

**“In and Out the Back Door”:
Canada’s Temporary Workers Programs in a Global Perspective**

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(Forthcoming in Geiger, M. & Pécoud, A. (eds) (2012), *The New Politics of International Mobility : Migration Management and its Discontents*, Osnabrück (Germany :)University of Osnabrück Press, Institute for Migration Research and Intercultural Studies).

Abstract

In the first part of this paper, we discuss the basic tenets of the migration management model and document the new consensus, emanating from international organizations and academic theories dealing with international migration, that temporary migration programs are best suited in today’s global world. The second objective of this paper is to illustrate the development of temporary migration using the Canadian model, which is often cited as a best practice example. Although academic interest with respect to policies affecting refugees and irregular migrants in Canada is relatively well developed, temporary migration policies are still little discussed and analyzed in the Canadian context. Our aim is to show the growing reliance on migrant workers and the development of a two-tier migration policy in Canada.

Introduction

The significance of international migration, and in particular the role of migrant workers, is being profoundly affected by crucial economic and social transformations linked to globalization. We argue in this paper that we are presently witnessing an important paradigm shift with the implementation of migration policies aiming at elaborating a two-tier migration regime, focused, on the one hand, on highly selective mechanisms of recruitment of qualified workers and, and on the other hand, on temporary work permits for less skilled occupations. This paradigm shift is embedded in the migration management approach, which has become a major reference in international migration discussions and analyses.

Evidently, the notion of migration management is not new and dates back to the end of the 19th century.¹ What is new however is the recently generalization of the “orderly global management” model. In the words of Gosh (2000), the founder of this new approach, migration management means managing for more orderly, predictable and human objectives, and to achieve these objectives, there is a need for a global governance migration regime. Migration management is based on one essential premise: namely that migration, if well managed, can be positive for all, i.e. countries of origin, countries of destination and migrants themselves (thus the “win-win-win” slogan). This framework has emerged within the context of European Union concerns with irregular migration perceived as a threat and considered difficult to manage given the extension of borders under the different treaties involved (Martin and Pécoud 2010)

Given the main concern with irregular migration, operational aspects of migration management policies cover three important dimensions. The first dimension has to do with more effective control of borders and involve basically the process of de-territorialization whereby migrants are intercepted before gaining access to European Union countries, what has been labeled “preventive refoulement”. The second dimension involves third states, mostly some weak states such as Albania and Greece, which are pressured to develop migration policies more attuned to effective border controls. This approach also involves alliances with transit countries such as Morocco and Libya, which are asked to curtail illegal emigration and where migrants are sent back when intercepted. The third dimension refers to co-development programs aiming at stopping emigration pressures from sending countries, programs criticized for being developed with exclusive EU interests.² Finally,

¹ Chetail (2007 : 24) reminds us that the US Supreme Court broke away from the principle of free circulation with its 1892 decision stipulating that every sovereign nation has the power to forbid the entrance of foreigners and decide who can be admitted.

² All this is well analyzed in the book by Martin and Pécoud 2010.

International Organizations, mainly the International Organization for Migration (IOM), play a significant role in diffusing the migration management discourse.

As mentioned above, the migration management approach is mainly the result of preoccupations with illegal migration. However, another central dimension of migration management discourse is the promotion of temporary migration as an appropriate policy choice. This dimension is much less discussed and analyzed. In the first part of this paper, we discuss the basic tenets of the migration management model and document the new consensus, emanating from international organizations and academic theories dealing with international migration, that temporary migration programs are best suited in today's global world.

The second objective of this paper is to illustrate the development of temporary migration using the Canadian model, which is often cited as a best practice example (e.g. UNDP 2009). Although academic interest with respect to policies affecting refugees and irregular migrants in Canada is relatively well developed, temporary migration policies are still little discussed and analyzed in the Canadian context. Our aim is to show the growing reliance on migrant workers and the development of a two-tier migration policy in Canada.

Temporary Migration in Global Migration Management Discourse

The global agenda is still profoundly embedded in utilitarianism and consequentialism³

It is not possible to dissociate present-day discussions on temporary migration from the global approach to international migration, and in particular to its profound embeddedness in utilitarianism (Taran 2007). Indeed, since the inception of international migration policies in the 19th century, the utilitarianist paradigm⁴ has been dominant and rarely challenged. In recent years, two competing paradigms, namely the globalization and human rights approaches, have altered the way we think about migration, but without really questioning the utilitarianist postulate. However, an emerging paradigm, based on the notion of open borders, is the only one radically challenging the utilitarianist paradigm.

The pillars of the utilitarianist paradigm

Migration policies rest on four pillars: political, demographic, humanitarian and economic. The political dimension represents the fundamental basis of the paradigm and considers national sovereignty as an absolute principle and states that migration policies must first and foremost be geared towards national interests. A corollary of this postulate is the primacy of national security, a preoccupation that has become overwhelming since September 11, 2001 (Crépeau and Nakache 2006).

³ For more details, see Piché 2009.

⁴ I use the term « paradigm » throughout the paper to mean a set of basic assumptions (values, ideologies, theories, hypotheses, interpretations) with respect to a specific research field (here international migration). A dominant paradigm is often taken for granted and it is very difficult for alternative paradigms to become accepted and legitimized.

The humanitarian dimension refers to refugees. Contrary to other types of international migration, refugees and asylum seekers are governed by international law under the Geneva Convention since 1950. Indeed, this constitutes a breach with respect to national sovereignty in as much as States party to the Convention have accepted the principle of multilateral management and, in this sense, this type of migration could be said to lie outside of the utilitarianist model. However, it must be added that the rights of refugees and asylum seekers have been severely curtailed in the last fifteen years. Considered too liberal, the application of the Convention has become more and more restrictive (Hollifield 1998; Legoux 2008) and more attuned to national and/or regional interests as in the case of the European Union.

The third pillar of migration policies is demographic. In traditional immigration countries as in Canada, the demographic foundation of immigration has always been present (Piché 2003; Simmons 2010). However, recently, demographic considerations have become generalized in developed countries. With population ageing and anticipated decreases in population, important labor shortages are anticipated and international migration becomes (or could become) the main component of population growth. For example, for the period 2000-2005 in developed countries, net international migration is estimated at 2,6 million while “natural” increase (births minus deaths) is estimated at 1,0 million (United Nations, 2006). It is in this demographic context that the notion of replacement migration (immigrants replacing births) has been suggested (United Nations 2001).

Of course, if the demographic context is considered “unfavorable”, it is directly linked to economic considerations, the forth pillar of migration policies. Ultimately, all migration policies pursue economic objectives and these occupy a central place in the elaboration and justification of migration policies. This can explain why scientific research on international migration has tended to focus on the economic impacts or consequences of immigration (see for example, Borjas 1994; Gosh 2005; Domingues Dos Santos 2006; Pécoud and De Guchteneire 2009). The term “consequentialism” has recently been coined to characterize this approach (e.g. Ruhs and Chang 2004). In brief, the consequentialist approach is centered on the positive or negative effects of international migration. Positive consequences will justify a more open policy while negative effects will justify restrictive policies. At the macro-demographic level, the economic impact of immigration is said to be either positive or indeterminate but never negative (Ruhs and Chang 2004). At the micro-level however, studies tend to show that migrants tend to improve their economic situation (Gosh 2005).

In sum, it can be argued that the four pillars of migration policies are cemented by utilitarianist principles: they are embedded in national sovereignty and are constructed around national economic interests. Recently, many voices have risen to suggest that this paradigm is seriously put to test by globalization processes. We now turn to these arguments.

Globalization

Many authors consider that the national level is no longer appropriate for the management of international migration. The nation-state, in the globalization context, is considered as less and less capable of controlling migration flows in a unilateral fashion (Dieckhoff 2000; Gosh 2000). It is thus important to ask whether globalization has fundamentally changed the dominant migration paradigm. The answer to this question is multifaceted and depends on the level of analysis. Here, we examine four dimensions of this question: volumes of international migration, decision-making levels, migrants' rights and basic tenets of the global migration approach.

With respect to the volume of international migration, the answer to the question on the impact of globalization seems to be positive. There is consensus in the literature that the present historical period is marked by intense mobility and that this mobility will continue to increase as a result of globalization. The evidence for this comes from a single source of data produced by the Population Division of the United Nations based on the number of persons enumerated outside their country of birth. According to these statistics, foreign-born populations have increased from 75 million in 1960 to 191 million in 2006 (Zlotnik 2006). In relative terms, these numbers represent 2,5 percent in 1960 compared to 2,9 in 2005. While the relative increase has remained small during the period at the world level, the increase has been particularly important in developed countries (3,4% in 1960 against 9.9% in 2005), which may explain why migration flows constitute a preoccupation characteristic of the global North. Given pressures inherent in globalization (the creation of regional blocks, increased socio-economic inequalities between rich and poor countries), it is reasonable to expect still higher levels of international migration in the future.

With respect to decision-making, the answer is also positive. Globalization is at the root of the emergence of a school of thought in the 1990s advocating the necessity of going beyond unilateral and national management of migration to multilateral and global management (Gosh 2009). It is clear that we have witnessed in the 1990s an increase in multilateral discussions of international migration, whether at the levels of governments or of international organizations such as the United Nations system (Pellerin 2004; Piché 2004). However, regarding the content of such discussions, there are important gaps between governments, international organizations and NGOs involved in the promotion and protection of human rights of migrants. States are more interested by issues of security and border controls, in particular with respect to irregular migration and human trafficking (Crépeau and Nakache 2006, Geigier and Pécoud 2010). On the other hand, international organizations insist on the important developmental potential of migration as well as the promotion of human rights. Finally, NGOs carry a more critical perspective, advocating for more open, less restrictive and more centered on human rights migration policies.

In this regard, the impact of globalization on the protection of human rights of migrants is minimal. On the one hand, the present focus on security is certainly not favorable to open immigration policies and to the extension of migrants' rights. On the other hand, the human rights approach to international migration has become a global issue and is prominent among key international organizations such as ILO, UNFPA and also among many NGOs. It appears that there is a globalization of the human rights model (Coicaud and Gardner 2003). We will come back to this point in the next section.

The final dimension with respect to the impact of globalization on migration policies is linked to the first fundamental pillar. Despite important shifts in the way migration is perceived, the globalization approach to migration is still embedded in the utilitarianist paradigm and does not question the two basic postulates linking international migration to national sovereignty and national economic interests. In the globalization perspective, migrants' rights do not constitute an important parameter in the elaboration of policies. Hence, if emigration is recognized as a universal right, there is no symmetrical right to immigration. Immigration is considered a privilege granted by States, which consider that they possess an exclusive right on rules of entry. Of course, the utilitarianist paradigm does not exclude the granting of certain rights to migrants, such as integration and residence rights, and in fact in certain countries these rights do exist. However, the degree of extension of these rights varies from country to country and ultimately depends on the goodwill of each country. In some countries, residence and citizenship rights for certain categories of migrants are easily accessible (e.g. Canada and the United States), while in most other countries citizenship is not possible.⁵

The migrants' rights approach, although it is changing the model of migration management, remains embedded in utilitarianism.

A third paradigm focuses on migrant workers' rights. It is exemplified by the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted by the UN General Assembly on 18 December 1990 to which we will come back further on. It must be acknowledged that the International Labor Organization (ILO) has explicitly promoted the notion of migrant workers' rights as early as in the 1940s. Indeed, in 1949, the ILO adopted Convention No 97 on the rights of migrant workers, followed by Convention No 143 adopted in 1975 (ILO 1949, 1975). ILO has recently proposed new guidelines in which article 8 stipulates that the human rights of all migrant workers, **regardless of their status**, must be promoted and protected (ILO 2006). This framework insists on equal treatment in the labor market, condemns human trafficking, insists on multilateral management of migration, recommends social and economic integration of migrant workers and, finally, underlines the positive nature of international migration in the context of development.

Other UN organizations play a strategic role in the promotion of the human rights of migrant workers. For instance, the now "extinct" UN Commission on Human Rights⁶ had adopted year after year (up until 2005) a resolution entitled "Human Rights of Migrants" (United Nations 2005). In brief, this resolution can be summarized in six points: the Commission

- i) strongly condemns all manifestation of racism and discrimination against migrants (art. 1-4);
- ii) urges States to promote and protect the human rights of all migrants, **independent of their migratory status** (art. 5)

⁵ For a review of the situation with respect to citizenship rights, see Weil 2001.

⁶ Replaced in March 2006 by the Human Rights Council.

- iii) urges States to engage in multilateral discussions on migration policies (art. 6);
- iv) favors immigration programs that allow complete integration in receiving countries and facilitate family reunification (art. 9-11);
- v) asks States to respect labor laws in accordance with national legislations and international conventions (art. 13);
- vi) encourages States to combat human trafficking (art. 19-20).

The UN Commission on Population and Development is also interested in international migration. Although this Commission is responsible for the follow-up the Cairo Plan of Action adopted at the 1974 International Conference on Population and Development (ICPD), it was only in 2006, at the time of its 39th session, that the Commission dealt explicitly with the theme “international migration and development”. Following up on the report of the Secretary General (United Nations, 2005), this Commission presented a resolution stressing the positive link between migration and development for countries of origin, destination and transit (through remittances and the involvement of diasporas). As we all know, international migration is a controversial subject particularly among developed countries, which are not open to holding international conferences with “binding” resolutions. Thus, no consensus was reached to organize such conference, although a high-level dialogue meeting was agreed upon and held in September 2006. The results of this meeting were not different from previous discussions and dealt with the positive aspect of migration for development. NGOs and civil society were not formally invited to this meeting; however, a consultation was held in New York on July 12, 2006 sponsored by the UN Non-Government Liaison Service (NGLS) during which NGOs expressed their views on the report of the Secretary General mentioned above (NGLS 2006). Two main criticisms were formulated: (1) that the report did not sufficiently promote a global approach to migration rights, and (2) that the angle adopted was too based on economic needs.

ICPD + 15 (i.e. 15 years after the 1974 Cairo Conference) has produced a series of regional reports in preparation for another international conference that may be held in 2014. These reports re-affirm the Cairo agenda, namely that countries should ratify the International Convention on the Protection of the Rights of Migrants. For example, the ECLAC (2010) report goes so far as to state that everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

The most important international instrument with respect to migrants’ rights is the UN Convention mentioned above. This convention, although adopted in 1990, became into force only in 2003. As of July 2010, 43 States had ratified the Convention, but no developed country had done so. Among others, article 1 stipulates that the Convention applies to all migrant workers and members of their families, without distinctions based on migratory status (regular or irregular).

However, what is important for our discussion is that the migrants’ rights framework does not call into question the utilitarianist postulate of national sovereignty. Indeed it stresses

the importance of multilateral actions in migration management, but within a context of cooperation between States that remain sovereign in migration policy matters. Hence, article 79 of the Convention states quite clearly that “nothing in the present convention shall affect the rights of each States Party to establish the criteria governing the admission of migrant workers and members of their families”.

Three other examples illustrate the proposition that utilitarianism is still very much present in the global agenda on international migration and human rights. The first example is the report of the Global Commission on International Migration (Global Commission 2005). In certain aspects, this report presents innovative recommendations, in particular with respect to the necessity to further develop the normative framework of migrants’ rights and adopt more binding international conventions. However, the Global Commission clearly specifies the necessity to respect national sovereignty in migration management. Furthermore, the report dwells heavily on the positive potential of migration for development. The second example is the latest ILO multilateral framework mentioned above which explicitly refers to migrant workers’ rights (ILO 2006). The title of the document is revealing since it refers to “non-binding principles and guidelines for a rights-based approach to labor migration”. However, this framework is based on the same basic principles as the Global Commission, namely national sovereignty and positive economic impact of migration (see for example article 15).

The third example, the UNDP 2009 Human Development Report, merits a separate discussion because of its very strong position in favor of greater human mobility. The report, viewing “development as promoting people’s freedom to lead the life they choose, recognizes mobility as an essential component of that freedom” (UNDP 2009: 8). Among the six pillars to maximize the human development impacts of migration (chapter 5), the first two deal with liberalizing and simplifying regular channels that allow people to seek work abroad and ensuring basic rights for migrants (p. 95). With respect to human rights of migrants, the report states that the six core international human rights treaties, ratified by 131 countries, all contain strong non-discrimination clauses applicable to migrants, regular and irregular, citizens and non-citizens (see also Chetail 2007 for the same point of view). Thus, “even countries that have not signed the CMW⁷ are still obliged to protect migrant workers” (UNDP 2009: 101). Although the report presents the strongest position ever for a UN body regarding the “intrinsic value” of human mobility, the main argument still resolves around the positive developmental impacts of international migration and its “instrumental value” (p.17). Consequentialism and utilitarianism are still on the agenda as well as the national sovereignty principle in as much as the proposal “does not prescribe any particular levels of increased admissions, since these need to be determined at the country level” (p. 95).

Hence, as for the second pillar of the utilitarianist postulate based on the necessary links between immigration and national economic needs, it is also not called into question by the migrants’ rights framework. To reconcile the consequentialist principle and human rights, the migrants’ rights framework has rephrased the migration-development equation by

⁷ Convention on Migrant Workers.

reversing the question. The question is no longer – as in the previous paradigm – is migration positive or negative, but how can migration be managed in order to produce positive effects. In fact, there is a strong presumption that migration **can be** positive if well managed. In particular, remittances and transnational groups constitute key factors in fostering development. Surely, for groups and organizations promoting migrants' rights, this "new" paradigm is extremely important and useful. Even if it remains within the utilitarianist perspective, it is an important tool for the promotion and protection of migrants' rights and can be used to pressure governments for increased protection of human rights.

Nonetheless, the human rights paradigm is fraught by two shortcomings. Firstly, international resolutions and conventions remain very little binding. For example, the fact that no developed countries have yet ratified the UN Convention on the protection of migrants' rights considerably limits its power.⁸ The second limit to the migrants' rights framework is linked to the acceptance of consequentialism as a principle. Consequentialism is a double-edged sword with respect to the promotion of migrants' rights. As long as it can be demonstrated, or is believed, that migration is positive, the promotion of human rights is possible and even facilitated. However, an important change in the economic context such as a severe crisis, with consequent increased unemployment, promotion of migrants' rights would be considerably weakened. In such contexts, the perception of the economic impact of migration would become negative and States, supported by public opinion, would feel justified to shut the doors and increase border controls, and consequently migrants' rights would become relegated to a second, even marginal, place.

A forth paradigm, labeled "open borders scenario", constitutes a radical rupture with the above paradigms in as much as it framed outside their utilitarianist foundations. It essentially asserts that migrants' rights should not be dependent on the goodwill of individual states and is based on three basic tenets. Firstly, the right to emigrate should be paralleled with the right to immigrate. In this sense, the paradigm completely reverses the dominant equation: migration is not a privilege but a right. The second basic principle states that there is an absolute necessity to build a strong international law with binding mechanisms. Finally, in the open border framework, migrant (temporary) worker programs, which do not offer the right of residence and integration, are contrary to migrants' rights.

The "open borders" paradigm has been well developed by a series of books published by UNESCO under the editorial leadership of Antoine Pécoud and Paul de Guchteneire, in particular in their 2007 book entitled *Migration without borders* (subsequently published in French in 2009). The basic arguments of the book are as follows. Firstly, political responses to the new international migratory context are largely inefficient, human costs are high (one death per day at the US-Mexican border) and so are financial costs (the richest countries spend from 25 to 30 billion dollars per year) (Pécoud & de Guchteneire

⁸ Many studies have attempted to address the question as to why developed countries refuse to ratify the convention: see the special issue of *Hommes & Migration* 2009 and De Guchteneire, Pécoud and Cholewinski 2009; for Canada, see Piché et al. 2009.

2009, chapter 1)⁹. Secondly, on a more theoretical ground, the analysis of arguments against the migration without borders scenario shows that no arguments, be they ethical, economic or social, seriously go against open borders (see for instance Ugur 2009). Furthermore, the scenario of massive outmigration as a result of open borders does not find empirical evidence (Kunz and Leinonen 2009). In brief, it is argued that there is an important paradox between globalization and the non-liberalization of migration flows (Harris 2009). In this context, the migration without borders scenario is certainly worthwhile to consider. Obviously, this scenario is still considered far-fetched and utopian. Most countries and regions of the world still have rigid borders, such as South Africa, Asia, North America and European Union. There seems to be some opening up of borders in West Africa and Latin America.

There seems to develop a new consensus that temporary migration programs are best suited in today's global world.

A few examples will illustrate the new consensus around temporary migration among international organizations. The first one comes from the Global Commission (2005). The argument in favor of temporary migration is based on offer and demand. On the one side, there exist an important offer coming from poor people in need of income. On the other hand, there is an increasing demand for workers in low skilled occupations for which local recruitment is limited, oftentimes impossible. In brief, allowing these poor workers to have access to income constitutes a win-win situation: for the migrants, for countries of origin and for receiving countries. In the report of the Global Commission, at least four recommendations deal with the relevance of temporary migration programs (no 2 to 5).

The second example comes from the ILO framework mentioned above (ILO, 2006). For instance, article 15 of the framework stipulates that the contribution of labor migration to employment, economic development and the reduction of poverty must be recognized and maximized for the benefit for sending as well receiving countries. Temporary labor migration is not considered negative in as much as the equal treatment principle of migrant and native workers is respected (guideline no 5.5). It must be recalled that these guidelines are not binding and that it is the idea of temporary programs as legitimate that comes out of the ILO framework.

A third example is the “International Initiative on Migration and Development”, launched by IOM in 2006 in cooperation with the private sector, the World Bank and some governments. This initiative argues for greater temporary mobility of workers using the usual argument about offer and demand. The IOM is not only advocating temporary migration but is also involved in specific programs, the Canadian seasonal agricultural program involving Guatemalan workers in Quebec being a case in point.

A final example comes from the UNDP 2009 Human Development Report mentioned in a previous section. This report argues for the expansion of schemes for “truly seasonal work in sectors such as agriculture and tourism” (p.4). Canada is even singled out as a country whose migrant workers programs have been successfully operating for decades (p. 96),

⁹ See also Pécoud and de Guchteneire 2006.

although the criteria for success are not mentioned! As we shall see in the next section, Canada's record needs to be critically re-assessed.

The idea of the relevance of temporary programs is not only promoted by international organizations as seen above, but there is also such support coming from the academic world. Two examples are noteworthy because of the strategic position of the authors. The first paper was written by two economists and published in *International Organization* (Ruhs and Chang 2004). At the outset, it must be noted that the authors argue in favor of including migrants' rights as a policy parameter along with the traditional consequentialist parameter, and this is certainly a very important argument from a human rights perspective. They suggest a typology of immigration policy using a "three by three" matrix involving two basic parameters, degree of consequentialism and degree of moral standards for non-citizens. What is important for our purposes is the final conclusions suggested by these authors. Firstly, they reject the four extremes as not realistic (namely rights-based nationalism, consequentialist nationalism, rights-based cosmopolitanism and consequentialist cosmopolitanism). Secondly, they advocate the "moderate" position (moderate consequentialism and moderate moral standing). To the question "what would be the most desirable design of labor immigration policy?", they answer that the design needs to be much less cosmopolitan and significantly more consequentialist than the human-rights approach as advocated by international organizations (Ruhs and Chang 2004: 90-94). Their final proposition is the need to design new types of temporary foreign worker programs including a list of core rights and "we need to deny migrant workers some of the rights that are generally granted to citizens and permanent residents of the host country" (Ibid: 97). Needless to add that this statement is contrary to international law since equal treatment in the labor market is recognized in the United Nations Treaties on economic, social and cultural rights and on the civil and political rights, which are in force since 1976 (Chetail 2007: 63).

A second more recent example is an article published in the journal *Ethical and Racial Studies* by the well-known sociologist, Alejandro Portes (2009). According to his review of the literature, he concludes that "cyclical" international migration, as opposed to permanent migration, has the most positive developmental effects. This is true for manual as well as professional and technical labor flows. It must be underlined that in his view, permanent migration of manual labor has non-developmental effects.¹⁰

The re-emergence of temporary migration programs may appear astonishing given that these types of programs, namely guest worker programs, have been severely criticized and

¹⁰ Of course, positive developmental effects say nothing about the socio-economic conditions in which cyclical migration operates or about the possible exploitative nature of such migrant labor. As a matter of fact, discriminatory and exploitative conditions can, and often do, coexist with positive developmental effects. The opposite is very unlikely because workers would not engage in such migration if positive effects were not expected. This association between migration and expected positive outcomes is as old as the famous Harris-Todaro (1970) model.

abandoned in the 1970s by many European countries (Castles 2006). In any event, the main point here is that there is consensus on the relevance of such programs.

The Canadian Model: a critical approach

Canada is good example of a country, which is presently transforming its traditional immigration policy, geared towards permanent residence, into a vast program of temporary workers. Canada has always been considered as part of the traditional immigration countries and policies have largely favored the recruitment of foreign workers through a selection process granting permanent residence. It is this immigration that has fueled the economic and social history of Canada and Quebec (Piché 2003). Although, in the 1970s, Canada resorted to foreign workers via temporary programs (see for example, Basok 2002), numbers were limited. Furthermore, despite strong pressures from the growers in the agricultural industry for the recruitment of Caribbean migrant labor in the face of persistent shortages of labor, the Canadian government refused to allow such recruitment until the end of the 1960s because of what Satzewich (1988) calls the racialization of post-war migration to Canada. Thus, all through the 20th century, Canada conveyed the image of a permanent immigration country. However, since the last 10 or 15 years, this image must be seriously revised (Sharma, 2006; Prebish 2010).

As with most other developed countries, the Canadian economic and demographic situation is now characterized by important labor needs. On the one hand, the present immigration system is seriously criticized by employers as being inefficient, given the long delays between immediate labor needs and the result of the lengthy selection process for economic immigrants (through a point system). Employer pressures are presently very strong towards linking directly employment (demand) and labor (offer). The result has been the development of temporary migration programs involving highly qualified as well as less qualified workers (Prebisch 2010). Detailed statistics are still hard to come by (Depatie-Pelletier 2010), but they are very eloquent in documenting the important increase in the number of foreign workers (migrant temporary workers) in Canada.

Statistics on temporary foreign workers are published yearly by the Department of Citizenship and Immigration Canada (CIC) and available on their WEB site (www.cic.gc.ca/english/resources/statistics/facts2009). Calculations presented in Table 1 have been adapted from the latest report (CIC, 2009). We have selected three years (2000, 2005 and 2009) in order to give some idea of changes occurring approximately in the last ten years. Table 1 shows that the grand total of foreign workers (line 5) increased from 89,746 in 2000 to 282,194 in 2009.

Table 1 about here

Many different types of categories are included in the label “foreign workers”, such as students, humanitarian visas, etc. In this table, we focus on two such categories: (i) temporary visas granted under international trade agreements such as the North American Free Trade Agreement (line 1) and (ii) workers with Labour Market Opinion (LMO, line 2). The latter category falls basically under different types of temporary migrant workers

programs under which employers must apply for a Labour Market Opinion (LMO) before they can hire a foreign worker or get pre-approval to hire a large number of workers. A positive Labour Market Opinion will show that there is a need for the foreign worker to fill the job offered and that there is no Canadian worker available to do the job.¹¹ These two categories represent some 60% of all foreign workers (line 4).

Crucial to our analysis is the very important increase in foreign workers as defined here (line 3): from 54,829 in 2000 to 163,979 in 2009. Furthermore, entries under « international agreements » have declined while the proportion of migrants in temporary programs (LMO workers) have increased from 72% in 2000 to 86% in 2009. Finally, the ratio of temporary to permanent workers has also considerably increased such that in 2009 temporary migration has exceeded permanent economic immigration (line 8).

In terms of human rights, it is the low skills programs that are most preoccupying. Low-skilled foreign workers are under the legal authority of their employer and are admitted under three main programs. (1) The **Live-in Caregiver Program** is the legal framework for the recruitment of foreign workers (mostly women) for employment as caregivers with the obligation to reside in the employer's home as stipulated in the work permit. In December 2009, there were some 38608 such caregivers (compared to 7451 in 2000, Table 1). (2) The **Seasonal Agricultural Worker Program** is targeted to nationals of Central America and the Caribbean, mostly Mexicans and Guatemalans, for temporary employment in the agricultural sector. Certain binding conditions are explicitly integrated in work contracts. In particular, no foreign worker part of this program is allowed to work for an employer other than the one specified in the contract, or can do so only with the authorization of this employer. Furthermore, after a period ranging from 7 to 14 days, the agricultural employer can put a stop to the employment of a foreign worker and thus start repatriation procedures. In 2009, there were 23437 foreign workers in this program (compared to 16688 in 2000). (3) Other foreign workers coming under temporary programs (mainly the **Low skilled Temporary Foreign Worker Program**) also increased considerably from 13882 in 2000 to 37524 in 2009.

The latter program was initiated in 2002 within the new immigration law and defines the guidelines for the recruitment of low skilled foreign workers in occupations other than care giving and agriculture. It is part of the Temporary Foreign Worker Program (TFWP) initiated in 1973 for the recruitment of highly skilled workers. This program has been expanded to lower-skilled workers in 2002 with important changes facilitating such recruitment from 2002 to the present. If in 2002 26,3% of all temporary foreign workers were in lower-skilled occupations, this percentage was up to 34,2 in 2008. (see Prebisch 2010) However, if the family members of foreign workers are included, it is estimated that between 40 and 55% of temporary foreign workers were in lower-skilled occupations (Nakache and Kinoshita 2010: 5-6). It can be expected that the rise in the number of foreign workers in lower-skilled occupations will continue in the future. A recent study has shown that lower-skilled foreign workers, contrary to highly skilled workers, have little

¹¹ The LMO is delivered by Human Resources and Skills Development Canada (HRSDC).

access to employment-related rights, to family reunification and to permanent residence (Nakache and Kinoshita 2010).

Temporary Foreign Worker Programs are troubling for two main reasons. Firstly, they create a new category of non-citizens since settlement is beyond the reach of these workers (Sharma, 2006). Thus Canada is presently developing a two-tier immigration policy: one for highly qualified immigrants through the point system (economic class) and/or through temporary programs with easy access to permanent residence; and another for lower-skilled workers for which integration is denied.¹² Despite the fact that this is a fundamental change in Canadian immigration philosophy, there has been no public debate to this effect. The second main problem with temporary programs is that they do not respect fundamental human rights.¹³

However, the most unacceptable aspect of temporary programs is that they are basically employer-led and that foreign workers are tied to one employer. It is thus possible to apply the concept of “unfree labor” to this type of employment: unfree to circulate in the labor market and unfree to refuse work when required (Basok 2002: 16).

Finally, it must be stressed that recent legal decisions have been made in Canada, which grant the same rights to migrant workers as all citizens. For instance, in its 2010 legal opinion on the rights of foreign workers, the Quebec Human Rights Commission concludes that these workers benefit from the guarantees granted by the Quebec Charter of Human Rights (Carpentier 2010). Another example is the decision by the Quebec Labor Commission, declaring that article 21.a of the Quebec Labor Code, which stipulates that persons employed in a farm are not considered as salaried employees with the possibility of unionization if they are not “ordinarily and continuously” employed, is unconstitutional because it is contrary to the Canadian Charter of rights and liberties (Québec 2010).¹⁴ As Nakache and Nikoshita (2010) have shown for the rest of Canada, there are some efforts to increase the protection of migrants’ rights but the problem is that these rights are in practice not really accessible because of the very restrictive nature of the work permits.

In the 1980’s, there was some discussion among Canadian scholars as to the nature of temporary programs. While Wong (1984) argued that they were guest-worker programs, Boyd et al. (1986), analyzing temporary worker flows between 1973 and 1985, showed that significant and growing proportions involved social and humanitarian reasons, thus not linked directly to labor market and therefore could not be labeled as guest-workers for this group. However, as we have shown (see also Prebish 2010), there is an important increase in the labor-market component of migrant workers in Canada and as such they can be labeled as guest-workers.

¹² Sharma (2006) argues that temporary programs in Canada create homeless categories of people while Walia (2010) coins the denial of integration as the apartheid of citizenship.

¹³ The « openness index » calculated by Ruhs (2011) shows that temporary programs in Canada are below average compared to other temporary migration programs in high- and middle-income countries.

¹⁴ However, this decision is being revised by the Montreal Superior Court and is likely to end up in the Supreme Court.

Conclusion

International migration and its management constitute major challenges for the 21st century, parallel to the great social, economic and political transformations characterizing today's world. In particular, globalization is changing the basic parameters with respect to the role of international migration and the place reserved for migrant workers. We are witnessing presently the setting up of a two-tier migration regime, one for lower-skilled workers centered on the refusal of integration and citizenship, and another for highly skilled workers who's mobility is favored with all kinds of rights and integration facilities. In other words, we are witnessing a new global migration regime that is highly restrictive and repressive for all types of unskilled migrants (Wickramasekara 2009), whether temporary, asylum seekers or undocumented. This regime is "new" in four senses: (1) it is global, i.e. it is elaborated in the context of multilateralism; (2) the demographic and economic needs create a new bipolar, unequal, North-South reality; (3) there is a wide consensus on the relevance of this type of migration regime, a consensus implying an alliance between employers and governments, largely supported by public and media opinion on the need to limit immigration but not temporary migration; and (4) international law with respect to migrant labor is weak and often non-binding.

It is possible to conceive of temporary foreign worker programs that are acceptable from a migrants' rights perspective, in as much as five minimal conditions are met: (1) the temporary nature of employment should be a voluntary option of the worker who should have access to permanent residence, if so desired; (2) the worker should not be tied to one employer and should be granted free circulation in the labor market; (3) independent and efficient mechanisms need to be put into place in order to guarantee the protection of the rights of workers; (4) cases of abuse need to be efficiently punished and not be only complaint-based; and (5) Canada should sign and ratify the UN Migrant Rights Convention (Piché, Pelletier & Epale 2009).¹⁵

¹⁵ With the recent election of a majority Conservative government, it can be expected that the importance of temporary migrant workers programs will increase and that the recruitment of temporary migrants will increasingly involve the private sector in general and employers in particular.

Table 1

Temporary versus Permanent Workers, Canada, 2000, 2005 and 2009**Canada - Foreign workers present on December 1st by yearly sub-status****PANEL A**

Temporary sub-status	2000		2005		2009	
	<i>Numbers</i>	<i>Percent</i>	<i>Numbers</i>	<i>Percent</i>	<i>Numbers</i>	<i>Percent</i>
International						
Agreements (1)	15,413	28	14,819	18,6	22,59	13,8
Information technology workers	1,395		1,98		3,565	
Live-in caregiver program	7,451		20,386		38,608	
Seasonal Agricultural Worker Program	16,688		20,250		23,437	
<i>Mexican</i>	<i>9,226</i>		<i>11,848</i>		<i>15,722</i>	
<i>Caribbean</i>	<i>7,462</i>		<i>8,402</i>		<i>7,715</i>	
Other workers with LMO*	13,882		19,205		37,524	
Workers with LMO* (2)	39,416	72	64,667	81,4	141,389	86,2
Sub-total (3)	54,829		79,486		163,979	
		100		100		100
% of total (4)	61		56,4		58,1	
Grand total (5)	89,746		140,906		282,194	

PANEL B**Permanent Immigration - Economic Class**

Economic	136,285	156,312	153,498
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class (6)			
% of total (7)	59,9	59,6	60,9

PANEL C

Ratio temporay

/permanent (8)	0,66	0,51	1.1
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* LMO : Labour Market Opinion (see text for explanation)

Source: CIC, 1989, *Facts and figures 2009 – Immigration overview: permanent and temporary residents*.

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