Zealand of steady increase of naturalization rates comparable in Sweden or in the New York population surveyed? Does it have more to do with the ease of the

## ***New Zealand***

New Zealand once followed a path similar to Canada. It had the discriminatory policy for immigration that pertained specifically to populations of European descent. As a colonial state, it allowed British subjects who reside in New Zealand for at least a year to vote. As a growing country of high immigration and emigration, it was concerned with regard to the movement of its population and this had an impact on the construction of the political community and New Zealand citizenship in 1948. At the same time, Britain was reviewing the concept of imperial belonging and the evolutionary development of post-colonial citizenship of New Zealand. In 2006, New Zealand had a growing population, with more and more coming from non-European backgrounds, along with a substantial Maori population. New Zealand's identity as a nation state is intimately tied to its status as a historical, global leader in the expansion of the franchise<sup>79</sup>. In earlier years, migrants came from the more traditional sources, such as Ireland, Britain, and Netherlands. In later years there was an upsurge of migrants from non-European sources. . This change did not lead to any public outcry or desire for a change in the formal requirements of the transition from migrant to citizen. It was deemed unnecessary, and in fact propelled it to advance its support for non-citizens voting rights. A member of parliament once spoke of the issue in

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naturalization process or is it due to the expansion of the suffrage? Nevertheless, it appears necessary to outline the studies that have been done up to now to illustrate the preliminary results.

<sup>79</sup>M. Rodriguez, Christina, Noncitizen voting and the extraconstitutional construction of the polity, *Int J Constitutional Law*(2010) volume 8, issue 1, P.40

terms where political membership appears to precede naturalization<sup>80</sup>. New Zealand finally adopted the broad legislation that enables non-citizen voting in 1975<sup>81</sup>.

## ***Sweden***

Sweden is a far older country but has a multicultural policy like the settlement countries of Canada, Australia, New Zealand and the USA. Their change to permit non-citizen voting was due to the immigration policy it acquired after the second world war, first for labor force immigration and then for refugee and family reunion. Both opened the gates to Nordic and non-European populations entering the country for a number of years. Sweden has a history of the expansion of suffrage with women gaining the right to vote in 1921, then lowering the voting age and then, in 1976, Sweden gave the franchise to non-citizens at the local and provincial level after 3 years of residency<sup>82</sup>.

## ***The United States***

In the early years of the United States it was quite common to allow voting to the people who came to settle the territories of the country even if they were not yet citizens. Local and state voting rights did exist in the 40 states and territories before the 1920s for immigrants who declared their intention to naturalise<sup>83</sup>. Their acceptance of immigrants and giving them electoral rights were linked with integration and the construction of the American identity of new

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<sup>80</sup> McMillan, Kate, National Voting Rights for Permanent Residents: New Zealand's Experience (April 24, 2014).P.7

<sup>81</sup> David C. Earnest, The enfranchisement of resident aliens: variations and Explanations, Department of Political Science & Geography, Old Dominion University, Norfolk, VA, USA, October 2014, p.862

<sup>82</sup> Electoral participation as a measure of social inclusion for natives, immigrants and Descendants in Sweden, Pieter Bevelander and Ravi Pendakur, P.7

<sup>83</sup> Jesse T. Richman, Gulshan A. Chattha,, David C. Earnest, Do non-citizens vote in U.S. elections? Elsevier Ltd, .Electoral Studies 36 (2014) 149e157, p.1

inhabitants finding a new life in America. The American state needed inhabitants to settle new lands and thus invited anyone willing to be part of the country. This custom changed with the emergence of World War I, when fear of their enemies drove the USA to create restrictions on new inhabitants entering the country. To this day there are almost no electoral rights given to non-citizens except in a few localities in Maryland towns and Chicago school boards<sup>84</sup>.

### **c. Analysis of the Data for These Countries in Terms of Voting Rates; Integration Rates and Decreases in Citizenship take up**

#### ***New Zealand:***

The New Zealand experience is quite useful in the sense that it demonstrates both the normative and empirical arguments for and against granting non-citizens voting rights. It also serves to test whether the risks and negative aspects of non-citizens voting actually happened. In New Zealand, the normative arguments for expansion of the franchise were for the inclusion of all of its members under the same authority, and a contributory aspect of membership such as paying taxes. In addition, it was thought that granting political rights to non-citizens would improve migrant integration outcomes by stimulating immigrant political participation in the host country whilst also sending a message to citizens that immigrants are “permanent members of society”<sup>85</sup>. Also, immigrants who are enabled to vote at the local or regional levels will be encouraged to naturalize so that they can access voting rights at the national level and jobs reserved for citizens. This is the experience of New Zealand giving voting rights to its permanent

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<sup>84</sup> Jesse T. Richman, Gulshan A. Chattha,, David C. Earnest, Do non-citizens vote in U.S. elections? Elsevier Ltd, .Electoral Studies 36 (2014) 149e157, p.1

<sup>85</sup> McMillan, Kate, National Voting Rights for Permanent Residents: New Zealand's Experience (April 24, 2014, P.11

resident population.<sup>86</sup> In general, the analysis by McMillan shows a reassuring picture of what New Zealand has experienced even with the risks. A good indicator of integration is the reciprocal integration between non-citizens and politicians. The act of giving the right to vote gives non-citizens the right to participate in the process and interact with the community in a civic manner and an opportunity to get to know the host country. The reciprocal of that dynamic is that now that those non-citizens are allowed to vote, politicians and associations will go and compete for those votes. That reciprocal interest will create opportunities for communication and integration between the nationals and the non-citizens

New Zealand has seen steadily increasing rates of naturalization, currently one of the highest rates of naturalization in the world.<sup>87</sup> However, there is no indication that non-citizen voting rights have changed this rate; Issues have arisen that have caused concern for people worried about foreign interests in their countries. The idea that non-citizens may have divided loyalty and could be vulnerable to a foreign power is not so far-fetched. In 2011, a newspaper reported on the creation of a new immigrant political party by a Chinese businessman, who was also behind a Chinese government owned company seeking to purchase a large dairy farm<sup>88</sup>. It raised the notion that the real power behind the party was the Chinese government. There is no available research on whether foreign governments have attempted to influence the politics of New Zealand by expat voters. However the possibility remains plausible if permitted.

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<sup>86</sup> McMillan, Kate, National Voting Rights for Permanent Residents: New Zealand's Experience (April 24, 2014, P.19

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[https://www.dia.govt.nz/diawebsite.nsf/Files/Granted\\_Citizenship\\_1949\\_2013/\\$file/Granted\\_Citizenship\\_1949.xls](https://www.dia.govt.nz/diawebsite.nsf/Files/Granted_Citizenship_1949_2013/$file/Granted_Citizenship_1949.xls)

<sup>88</sup> McMillan, Kate, National Voting Rights for Permanent Residents: New Zealand's Experience (April 24, 2014, P.15

## ***Sweden:***

Since the 1980's Sweden has extended the franchise to non-citizens at the municipal and the provincial level in the hopes of promoting increased political influence, interest and self-esteem within foreign citizens. Many of the factors determining propensity to voting remain the same, such as education, income, and civic engagement, but new ones get added, such as the effect of living in large cities. For example, renting apartment lowers odds of voting. The analysis performed by Pendakur/Bevelander adds additional insight on participation and voting odds of populations of both non-citizens and citizens<sup>89</sup>. It does establish that there are differences between non-citizens and citizens voting patterns, but not as many as previously thought. If inclusion is about participation then voting is an effective measure of social inclusion because it taps a purely voluntary willingness to participate<sup>90</sup>. However there are some factors that affect voting more than others. It may seem that there is lower voter participation rate for non-citizens compared to citizens, due to lower socio-economic status. Not surprising as well, is the indication that since the 1980's there is lower participation across the board for citizens as well in most democratic countries. It demonstrates that since the 1980's, electoral participation of both citizens and non-citizens, who voted, has been reduced by the around the same percentage of 15%.<sup>91</sup> This shows that both groups follow more or less the same voting patterns even though one group is more disadvantaged than the other. As a matter of social inclusion, it could be said that they are both integrating as best as the underprivileged non-citizens could. Non-citizens are

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<sup>89</sup> Electoral participation as a measure of social inclusion for natives, immigrants and Descendants in Sweden, Pieter Bevelander and Ravi Pendakur, 2009, p.18

<sup>90</sup> Electoral participation as a measure of social inclusion for natives, immigrants and Descendants in Sweden, Pieter Bevelander and Ravi Pendakur, 2009, p.18

<sup>91</sup> Pieter Bevelander and Ravi Pendakur, Electoral participation as a measure of social inclusion for natives, immigrants and Descendants in Sweden, , 2009, p.

voting in the elections that they are allowed to vote in, so they are in fact proving the point that some are integrating. However, the counter point is made that their voting rates are far lower than their national counterparts and thus low civic integration levels of non-citizens is evidence of a failed policy.. Sweden is one of the top EU naturalization states. The EU Member State with the highest naturalization rate in 2014 was Sweden (6.3 acquisitions per 100 non-national residents)<sup>92</sup>. However the study proved an enraging truth to many that even when given the right to vote, the non-citizens vote is substantially reduced when compared to the national vote<sup>93</sup>. Integration is shown when participation is positive but when it is not, it shows that giving non-citizens the right to vote may not be the solution for their integration into Swedish society.

### ***United States of America***

In certain cities, such as New York City before 2003, school board elections allowed non-citizens to vote in those elections. Parents of kids who were not citizens were very much involved and increased turnout in certain elections concerning the curriculums of their schools affecting their children<sup>94</sup>. The participation by non-citizen parents initiates the discussion of integration into the school system but also a commitment to helping develop community issues concerning their children at school. This is the case for the Chicago school board elections,

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<sup>92</sup> [http://ec.europa.eu/eurostat/statistics-explained/index.php/Migration\\_and\\_migrant\\_population\\_statistics#Acquisitions\\_of\\_citizenship](http://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics#Acquisitions_of_citizenship)

<sup>93</sup> Pieter Bevelander and Ravi Pendakur, Electoral participation as a measure of social inclusion for natives, immigrants and Descendants in Sweden

<sup>94</sup>Hayduck, Ron, Democracy for All: Restoring immigrant voting rights in the United States, Taylor & Francis Group, 2006, P.102

where voting is permitted. However we have no statistics to continue to measure rates of naturalization or integration measures.

The concept of immigration federalism is useful to see the experience of how a federal state manages different subnational entities which may or may not allow non-citizen residents to<sup>95</sup>. The United States may not have data recording non-citizen voting but it may prove a useful comparable as the neighbor of Canada. States, like provinces, have immigration rules and can decide who can and cannot vote in their respective states

## **VII. Resolving the issue:**

The lack of data to properly assess the impact or non-impact of extending the vote raises different issues. With regard to the impact of non-citizens receiving the right to vote, the lack of data means that there is not much data available to construct an argument for not extending the vote. Fear of foreign governments influencing their national population in elections is borne out in some examples. In 1986 the King of Morocco advised the Moroccan Dutch population not to vote in the 1986 Dutch election<sup>96</sup>. In 2011 in New Zealand a Chinese business man, with direct business connections to the Chinese government created a new immigrant party that won some votes<sup>97</sup>. The Swedish example shows how much participation is shown by non-citizens when given the vote, and the result were not positive. The normative fears are not being shown and the empirical ones are not enough to make the case to outright deny the right to vote. There is a lack of data on both sides of the argument, but the current data seems to suggest no evidence of a

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<sup>95</sup> Maas, Willem, *Multilevel Citizenship*, University of Pennsylvania Press, 2013, P.73

<sup>96</sup> Kees Groenendijk, *Local Voting Rights for Non-Nationals in Europe: What We Know and What We Need to Learn*, University of Nijmegen, 2008, P.14

<sup>97</sup> McMillan, Kate, *National Voting Rights for Permanent Residents: New Zealand's Experience* (April 24, 2014, P.15

negative impact of this policy and mild positive results. One offers evidence to prove participation and thus integration. The data on the Swedish and New Zealand experiences with non-citizen voting gives a good first-hand explanation and experience that provides a basis for verifiable provable statistics. However more data is needed to provide the basis in order to make a conclusive opinion.

### **Discussion/Conclusion: Why Not? Risk Analysis for such a Policy.**

The purpose of extending the right to vote to non-citizens is firstly, to respect their right to equality and to full participation in the governance of where they live. Secondly, it may foster integration. The risk that is associated with the choice to extend voting rights is that it might diminish the incentives to acquiring citizenship. Fears in this regard were found unrealised in the New Zealand context. From another point of view, each country has its own idea of a political community and the history of their construction of their polity will affect their decision of whether or not they embrace alien suffrage. New Zealand has changed the definition of its community because it had to adapt to high rates of immigration. Their history with non-citizen populations of British subjects, and others, made them realize that they had to adapt and rethink the identity of their own political community.

The Swedish study that deduced the voting patterns of citizens and non-citizens establishes that citizens and non-citizens had the same main determinants with regard to voting. However, non-citizens were more likely to have lower income levels than nationals and thus<sup>98</sup> lower voting rates. This study establishes that non-citizens have the same level of participation as

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<sup>98</sup> [http://www.huffingtonpost.com/jared-bernstein/immigration-and-poverty\\_b\\_4650580.html](http://www.huffingtonpost.com/jared-bernstein/immigration-and-poverty_b_4650580.html)

all citizens with similar socio-economic determinants. Non-citizens have the same voting habits as nationals and should be treated equally, and not have their potential wasted. The constitution does not preclude the extension of suffrage to non-citizens. Indeed, there may be an argument that equality and absence of discrimination requires the expansion of suffrage to non-citizens. Evidence as to whether or not extending the franchise benefits integration remains elusive and very difficult to measure, according to the study of Pendakur/Bevelander in Sweden.

I would argue that since integration can be measured by the mere electoral participation of non-citizens in elections, it can be said that civic integration is happening for a segment of the population that is willing to vote. Integration is difficult to measure. Future studies will focus on non-citizen voting and other factors to determine what is most beneficially effective for civic integration of non-citizens. The comparative studies of immigrant and national voting patterns reveal some distinctions, but the most important patterns are the same. Since democratic participation is generally integral to civic integration, it is fair to suggest that non-citizen voting leads to integration, but statistically assessing that impact is the question. Since the integration of new peoples in the early years is crucial to shaping political behavior, it can be argued that civic potential is being squandered by not allowing non-citizen voting at the municipal level, if not at the provincial and federal level. The federal level brings questions of security and international relations. The municipal and provincial levels are more centered on the services required by the population, with less involvement with security issues.

The arguments of Zwibel, Myer et al support the proposition that non-citizen voting initiatives lead to participation, which is a measure of integration. The existence of the positive participation rates benefits integration. . Analysis of the New Zealand experience demonstrates

reasonable levels of participation. At a minimum, it does not support the existence of the alleged negative fears. The New Zealand study shows that fears of foreign government influence, of immigrants creating their own political parties, and decreased incentives to naturalize are largely unrealized in the New Zealand context<sup>99</sup>.

### **Final conclusion:**

We can learn of different aspects of the issue of extending voting rights to non-citizens by looking at the experiences of different countries that have touched on the issue: the liberal policies and experience of New Zealand in extending voting rights to non-citizens; the Swedish study revealing differing voting patterns between citizens and non-citizens; the concept of immigration federalism in the United States, with relatively little connection to the issue at the federal and state level, but more so at the community level. By looking at integration rates, rates of naturalisation, residency requirements, and electoral experiences, we can better understand the complexity of the integration process for non-citizens. In amalgamating all the data, it would seem that there is no evidence of negative effect to extending voting rights to non-citizens, but there is little clear evidence of positive effect. Through the triangulation of studies, various sources indicate that integration is a possible positive benefit. A risk analysis with would lead to the conclusion that it would be feasible to implement such a policy in Canada. While the evidence may not support the conclusion that it is clearly a good policy, the evidence does not support the conclusion that it is a bad policy. With little, if any, proven negative outcomes, the policy objectives of participation and integration would support implementation of some form of recognition of non-citizen voting.

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McMillan, Kate, National Voting Rights for Permanent Residents: New Zealand's Experience (April 24, 2014).<sup>99</sup> P.20

A plausible policy recommendation based on this study would be to create a graduated non-citizen voting policy in Canada. The idea is based on the proposition that we want immigrants to fully integrate, more quickly. This would have a more powerful impact on the next generation. The proposal would be to give voting rights to non-citizens at the local level after one year of residence, then to give them voting rights at the provincial level after three years of residence. Upon receiving citizenship or after 5 years of residence, they would receive the vote at the federal level. This recommendation would be part of a pre-emptive integration strategy, to make both newcomers and long-time residents more productive democratic citizens of Canada. However with the concerns of loyalty at the federal level, there may be an issue with the electorate accepting such a policy. This study is only concerned with the right to vote, the active suffrage; further studies should be done on the right to stand for elections, passive suffrage, where there may be other reasons to reserve it for citizens. A made in Canada strategy for the non-citizen voting issue could justify beginning with the right to vote, the active suffrage.

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