

MIGRANT WORKERS' VULNERABILITY TO EXPLOITATION:
HOW PUBLIC POLICIES INFLUENCE THE FATE OF FOREIGN SEASONAL WORKERS
IN CANADA AND AUSTRALIA

Major Research Paper

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Introduction

For most societies, immigration is a sensitive topic. With contradictory interests on their agenda, it is difficult for countries to develop coherent policies in this area. On the one hand, governments wish to attract human capital and skills, but on the other they want to avoid sharing national resources with "outsiders" (Castles 2006; Martin 2006). In an effort to reconcile conflicting objectives, policy-makers and politicians are now rediscovering the appealing features of guest worker programs (Millbank 2008; Ruhs and Martin 2008).

Guest worker programs, or temporary migrant worker programs (TMWP's), aim to recruit foreign workers to fill out positions in a sector of the national economy suffering from labour shortages. These schemes are usually accompanied by a restriction of migrant workers' rights (Ruhs and Martin 2008). With this essay, I intend to demonstrate that TMWP's, as they are presently conceived, increase and profit from the vulnerability of migrant workers. They put them at risk to be subjected to high levels of exploitation. This essay will move away from the traditional conception of vulnerability which identifies pre-established groups as vulnerable (e.g. women, children, aboriginal people). Instead, I will identify markers (e.g. economic, cultural, legal) to determine the level of vulnerability of certain groups or individuals. I do so to illustrate that vulnerability to high levels of exploitation is constructed by social practices, such as guest worker schemes, rather than being inherent to certain groups.

I will first provide an overview of costs and benefits of guest worker programs to set the context in which they are developed. I will then move to the conceptual framework of this essay, clarifying both the concept of vulnerability and the concept of exploitation. This background

information will lead us to the heart of this essay: identifying the markers of vulnerability carried by temporary migrant workers. I will explore the legal, cultural and economic dimensions of their vulnerability. I will use two TMWP's to exemplify my argument: Australia's Pacific Seasonal Worker Pilot Scheme (PSWPS) and Canada's Seasonal Agricultural Worker Program (SAWP). Finally, I will suggest a set of best practices which could decrease the vulnerability of temporary migrant workers and serve as a bridge to develop more sustainable policies to fill the gaps in our labour markets.

Being addressed to policy makers, this document will touch upon various fields such as economics, ethics, and sociology. This multidisciplinary essay aspires at renewing the debate around immigration policies and offer smaller, more accessible steps to improve our national policies.

Overview of benefits and costs of temporary migrant worker programs

Adopting the point of view of policy makers from receiving States, governments developing guest worker programs, I will go over the main benefits and costs of temporary migrant worker programs for receiving countries, employers and migrant/local workers. For the sake of coherency and conciseness, I leave aside the "sending country" dimension of the debate¹.

¹ For a full discussion on the topic, see Rosewarne, Stuart. 2006. "Globalisation and the Commodification of Labour: Temporary Labour Migration." *The Economic and Labour Relations Review* 20 (2): 99-100.

Benefits

According to advocates in favour of guest worker programs, temporary migration is beneficial for several reasons. To begin with, foreign migrant workers can provide the needed support to specific industries experiencing temporary labour shortages. For employers, TMWP's are a cheap and quick solution to remedy labour shortages (Taylor & Finley 2008, 192). Business leaders do not have to undertake major investments to increase the productivity of their enterprise.

These programs are also an alternative to the recruitment of illegal workers. Employers can legally hire foreign labour at a low cost. It has been observed that temporary migrant workers have a better attitude than national workers towards difficult jobs, and employers appreciate this approach from their employees. Interviewing Canadian farm owners, Preibisch revealed that migrant workers are perceived as more reliable than local workers (Preibisch 2007, 428). This is the case especially in sectors deemed to be dangerous, dirty, and demeaning (e.g. agriculture, construction, etc.). In the short-run, these programs are obviously profitable to employers who can access them.

From the employers' perspective, guest worker schemes are appealing. However, critics are numerous: "While there may be a place for a truly temporary and seasonal worker program, the reality of the abuses of these programs shows that they are more often used to maintain a cheap, compliant work force" (Garcia 2006, 51).

Costs

From the perspective of the temporary migrant worker, things are more complicated. On one side, they usually do get wages superior than what they would have gained at home. On the flip side, as argued by Garcia, workers can difficultly assert even the few rights that they are granted by receiving States. One reason for this is the limited duration of their visa. Because they are not part of the negotiations leading to the elaboration of TMWP's, guest workers are alienated from their own labour. This leads to the erosion of their bargaining power (Garcia 2006, 29). The negligible bargaining power of migrant workers can force them to accept highly exploitative contracts and abusive working conditions (Lenard and Straehle 2010, 289).

This threatens not only the working conditions and wages of all migrant workers competing with each other to get in these programs (Garcia 2006, 28), it also threatens the living standards and wages of the most vulnerable citizens of the receiving countries (e.g. newly arrived immigrants, low-skilled workers) (World Bank 2006, 43). The arrival of this cheap and disposable labour force keeps the wages from adjusting to a level that would provide the incentive for locals to enter the labour market, pushing them to choose unemployment over employment. This leads to the deterioration of their own bargaining power.

Migrant workers' lack of bargaining power lessens the power of all workers to negotiate the terms of their employment (Garcia 2006, 36). Because local workers compete against foreign workers with restricted rights, they will have to lower their expectations and accept conditions which make them worst off than before. In social democracies like Canada and Australia, that might mean higher levels of unemployment (people won't revise their expectations immediately,

there is a delay) and higher levels of citizens in need of welfare assistance since they will not take on jobs that would make them worse off than if they did not work.

The network of employment created by guest worker programs also drives away locals from certain sectors of the economy. This leads to a segmentation of the labour market. Some jobs become suitable only for temporary migrants. Locals do not want to take up jobs that are poorly paid and that are associated with "outsiders" (Castles & Miller 2009). TMWP's fuel a discourse opposing "Us" to "Them" by promoting the utilization of commodified labour, workers with limited rights and agency, instead of promoting an attitude of respect towards workers leaving their family to work in destination countries' industries (Aguiar, McKinnon & Sookraj 2010, 67). Encouraging the isolation of these groups can lead to serious social problems, including racism and riots. The ethnicisation of certain professions sustains an environment of discrimination against temporary migrant workers, and more broadly against immigrants (Millbank 2008, 34).

1. Conceptual framework: Vulnerability and exploitation

Now that we are more familiar with the general benefits and costs of guest worker programs, let us address the conceptual framework of this essay: the vulnerability of temporary migrant workers to high levels of exploitation.

1.1 The concept of vulnerability

The Organization of the United Nations (UN) conceptualizes vulnerability as an attribute characterizing pre-established groups: "The UN and its agencies protect vulnerable groups, like children, refugees, displaced persons, minorities, indigenous people and the disabled [...] UN bodies monitor compliance with conventions protecting the rights of vulnerable groups (children, women, racial minorities), and hold countries accountable for violations" (UNIS 2007). This understanding of vulnerability is widespread. It has the merit of being simple and easy to promote. However, the strength of this conception is also its weakness. This simplification renders the concept of vulnerability completely sterile. I wish to explore further the idea of vulnerability to demonstrate that individuals are not inherently vulnerable. They are vulnerable in certain situations because they bear markers of vulnerability and these markers are the result of social arrangements.

Schroeder and Gefenas, working in the field of bioethics, propose that "[to] be vulnerable means to face a significant probability of incurring an identifiable harm while substantially lacking ability and/or means to protect oneself" (Schroeder & Gefenas 2009, 117). This definition is twofold: First, the individual is weak, s/he does not have the tool to protect her/himself. Second, the individual faces a threat. Indeed, vulnerability is not fixed. The environment in which an individual lives may increase his/her vulnerability. Expanding on this idea, Hurst goes further and suggests that there are different levels of vulnerability. Vulnerability is "[...] an identifiably increased likelihood of incurring additional or greater wrong" (Hurst 2008, 195). This notion of degree suggests that vulnerability is relative. It also questions the legitimacy of identifying certain groups as inherently vulnerable.

For example, a Canadian woman incurs a lesser risk of being harassed by men if she travels to Germany than if she travels to Saudi Arabia. In both situations, the individual is a woman and an outsider. Using the traditional conception of vulnerability, one could assume that in both situations, this individual is equally vulnerable to harassment. Yet, this is not the case. It suggests that this individual is neither vulnerable because she is a woman or because she is a foreigner (or else she would face the same risk of being harassed in Germany and in Saudi Arabia). She is more vulnerable to harassment in Saudi Arabia because she faces an important cultural barrier and because she bears a different legal status in that country. These could be identified as her markers of vulnerability.

Asserting that some groups are inherently vulnerable also implies that other groups are "invulnerable" or "impermeable" to use the words of Butler (Butler as cited in Bell 2010, 147). This conception of vulnerability jeopardizes the well-being of certain individuals, ignoring the hazards faced by those that do not fit the established categorization. Schroeder and Gefenas stress the importance of clearly identifying the risk or the threat before determining the degree of vulnerability of an individual. These authors raise the issue of "false categorization", that is considering certain individuals as vulnerable because they are part of a "vulnerable group", and other not because they are not part of the group (Schroeder & Gefenas 2009, 118).

The notion of marker helps us avoiding the pitfall of false categorization. Carel introduces a basic understanding of markers. He proposes that all human beings are vulnerable but some are more than others because of physical, social, economic or psychological limits (Carel 2009, 215). Interacting dimensions of vulnerability can contribute to deepening the vulnerability of an individual. Carel calls these limitations "more-than-ordinary

vulnerability" (Carel 2009, 214). Researchers such as Schroeder, Gefenas, Alvarez-Castillo, Cook Lucas and Cordillera Castillo also use this concept of marker to determine the degree of vulnerability of an individual (Schroeder & Gefenas 2009; Alvarez-Castillo, Cook Lucas & Cordillera Castillo 2009). Kipnis proposes a rigorous taxonomy of markers. There would be six dimensions to vulnerability: cognitive, juridic, deferential, medical, allocational and infrastructural (Kipnis 2001, G-6). We could add that, without being markers of vulnerability *per se*, subordination, marginalization, intimacy violation, constant humiliation and exclusion are practices feeding one's vulnerability (Anderson and Honneth 2005, 135-136). Markers of vulnerability allow us to achieve a more subtle understanding of vulnerability (Hurst 2008). It also provides power to policy makers who can address specific dimensions of vulnerability of the population they deal with.

Many authors link, explicitly or not, vulnerability and exploitation (Chennells 2009; Kipnis 2001; Macklin 2003). Scholars studying the "identifiable harm" of exploitation suggest that the economic status, the ethnic origin, the legal status and the educational achievements are among the most relevant markers of one's vulnerability (Askola 2010; Chennells 2009; Macklin 2003). According to Wood, exploitation is morally wrong only when it takes advantage of the vulnerability of an individual (Wood 1995, 151). For Hurst, the origin of the vulnerability is important to determine what kind of protection one should be granted (Hurst 2008, 202). It is suggested that vulnerable individuals should be protected by the people or the organization which put them in that position of increased vulnerability (Hurst 2008; Kipnis 2001).

Drawing on that flourishing body of literature, I will add Hurst's notion of degree to Schroeder and Gefenas's definition of vulnerability to generate our working definition of

vulnerability for this essay: Vulnerability is the **"increased likelihood"** (Hurst 2008, 195) **"of incurring an identifiable harm while substantially lacking ability and or means to protect oneself because of specific markers"** (Schroeder & Gefenas 2009, 117). As mentioned before, the identifiable harm in our case will be high levels of exploitation. Inspired by Wood, I do not wish to demonstrate that exploitation is morally wrong in itself. Instead, I want to establish that putting highly vulnerable individuals in a situation where they face the risk of being highly exploited is problematic for modern democracies, which recognize that human beings are of equal worth regardless of their gender, economic status or ethnic origin. To do so, I will use the example of temporary migrant workers coming to Canada and Australia under the SAWP and the PSWPS. I will exhibit how their legal, cultural, and economic vulnerabilities expose them to the risk of being highly exploited by employers. But before jumping to our case studies, let us explore the second concept central to our analysis: exploitation.

1.2 The concept of exploitation

Having in mind the multidisciplinary nature of this essay, I wish to provide a definition of exploitation that applies not only to the field of ethics but also to other fields such as economics or sociology. As mentioned before, I do not intend to demonstrate that exploitation in itself is morally wrong. I wish to define exploitation as an analytical concept rather than a normative concept.

Mayer's article "Guestworkers and Exploitation" provides a good starting point for us to understand what exploitation is (Mayer 2005). He begins his article with an analysis of the neoclassical position towards exploitation: "According to the neoclassical standard, imperfect

competition makes it possible for some agents to take unfair advantage of others. Exploiters have market power, which permits them to dictate price to the disadvantaged" (Mayer 2005, 313). Neoclassical economists thus suggest that fairness is a matter of price and that TMWP's are unfair because foreign workers are unable to compete freely in their destination's labour market, and thereby receive a wage that is lower than it would be in a free market arrangement.

Scholars from the egalitarian tradition pretend that individuals are exploited because of their political status not their economical status (Mayer 2005, 313). Because individuals do not have access to political rights, employers take advantage of them and give them a reduced wage. This conception is inspired by Marx's understanding of exploitation: "One traditional definition of labor exploitation is the Marxian one, in which this is defined as the ratio between surplus and necessary values" (Zafirovski 2003, 463). Inspired by Marx's writings, Dymski and Elliott suggest that exploitation is the "mastery over and advantage of a working class by a capitalist class through productive and profitable use of resources" (Dymski and Elliott 1988, 30). Mayer seems to understand Marx's conception of exploitation as inherently unfair but one could argue that this definition is quite neutral. Exploiting someone (or something) is paying a wage (or a price) to get a good or a service, that is inferior than the resell price of the good or the service produced.

Mayer himself interprets exploitation as being an unfair condition. He argues that individuals with sufficient means to live decently cannot be put in a condition of exploitation because they have a decent alternative to exploitation. They can freely choose their situation and this is a guarantee of fairness (Mayer 2005, 312). This author focuses on the economic dimension of vulnerability: "You cannot take advantage of someone who has enough, for then there is no

vulnerability to exploit" (Mayer 2005, 319). Mayer supposes that exploited individuals must necessarily be desperate (Mayer 2005, 317).

This essay does not pretend that exploitation entails despair or distress. Because it is important for a multidisciplinary essay to use concepts that can be used in different context, I will adopt and adapt the Marxian version of exploitation: **Exploitation is buying and utilizing an object in order to resell what is produced at a higher price.** In Marx's view, everything can be exploited "nature and machines as well as labor" (Dymski and Elliott 1988, 29). Indeed, one could buy and utilize a forest in order to make a profit out of selling its trees. One could also buy and utilize labour in order to resell what is produced at a higher price. Finally, one could buy and utilize a human being in order to resell her/his organs at a higher price. These examples show that the definition is neutral enough to be used in different context. Obviously, the last example appears abhorrent to most of us. Let us explore why it is so.

Modern democratic societies seem to accept the fact that exploitation is the best way to manage the economy. However, democracies also agree on the fact that the direct exploitation of human beings, or the indirect exploitation of human beings through the purchase of labour, should not be unlimited because human beings possess intrinsic worth and should be able to live a dignified life. Democratic countries developed legal mechanisms throughout the last century to protect this right to a dignified life. With these mechanisms (e.g. constitutions, labour standards), governments established minimal standards beneath which they consider that the dignity of an individual is compromised. This is why it is illegal in democratic States to buy someone and sell her/his organs. It violates the basic standards credited to all human beings and negates the inherent worth and dignity of the individual.

To differentiate between individuals being exploited within the realm of what is deemed acceptable by the State and those that are being exploited beyond these minimal standards, I will refer to the latter as being highly exploited or facing high levels of exploitation. Zafirovski introduces this notion in his own work: "many branches of industry, especially those having easy access to pools of cast-off workers from other sectors, featur[e] even higher rates, that is, "super exploitation"" (Zafirovski 2003, 464). Using a similar formulation, Sawchuk and Kempf suggests that temporary migrant workers are a "highly exploited form of labour" (Sawchuk and Kempf 2008, 493).

It is now time to connect the dots and summarize our theoretical framework:

1. Human beings are exploitable and it is deemed acceptable in democratic societies to exploit them indirectly, through the purchase of their labour
2. Modern democracies recognize that all human beings possess an equal worth and protect this worth through legal mechanisms
3. Human beings that are unable to protect themselves from harm because of economic, cultural or legal reasons are deemed vulnerable to different degrees
4. Because all human beings are of equal worth, most vulnerable individuals should not be exploited more intensively than others because of their lack of capacity to claim their right to basic standards
5. The State, the rights protector on a given territory, should dedicate more attention to vulnerable individuals so that they are indeed equal before the law

Some will consider this assumption of equality suspicious at best. Obviously if everyone agreed that all human beings possess an equal inherent dignity, we would not have to study the

ethic of guest worker schemes. They would be developed in such a way that migrant workers' right to basic standards would be protected by the receiving States. Yet, this is not the case.

The "common morality" theory assumes that all cultures share a basic set of norms and values: "abstract principles do not change, (but) the scope of individuals to whom the principle is deemed to apply has changed" (Beauchamp as cited in Lindsay 2005, 327). Until that day, it seems that we have not recognized the moral equality of non-citizens. It is thus perceived as acceptable by some to exploit temporary migrant workers more intensively than local workers, that is offering them conditions beneath the basic standards set by the State to preserve one's dignity, because they are not part of the moral community yet.

From an economic perspective, Zafirovski suggests that "[h]igher wage flexibility or elasticity would indicate higher exploitation, and vice versa" (Zafirovski 2003, 466). The pay is one way to determine the level of exploitation of a migrant worker but it is not the only one. Working conditions, living conditions, hours worked are as many indicators that a worker is being highly exploited. Any situation that would drive a local worker to press charges against her/his employer is considered to be highly exploitative. A high level of exploitation is noticeable through the wage and working conditions differentiation between local and foreign workers. For example, in the United States, the Braceros program allowed employers to massively exploit the economic vulnerability of migrant workers: "Some [migrant workers] did not find steady work, and others were cheated by unscrupulous employers. Deductions for room and board could often be unreasonable, and the wages paid were frequently below the hourly rate for American farm workers—a practice that was illegal but rarely punished. The living conditions were Spartan, at best, and the work was certainly dirty and difficult" (Mayer 2005, 325).

The history of rights and liberties is one of incremental steps. In the last century, social democracies have allowed more and more groups to enter the moral community (women, non-white persons, native persons, etc.). "[W]hat is necessary is that recognized members of the moral community view the protection of these entities as being directly connected to the quality of life of the community" (Lindsay 2005, 337). I suggest that foreign workers migrating to a receiving country will eventually be included in the moral community as equals. Consequently, we need to explore which changes could make current policies more appropriate to protect these workers' rights. This essay aims at identifying the present sources of temporary migrant workers' vulnerability and propose solutions to reduce their vulnerability to levels of exploitation that would be unacceptable to local workers.

2. Migrant workers and markers of vulnerability

In this section, I will elaborate on the factors constraining some of the temporary migrant workers to accept conditions deemed highly exploitative, that is harsher conditions than governments find acceptable for their own citizens. Vulnerability is multidimensional and among the numerous markers of vulnerability affecting foreign workers, I identify three as being crucial

to analyze their situation: legal, cultural and economic². Usually, these markers are carried by temporary migrant workers but not by local workers. Local workers enjoy large legal protections against high levels of exploitation, they have a sense of how their legal system works, they are able to request the help needed if they want to report abuses committed by their employer, and finally, most have access to enough resources to refuse working under highly exploitative conditions. Highly skilled migrant workers such as university teachers or IT specialists are usually less vulnerable to high levels of exploitation than their "unskilled" counterparts. Indeed they carry less markers of vulnerability than guest workers employed as farmers or caregivers. This explains why the literature demonstrating the exploitative nature of these schemes has mainly focused on less skilled TMWP'S. Nevertheless, even highly skilled workers can experience high levels of exploitation.

Mayer makes an important point in stating that: "Not all [highly] exploitable agents are [highly] exploited" (Mayer 2005, 319). This idea is at the core of our essay. We do not wish to paint a negative portrait of all employers hiring foreign workers: "if an employer with a heart of gold offers these vulnerable workers high wages and good conditions, we would not describe the transaction as [highly] exploitative" (Mayer 2005, 320). I wish to underline that guest workers *risk* to be highly exploited because of the way TMWP's are structured. To do so, I will first explore the legal marker, then the cultural marker and finally the economic marker of

² Some authors would suggest that gender would be one important marker of vulnerability but since this essay aims at providing dimensions of TMWP's that policy makers can change, I leave this marker aside. Also, I believe that the difference between the experience of men and women migrating to work abroad is often entrenched in cultural practices and legal mechanisms discriminating against professions largely occupied by women (e.g. sex work, caregiving). In that sense, if legal and cultural barriers were removed, or at least lessened, uniformly across professions, women and men migrating to work could enjoy similar basic standards and escape highly exploitative work situations.

vulnerability carried by temporary migrant workers. Employers and policy makers will usually refer to a foreign worker's *flexibility* rather than her/his vulnerability. This segment aims at demonstrating that a worker's higher flexibility is caused by her/his higher vulnerability to intensive exploitation. Therefore, flexibility should not be conceived as a desirable characteristic of the labour force.

2.1 The legal marker

First, temporary migrant workers are vulnerable because of their legal position: "Such workers can be distinguished from other wage workers who enjoy a more comprehensive freedom in their right to sell their ability to labour" (Rosewarne 2006, 107).

Bauder suggests that both dimensions, formal and informal, of citizenship contribute to the process of distinction between migrant workers and local workers: "The legal status and cultural meanings associated with citizenship play a key role in rendering many migrants into a labor force that is particularly vulnerable and exploitable" (Bauder 2008, 316-317). Bauder defines citizenship as a form of capital and links it to the marxian conception which establishes capital as a tool to dominate labourers (Bauder 2008, 318). "Capital is a way to actively construct difference and express distinction. People who possess it use it to distinguish themselves from non owners and thereby elevate their status and congeal their privilege, while people who lack access to it can be excluded and subordinated" (Bauder 2008, 318). Citizenship acts as a mechanism to prevent migrant workers from sharing national resources.

Furthermore, Walia suggests that the legal constraints on temporary migrant workers is the source of their vulnerability to "super-exploitation". If they dare to claim their rights they risk

being fired and deported since the validity of their visa is linked to their employment situation (Walia 2010, 72). The threat of being deported is a troubling feature of guest worker programs (Garcia 2006, 46). The consequence of such condition is straight forward. An employee will not risk his/her economic gains and status to denounce high levels of exploitation, especially when the prospect of winning his/her case is rather thin. Garcia argues that the very nature of temporary working schemes makes participants vulnerable to highly exploitative conditions (Garcia 2006, 28). Because workers are only in the receiving country for a short period of time, they cannot claim their rights and get them enforced. Legal processes are lengthy and uncertain . This leads migrant workers to tolerate treatments that are officially forbidden. "As history shows, however, even when rights are granted on paper, they are often not available in practice" (Garcia 2006, 57). Without strong mechanisms of enforcement, these individuals remain greatly vulnerable to all sorts of risk like high levels of exploitation for example.

For the last 50 years, States undertook a process of de-modification of the labour by implementing regulations concerning labour rights and individual rights. However, guest worker programs often limit the extent to which these rights are shared with foreign workers and contradict this tendency by re-commodifying labour (Garcia 2006, 29). Without a seat at the table of negotiations of trade agreements, workers will remain voiceless (Garcia 2006, 30). Migrant workers cannot negotiate the terms under which they are employed by foreigners (Garcia 2006, 30). Oke summarizes the legal vulnerability of migrant workers quite well: "Temporary work often ties workers to an employer, or places limits on work hours. Some visa-holders can only stay in the country for a short time without employment, increasing the disincentive to leave an exploitative employer, or to find employment with better conditions.

Further, work can be a means of attaining permanent residency and employers can exploit this. Vulnerabilities depend upon the bargaining position of workers" (Oke 2012, 89-90). Foreign workers are denied protections guaranteed by national labour rights on the ground that they are not citizens of the country (Rosewarne 2006, 100). In some cases, the employee is legally tied to her/his employer through her/his work visa (Rosewarne 2006, 100). It is commonplace for guest worker programs to restrict not only "market mobility" but also "physical mobility" (Rosewarne 2006, 103). Lastly, a great deal of these schemes limit the civil liberties of temporary migrant workers (Rosewarne 2006, 104).

Migrant workers often take up jobs in markets that are loosely or not regulated (Rosewarne 2006, 104). They are more present in fields that are usually poorly protected by national labour laws, for example farming and caregiving. "The employment contract locks the worker into a more subordinate position than that of the classic wage worker who sells a specific property right, the ability to perform labour" (Rosewarne 2006, 105). This is no coincidence: these fields are deserted by local workers who are in a better position to refuse highly exploitative positions. Sectors presenting higher risks of high levels of exploitation, because of the dispersion and the isolation of workers, are not attractive to local workers anymore. Local workers have access to welfare and employment insurance benefits. The labour standards in these sectors of the economy do not have to evolve as fast as other sectors since temporary migrant workers are available to fill out positions left by local workers.

Facing major legal constraints, the migrant worker's well-being is left in the hands of the receiving country. For that reason, policy makers must be careful when developing TMWP's.

They have to find a way to include workers' representatives in the policy making process to make sure that the program is fair and addresses the concerns of the employees.

2.2 The cultural marker

Secondly, temporary migrant workers are vulnerable because of the cultural barrier they face when they leave their home country to work abroad. Abuses and discrimination can be ingrained in racism originating from the cultural barrier existing between the employer and the foreign employee: "Roots of [traditional divide-and-conquer strategies] are found in both personal (grower's) racism, pseudo-genetic, common-sense ideologies" (Sawchuk and Kempf 2008, 497).

Robinson and Carey suggest that "[t]he current dichotomy in the migration literature between 'highly skilled' and the 'unskilled' is, in many ways, artificial and unhelpful" (Robinson and Carey 2000, 103). Indeed, the cultural marker of vulnerability can make it difficult for migrant workers, even for high skilled ones, to be treated adequately by their employers in receiving countries. In many receiving countries, "non-white" workers do not have access to the best opportunities (Robinson & Carey 2000). "[R]acial markers often signify cultural nonbelonging" (Bauder 2008, 324). The cultural barrier may also include a language barrier: "For example, migrants are often unable to give the cultural performances expected from the members of an imagined national community. They may speak with an accent rather than 'proper' standardized language" (Bauder 2008, 325). In some instances, cultural discrepancies also limit the capacity of guest workers to associate themselves with local groups to claim their rights (Sawchuk and Kempf 2008, 497). "The lack of access to the identity and entitlements associated

with citizenship apparently devalues the labor of noncitizens, legitimating their exploitation" (Bauder 2008, 326).

Without strong knowledge of the national language, temporary foreign workers, high skilled or low skilled, are disempowered (Kiwon 2008, 69-71). Rights are still embedded in the legal system of the nation-State (Martinez Brawley & Gualda 2006, 64). In Canada for example, Binford suggests that English-speaking Caribbean workers developed a culture of empowerment over the years, unlike their Mexican counterparts still perceived as docile employees by Canadian employers (Binford as cited in Sawchuk and Kempf 2008, 496). Having access more easily to the local culture because of the common language, Caribbean workers seemed to be able to claim their rights more easily and to enforce the contract signed by both parties more strongly (Sawchuk and Kempf 2008, 496).

When both racist stereotype and language barriers characterize a work environment, temporary migrant workers are considered to be in a position of great vulnerability.

2.3 The economic marker

Third, temporary migrant workers are vulnerable because of their precarious economic condition created, among other things, by the few job opportunities and the thinness of the social safety net in their home country. For example in Germany, "three-quarters of the Turkish guests cited financial difficulties as their primary motive for migrating. Many had debts to repay or were unable to save anything out of their current wages" (Mayer 2005, 323). Another element adding to their economic vulnerability is the wage discrepancies between receiving and home

countries. This difference leads them to accept high levels of exploitation to access the labour market of rich countries.

The recruitment process of guest worker programs leads workers to contract debts that can only be paid back by working abroad. Among other spendings, potential participants usually migrate internally to go in areas where they have more chances of being selected for the program. They also have to get a passport, and pay for a part of their visa fees and airfare (Gibson and McKenzie 2011, 362). All these costs further deepen the migrant workers' economic vulnerability to high levels of exploitation.

Garcia suggests that guest worker programs erode the bargaining power of workers not only in the receiving countries but also on the global labor market (Garcia 2006, 28). Taking workers bargaining power away makes them more and more like inanimate commodities that are moved from one country to another, according to production needs. "[I]f effort per unit of labor in production were indeterminate *ex ante*, the threat of starvation would allow capital owners to forcibly extract extraordinary effort from workers" (Dymski and Elliott 1988, 29). TMWP's contribute to the economic vulnerability of the global labour force.

Temporary migrant worker programs are problematic because they increase the vulnerability of workers instead of protecting them from high levels of exploitation. These schemes tacitly encourage employers to take advantage of migrant workers' legal, economic and cultural vulnerability and exploit them more intensively than local workers.

3. The Australian and Canadian schemes for seasonal agricultural workers

The literature exploring the concepts of vulnerability and exploitation usually refers to case studies such as women working in the prostitution industry or women and children victims of human trafficking. Although these cases probably show the most vulnerable situations in which an individual could find her/himself, they are not the only instances in which individuals are vulnerable to high levels of exploitation. Focusing on the victim status of highly vulnerable persons does not help us to change the settings which put them in such a condition in the first place. Rather it reinforces the stereotypes carried by individuals issued from a group labeled as vulnerable.

Taking a step back from such "worst-case scenarios" may help us avoid the pitfall of victimizing highly vulnerable individuals. This is why I chose to study the Australian pilot for the Pacific Seasonal Workers' Scheme and the Canadian Seasonal Agricultural Workers' Program. Both programs are hosted by resourceful democratic countries with high standards of rights and liberties, and both recruit mainly men from poorer countries to perform physically difficult jobs. At first sight, one would not label strong Mexican or Tongans harvesters as highly vulnerable individuals. However, as we will see through the next section, participants are more vulnerable to the risk of high exploitation than local workers because of their precarious legal status, the cultural and language barriers they experience, and their poor economic opportunities.

This section of the essay aims at analyzing the vulnerability of temporary migrant workers participating to the Canadian SAWP and the Australian PSWPS. When available, I added illustrations of instances where high levels of exploitation of migrant workers were

observed. The Canadian program having been around for decades provides us with some appalling examples of the risks faced by temporary migrant workers.

3.1 The Australian PSWPS

In 2008, Australia decided to implement a pilot scheme to welcome workers from Pacific Islands and thus remedy the shortage of local workers in the agricultural sector. Policy makers made 2500 visas available to these temporary migrant workers over a period of three years (Gibson and McKenzie 2011, 361). On July 1st 2012, this pilot program became the Seasonal Worker Program (DEEWRA 2012). Participants of the PSWPS mainly harvest fruits and nuts on Australian farms (Gibson and McKenzie 2011, 361-362). The recruitment process is controlled by "approved employers" who are selected by the government (DEEWRA 2012).

Over the duration of the pilot program, employers successfully lobbied to increase the "flexibility" of the program. They hesitated to hire foreign workers under the initial conditions which limited more strictly the time of employment of foreign workers, and placed a larger burden of travel costs on the employer (Gibson and McKenzie 2011, 361-362). The latter change increased the already existing economic vulnerability of selected foreign workers. Indeed, it enlarged the debt incurred by foreign workers to access the Australian labour market. Gibson and McKenzie observe that "[m]any of those participating in the PSWPS are poor by global standards, with 16% living in households earning less than US\$1 per capita per day, and 40% in households earning less than US\$2 per capita per day" (Gibson and McKenzie 2011, 363).

As stated previously, guest workers coming from rural and poor areas have very little bargaining power and cannot fight the increase of their debt ratio demanded by employers. "The

initial costs of the workers include their one-half share of the airfare, a passport, police clearance, medical check-ups, the visa, internal travel within the home country, and warm clothing. These costs average A\$1063 for Tongans, and A\$1644 for i-Kiribati, reflecting the higher cost of air travel from Kiribati" (Gibson and McKenzie 2011, 365). These costs represent a significant debt that participants have to contract partially before leaving. It is expected that workers will pay their employers back for a portion of the airfare through deduction from their salary earned on the farm (DEEWRA 2012). Such a large debt may force the participants to accept inadequate working conditions.

The PSWPS work visa is linked to the employer recruiting the participants. As Oke notes, this legal constraint leaves workers vulnerable to the will of employers: "for workers employed on the Pacific Seasonal Workers' Scheme, the inherent complications in their visa conditions emerged when the company where they were working went into receivership, leaving them unemployed until a new contract was established, as they did not have work rights outside the named employer" (Oke 2012, 90). Not having the option of working for another employer, temporary migrant labourers are subjected to conditions dictated by the sponsor. Although unions were involved in the policy making process to develop the PSWPS, participants remain largely outside of unionized organizations: "Paul Howes of the AWU argues that Pacific Seasonal Workers' Scheme participants must . . . have the same rights as other workers including the right to join a union for protection from unscrupulous bosses (AWU 2008)" (Oke 2012, 95). Rights advocates suggest that temporary migrant workers from the Pacific islands are unaware of their right to join a union in Australia (McCarthy 2012). The precarious status of migrant workers, due

to the temporary nature of their visa and the fear to be deported, makes them particularly vulnerable to high levels of exploitation (Campbell 2010, 52).

The Fair Work Ombudsman, a national governmental organization in charge of watching and enforcing labour standards across the country, "identifies certain groups of workers as 'vulnerable' and who might require more specific support or protection than other workers" (Campbell 2010, 52). This Australian organization suggests that, among other things, cultural and language barriers, and the lack of knowledge regarding laws regulating working conditions, migrant workers face a higher risk of being abused by employers than local workers (Campbell 2010, 52). In May 2012, 26 temporary migrant worker went on strike to denounce the racist attitude of their employer. The official response was certainly disappointing for the Tongan workers: "The Co-ordinator of the Seasonal Workers Programme, Meleoni Uera, says the dispute has now been resolved, claims of racism against the farmer were exaggerated, and the farmer is accepting more Tongans" (TBC 2012). This demonstrate the cultural vulnerability of migrant workers. The concerns regarding the lack of language knowledge, and the associated fear to "speak up" to abusive employers was voiced by the Australian Fair Trade and Investment Network (AFTINET) (Parliament of Australia 2011).

As we can see from the limited body of literature on PSWPS, participants are indeed legally, economically and culturally more vulnerable than local workers to high levels of exploitation. The Fair Work ombudsman notes that "(their) inspectors have identified that most matters have involved underpayment or non-payment of wages and overtime, unlawful deductions from wages and non-compliance with record-keeping obligations" (Campbell 2010, 52). A study focusing on the conditions of international students participating in the Australian

labour market: "found that 21 per cent of international students had suffered abuse at work, including exploitative rates of pay or excessive hours" (Deument et al. as cited in Oke 2012, 90). Overall, international students face a lower degree of legal, economic and cultural vulnerability than temporary lower skilled migrant workers yet still, some of them face highly exploitative conditions of work. It is only a matter of time before further studies document the high levels of exploitation faced by migrant seasonal workers in Australia.

3.2 The Canadian SAWP

The Seasonal Agricultural Workers Program as we know it today was implemented in 1966 in Canada (Sawchuk and Kempf 2008, 496). About 24000 visas are delivered each year under this program (Gibson and McKenzie 2011, 361). Nine of the ten provinces recruit workers through this scheme for a period of 6 weeks to 8 months, Ontario being the most important recruiter of agricultural guest workers. This scheme was expanded during the 1980's when Canada started to recruit workers from Mexico additionally to Caribbean workers (Sawchuk and Kempf 2008, 496). The recruitment process of temporary workers is conducted by organizations set up and financed by the Canadian agricultural industry (e.g. FARMS in Ontario): "The program is quite simply an employer-driven vehicle, serviced by the Canadian government" (Flecker 2010, 100).

Just like participants in the PSWPS, migrant workers coming to Canada under the SAWP contract important debts to be part of this scheme. Several fees can be recovered by the employer once the labourer starts working. This sets the migrant worker in a position of indebtedness towards her/his employer. For example in 2012, employers from Ontario could deduct up to 589\$

from Mexican workers to cover for the airfare. They could also deduct 150\$ for visa fees and 2,16\$ per worked day for "Other Recoverable Costs" (FARMS 2012).

Migrant workers coming to Canada are legally protected from abuses but their precarious status prevent them from claiming their rights (Walia 2010, 74). Indeed, employers can terminate a worker' contract for "non-compliance, refusal to work, or any other sufficient reason" (FARMS 2012). Documented abuses in the SAWP include "wages lower than Canadian counterparts and up to sixteen-hour workdays during peak season, without receiving overtime or vacation pay" (Walia 2010, 74). In Canada, labour standards are protected by provincial legislation. Recently, the Supreme Court of Canada ruled in favour of an Ontario Law stipulating that farm workers do not have the right to unionize in that province (Makin 2011). They have the right to associate but unionization, a specific form of collective bargaining, is prohibited. In an environment where workers are as isolated (both geographically and culturally) one from another, unions seem to be the best if not the only way for temporary migrant workers to claim their rights. Even in provinces where the right to unionize is protected, workers' precarious visa status may prevent them from joining a union: "In Septembre 2008, a group of fourteen Mexican farm workers at the Floralia Plant Growers in the Abbotsford, BC, were sent back to Mexico after filing papers to unionise through the UFCW" (Walia 2010, 75).

There is no national agency taking care of protecting migrant workers rights, even though the SAWP is a federal program (Byl 2010, 97). Migrant workers must go through provincial "local employment or labour standards office" to fill out a complaint against their employer (CIC 2012). The red tape involved in filling a complaint can be burdensome and discouraging for

temporary foreign workers who do not have a clear knowledge of their rights and of the judicial system.

The language barrier can also discourage them from taking the time to get informed and denounce the abuses committed by an employer. Usually, inspections conducted by appropriate bodies follow a complaint and will be announced to the employer prior to the actual visit (OML 2012). This procedure is ill-conceived to protect temporary foreign workers: "The current system does not appear to provide sufficient inspection or enforcement of the terms of the contract" (Worswick 2010, 4). Bauder suggests that medias reinforce stereotypes regarding temporary migrant workers coming to Canada through the SAWP. "For example, seasonal agricultural work in Canada is seen as too dangerous, physically strenuous, and demeaning for Canadian workers, but not for foreign migrant workers from Mexico and the Caribbean" (Bauder 2008, 325). This sustains racist attitudes towards migrant workers. On the language barrier faced by temporary guest workers, Sawchuk and Kempf argue that "[t]he ethno-linguistic differences – revolving around the absence of Spanish-language capacity of the supervisory staff and the ethno-centric presumptions that continue to replicate this inadequacy – produce a degenerative feedback loop of events where English-only instructions, half-understood, ineffectively direct work. This is followed by supervisory criticism (and not infrequently racialised claims of laziness and neglect)" (Sawchuk and Kempf 2008, 500). As we can see, just like PSWPS participants, SAWP participants are economically, legally and culturally vulnerable to high levels of exploitation.

3.3 Suggested best practices

"Reflecting on poor conditions, a worker comments: "[I wonder] if this is really what the Canadian people or the bosses we have want us to do – hold a demonstration . . . to express what's wrong with our houses, how we are treated, and the benefits that we should have a right to?" (Hinnenkamp 2004 as cited in Sawchuk and Kempf 2008, 500).

Let us consider some practices that might help temporary migrant workers to be less vulnerable to high levels of exploitation. As previously established policy makers could improve several dimensions of TMWP's in order to protect migrant workers more adequately.

Sachar argues that granting special protections to most vulnerable individuals may reinforce the stereotypes they are already subjected to (Shachar 2000, 64). Ferrarese would disagree and counterargue that if vulnerable individuals would indeed have enough tools to claim their rights with standard mechanisms, they would not be considered highly vulnerable individuals anymore (Ferrarese 2009, 610). Some scholars like Garcia would argue that abolishing guest worker programs would be the solution. He suggests that guest worker schemes are an extension of slavery (Garcia 2006, 30). Indeed, critics of these schemes have very strong moral arguments to support their view. Instead of abolishing the programs altogether, I suggest that reforming the programs could lead to better outcomes for workers while discouraging governments to implement further risky schemes. Given the bureaucratic nature of public policies, I take the stand that an incremental approach will be the most efficient way to change problematic practices. I argue that a black and white portrait is not helpful because it provides no credible alternative to these programs.

Sawchuk and Kempf suggests that migrant workers gain knowledge and experience through their relationships with their national embassy, receiving country's officials, their

employer, their co-workers, advocacy groups and communities of origin (Sawchuk and Kempf 2008, 498). These are entry points to reduce the vulnerability of temporary foreign workers. Garcia suggests that "foreigners living abroad may be 'virtually represented' by their governments through the foreign policy actions of their leaders. In the case of guest workers, "virtual representation has not worked very well because low-wage workers usually lack political power in their home countries" (Garcia, 2006, 43). Sawchuk and Kempf note that in Canada, we can see an increasing solidarity developing between foreign workers and locals coming from the same ethnic community. "This is seen, for example, in relations between the various Caribbean communities in the city of Toronto and Caribbean guest workers" (Sawchuk and Kempf 2008, 498). **Encouraging the development of relationships between migrant workers and their community of origin present in the receiving country could be one step to diminish their cultural vulnerability.**

Work visas granted on the condition to work for a sponsor is probably one of the most problematic terms for any migrant worker schemes (EU Commission 2005, 11). In the UK, high-skilled foreign workers obtain their work visa independently from their employer (Zaletel 2006, 623). This is an important step to limit the potential abuse of temporary workers (JCWI 2010). This independence from the employer would also guarantee liberty of movement which is limited when a temporary worker is tied to an employer, like it is generally the case in Spain (Plewa & Miller 2005, 60-61). **Granting temporary visas to work in a certain sector of the economy rather than a specific company could be one way to limit the legal vulnerability of temporary migrant workers.**

Another way of doing this at a low cost could be to encourage migrant workers to organize themselves through unions aware of the specific needs of temporary migrant workers (Parliament of Australia 2011). Unions are no guarantee of good treatment for all workers as Oke notes: "The issue is difficult for unions not just because of the issues around national versus transnational solidarities but also the intersection of this issue with the creation of workplace vulnerabilities, including the casualisation of workforces and the ability of temporary migration programmes to be used to undercut wages and conditions" (Oke 2012, 93). But this type of association does empower workers especially in work environments such as farms: "The protection of workers' entitlements and health and safety is a major concern in precarious industries like horticulture, agriculture and construction, which often operate in remote and isolated areas with low union coverage, limited government regulation and a highly casualised, mobile workforce" (Maclellan 2008, 47-48). Oke provides us an example of how unions may help temporary migrant workers: "For example, the role of the AWU has been central to the pilot seasonal horticultural work programme for Pacific workers and has actively sought to recruit these workers. Unusually in this industry, the union negotiated them a contract guaranteeing at least 30 hours of work a week" (Oke 2012, 93). **Indeed, unions can assist migrant workers in diminishing their legal vulnerability and free governmental resources dedicated to inspect remote work places.**

Maclellan suggests that: "Any seasonal workers program should include a standardised disputes procedure, to ensure that workers being sent home are provided natural justice and grievance processes" (Maclellan 2008, 49). Reenforcing independent ombudsman organizations is also absolutely necessary if workers rights are to be respected. For example, in Australia: The

Fair Work Ombudsman has approximately 800 staff located in 26 offices across Australia and approximately 300 of these staff are appointed as Fair Work Inspectors (...) We estimate that we are now responsible for providing workplace relations advice, education and compliance services to more than 90 per cent of all employees and workplaces around the country" (Campbell 2010, 51). To counter migrant workers' vulnerability, the Fair Work Ombudsman provides free translators for the workers, gives out information for them in 26 different languages, and conduct proactive investigations. They also take care of judicial processes when employers are not complying with existing regulations (Campbell 2010, 52-53). There are similar instances in Canadian provinces, but the fragmentation of this entity seems to be inefficient to deal with agricultural migrant workers issues. "The experience of seasonal workers schemes in New Zealand (Maclellan 2008) and Canada (Basok 2002; UFCW 2004; Russell 2004) shows that any seasonal workers scheme must involve more than monitoring of conditions for temporary workers – the scheme must be regulated by government, and there must be a system of sanctions for breaches of those regulations" (Maclellan 2008, 48). **A proactive and resourceful ombudsperson office would obviously decrease the legal and cultural vulnerability of temporary migrant workers.**

In one New Zealand community, a "culturally-aware police officer" served as a contact for temporary migrant workers participating in the Recognized Seasonal Employer (RSE) scheme, a program very similar to the Canadian SAWP and the Australian PSWPS (Parliament of Australia 2011). On a larger scale, this kind of initiative could enhance the level employers' compliance to the laws regulating the conditions in which migrant labourers live and work. Without providing language classes themselves, receiving governments could add pre-departure

meetings as a requirement to access the labour market: "Currently, the Progressive Intercultural Community Services (PICS) organisation continues to provide workshops, training, advocacy, language classes and general resources to farm workers" (Walia 2010, 74). All authors emphasize the value of pre-departure training sessions: "Given evidence of alcohol abuse by Pacific workers in New Zealand, there is a need for pre-departure information on a range of social issues as well as about wages and workplace conditions: for example, on the weather, appropriate clothing, the quality of housing and issues like substance abuse, HIV-AIDS and gambling" (Maclellan 2008, 50). **Training police personnel to deal with migrant workers and requiring migrant workers to participate in workshops on workers rights and social issues could decrease the cultural vulnerability of participants to TMWP's.**

The economic marker of vulnerability is probably the most tricky to overcome but one measure could be to legally dissociate the workers from their employer. **By offering visas to work temporarily in a sector instead of a tying worker to a single employer, workers could find alternative ways to finance their migration than working for a highly exploitative employer.**

Conclusion

We now have the tools to understand more accurately the vulnerability of temporary migrant workers to high levels of exploitation. I demonstrated that most migrant workers have a three dimensional vulnerability when they work abroad. First, their legal status is precarious because of the temporary nature of their visa, the constraints put on their right to mobility and organization, their lack of citizenship and the difficulty to enforce the law in industries occupied by temporary migrant workers. Second, they are vulnerable because of their economic situation. They have few job alternatives, their bargaining power is close to inexistent and they contract an important debt by leaving their home country. Finally, they are culturally vulnerable because they lack language skills, they know little about the labour standards and the laws of the receiving country, and they face racism when working abroad. The vulnerability of an individual does not imply that s/he will be automatically abused or mistreated. It does however set the risk of being super-exploited very high.

For that reason, democratic governments, which recognize the equal intrinsic value of all human beings, should aim at developing more sustainable practices than the current TMWP's. As Sawchuk and Kempf put it: "Guestwork is framed by health risks, loneliness, harsh conditions, instances of poor treatment, lack of citizenship and worker rights as well as pronounced cultural alienation" (Sawchuk and Kempf 2008, 497). The analysis of Canada's SAWP and Australia's PSWPS provided us an illustration of vulnerability to highly exploitative practices. I suggest that incremental steps must be taken by receiving countries to change unacceptable features of TMWP's to eventually find alternatives to these programs. Some will say that it would be costly

to give these migrants more rights, or to enforce present legislation more intensively. To that I answer: Of course, a high level of exploitation is always cheaper than a low level of exploitation.

As stated in the initial overview of temporary migrant worker programs, even though these schemes can be beneficial in the short-run, they become detrimental over time. They promote an increasing dependency of industries on temporary migration, they create social problems, and they deteriorate the bargaining power of workers. Such programs should not be abolished overnight, but alternative policies should be developed to replace this form of temporary migration. If we need these workers to help us remedying to labour shortages, we should respect them and treat them accordingly. Over the long-run, policy makers will realize that current TMWP are unacceptable. By then, I expect that alternative solutions which answer a country's need in term of labour will be easier to implement (e.g. better training of the local labour force, raise of the wages for difficult and dirty jobs, replacement of uncompetitive industries by efficient ones, higher levels of immigration, etc.). In depth interviews with participants of the PSWPS (or eventually the Seasonal Worker Program) and rigorous data and statistics on the conditions of temporary migrant workers would help policy makers develop programs more sensitive to the needs of these workers and more sustainable policies.

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