THE TEMPORARY FOREIGN WORKER PROGRAM IN CANADA: LABOUR MARKET SOLUTION OR OPEN DOOR FOR ABUSE?

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Abstract

One of the most controversial and often-discussed aspects of the modern global migration system is the issue of precarious labour in the context of migration. In both unauthorized migrants, in particular in the United States and Europe, and authorized guest worker regimes, most prominent in the Gulf Monarchies, employers and firms have found large pools of labour not subject to the same legal and social norms as the native workforce. This trend, which has existed since at least the post-World War II period but has been rapidly increasing in the 21st century, has not been without controversy, from a variety of political perspectives. Precarious workers in these conditions are sometimes accused of “stealing” jobs from native-born workers or of driving down working conditions in the receiving countries. Conversely, many NGOs concerned with human rights have drawn attention to the various abusive and exploitative elements embedded within these regimes. Workers are often tied to one particular employer, may not be subject to minimum wage or other workplace legislation and often live in squalid conditions.

This paper will investigate the various controversies around the Canadian Temporary Foreign Worker Program (TFWP), with a particular focus on the effects, or lack thereof, of recent reforms to the program. In doing so, it will compare the policies and application of Canada’s program to other, similar programs in developed countries in order to create an accurate portrait of the programs stated and implicit goals and how successful it is achieving them. In addition, the paper will attempt to locate the TFWP’s place within the wider system of migration control policy in the Canadian context, and the extent to which it is congruent with the broader stated values of these policies.

Keywords: Migration, Canada, Migrant Workers, Temporary Foreign Workers, Immigration Programs

1. Introduction

If it has meant anything, globalization has meant a fundamental challenge to the ultimate sovereignty of states, in a whole variety of matters. Particularly since the end of the Cold War and the ushering in of a certain consensus of policy, often termed “neoliberal”, states have been under pressure to step back from the regulation of trade and capital flows, entrusting these to multinational bodies (such as the World Trade Organization) and “the market”. In other areas, such as the formulation of the United Nations’ “Responsibility to Protect” (R2P) doctrine, the sovereignty of states has been challenged on humanitarian groups, with the notion of international norms of behaviour taking precedence over a states’ essential control over its internal affairs. This is not to say that these limitations on sovereignty are necessarily good or bad, at least in their entirety, but rather that they are an essential element of the globalized world, with nations that go boldly against them seen as outliers or pariahs. Curiously, then, and despite the more recent global increase of refugees and other displaced
persons, this anti-sovereignty logic has largely not informed the global policy consensus in regards to migration of people between states. Indeed, that “the ability to expel or removed unwanted people has always been a symbolic test of the state’s sovereignty over its national borders” [1], is a statement which many governments are now more eager than ever to live up to. From Donald Trump’s promise to build a “big, beautiful wall” on the United States-Mexico border to the outright rejection of asylum seekers by EU nations such as Hungary, the notion that the receiving state shall ultimately have final and absolute control over who comes inside its orders and how is one which is gaining, rather than waning, by the day. In many countries, this sentiment has gone further, with a desire to reduce and restrict immigration itself being an animating factor of a number of so-called “populist” political movements across the developed world (and in some cases, such as India’s border with Bangladesh, the developing world as well).

At the same time, there is an “international trend towards a proliferation of temporary migration programs for low-skilled work” [2], which takes on a variety of forms depending on the country. Though the notion of a “guest worker” program much predates the modern era, dating back to at least the early post-WWII period in Europe, if not earlier, these new programs are distinguished by a number of features. In general, such programs are characterized by limitations on worker mobility (often their residency permit is tied to a particular employer), a lower standard of labour rights than native workers, and the essentially temporary, often seasonal, nature of the residency permit. Some of these programs were instituted in response to an existing population of undocumented migrant workers (as is the case in Spain and, to some extent, the United States) and others which grew out of perceived gaps in the local labour market (an extreme example of this being migrant worker groups in the Arab Gulf monarchies), but they share such characteristics in general terms, to greater and lesser extents. At the same time, it should not be thought of that all international labour mobility under these types of programs is located at the low-paid end of the job market, though it is in this sector that more news stories stemming from worker abuses are found. The temporary workforce also comprises many high-skilled professionals moving between countries, often in technical or management roles. Examples of this would include software engineers from India employed in Silicon Valley under the H-1B visa program, or management consultants in the “high-skill” section of Canada’s Temporary Foreign Worker Program (TFWP). Though such labour migrations are often in law subject to similar terms as “low-skill” migration, in practice they are usually not viewed as exploitative in the same way, partially because “highly skilled workers and entrepreneurs may well experience significant advantages in the labour markets of host countries” [3]. Nevertheless, such programs, though widely used, have become increasingly controversial, both due to the observed abuses of migrant workers themselves and the perception that their presence in the national labour market may lessen working conditions and take away jobs from the native population. Often, the justification for the programs in response is stated that such workers are needed to fulfill specific functions in the labour market that native workers either cannot or will not, and that the earnings potential for low-skilled workers is much higher than in their native countries, generating crucial remittance payments. Controversies around such programs touch on a number of issues surrounding the responsibilities of governments to citizens versus non-citizens, the racialization of labour divisions and the benefits and drawbacks of immigration as whole.

In this political and economic context, Canada’s migration management regime, both in terms of permanent immigration and temporary worker, is often seen as a model to the rest of the developed world. In this story, the perception of an effectively-functioning, merit-based immigration system has meant that, “for a very long

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1For the purposes of this paper, “migration management” will be defined as “the practice of regulating the conditions of crossborder movement” (Reed, 2008)
time, Canadians have shown a very-favourable attitude towards immigrants in general” [4] meaning that nativist-style policies have had less political traction there. This is, it is said, in part due to a government embrace of multiculturalism as a core value of the country and in part due to the high level of selectivity that Canada’s “points”-based immigration system imposes on potential migrants, meaning that only those most likely to integrate and be economically successful are allowed in. There is some truth to these claims, with Canada being one of the only developed countries whose government has proclaimed an intention to increase immigration quotas over the near future, but, there is an underside to this success story. The TFWP, and the related Seasonal Agricultural Worker Program (SAWP) and Live-In Caregiver Program (LCP) have been long-standing aspects of Canada’s migration management strategy, but only recently have become more widely known and controversial. In part, this is due simply to an increase in numbers, as “the number of migrant workers in Canada more than tripled between 2000 and 2011” [5], but it is also due to increased media and activist attention on issues faced by migrant workers in the country. Given the restrictive conditions which are very much a feature of the overall Canadian TFW regime, some have stated that, “migrant workers’ limited access to civil, political, and social citizenship rights renders them partial citizens” [5], with their presence forming a kind of shadow migration system which allows the Canadian state overall to escape scrutiny. For these reasons, along with a perception that TFWs have contributed to a weakening of bargaining power for Canadian employees, the program has faced declining popularity, with “more than half of those polled opposed” to it [2]. On the other hand, defenders of the program have argued that public opposition is often misinformed, that TFWs fill specific gaps in the labour market, that avenues to citizenship do exist within the program’s design and, even at the low-skill end, participation in the program represents a significant increase in earnings for migrants [6]. In response to these controversies, the federal government, which is mainly responsible for the management of the program, introduced a number of changes designed to restrict its use, ensure fair competition practices with Canadian workers, and increase penalties for employer abuse [7]. Though some have characterized the introduced reforms as merely cosmetic and doing little to alleviate the conditions of migrant workers themselves, it is clear that the issue of TFWs is much more of an active debate now than it has been in the past. Examining various aspects of the program, both in terms of legislation and in practice, will allow for a more fulsome picture of its place in the Canadian economic and political system to be developed. In doing so, a more balanced assessment of temporary migration within Canada, along with suggestions for meaningful reform, will become possible.

2. The Origins and Purposes of the TFW Program

Though its use has greatly expanded post-2000, the origins of the TFWP lie in the reform of the overall Canadian immigration system in the late-1960s. This reform abolished the existing national origins quota system (which favoured European migration over non-European), and instituted a “points-based” system. Under this system, potential immigrants to Canada are assessed on a variety of criteria (such as education level, language fluency, age, etc.) which are designed to judge the individual’s potential to be economically productive and socially integrated within Canada. Each criteria is assigned a point value, with a minimum “pass” score required to potentially immigrate.3. Though there are two other major avenues to permanent resettlement in Canada (those being the

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3The Canadian government sets an immigration quota each year, so, some applications may be delayed into a subsequent year if the quota has already been met, even if the individual has passed the point threshold. This has led to periodic “backlogs” in immigration applications in Canada.
family reunification and refugee programs), when the Canadian immigration system is discussed, often as a model for other countries to follow, it is usually this “economic class” system that is being referred to [8]. However, “since 1970, there have been continuing efforts to raise the selection standard for independent immigrants” [5] (Taylor & Foster, 2015), in order to both limit immigration to preferred levels and to ensure that only the “best of the best” will be allowed to permanently settle in Canada. As Canada’s only land border is shared with the United States, it has not historically had a significant population of undocumented migrants meaning that migration management has, in certain respects, been an easier task than for other developed nations. At the same time, a perceived need to “fill-in” labour gaps at the low end of the market, without allowing for individuals involved in these streams to have the right of permanent residency in Canada, led to the parallel development of the country’s first temporary worker programs. In 1966, an agreement was signed between Canada and several Caribbean nations, expanding to Mexico in 1973, to develop a seasonal agricultural worker program, which would later evolve into the SAWP [2]. Unlike other aspects of the TFWP, these were developed and remain as bilateral agreements between the involved nations, with the sending country government assuming certain responsibilities not involved in the TFWP in general. At the time, these agreements were justified under a logic of “agrarian exceptionalism, which proposes that agriculture is a unique industry” [9], with extremely low profit margins and therefore a need for specified labour arrangements apart from the prevailing Canadian standards. In 1973, the first general Temporary Foreign Worker legislation went into effect, for which “initially only skilled workers, seasonal agricultural workers and live-in caregivers were eligible” [4]. The so-called “low-skill” aspect of the general TFWP (as distinct from the SAWP) would not be developed until the mid-00s, with the specific impetus coming from intensive construction projects related to the development of oil resources in the province of Alberta [6]. The live-in caregiver portion of the agreement, which allows for the recruitment of overseas workers to provide care to children or the elderly, was expanded into the Live-In Caregiver Program in 1992, which, uniquely, allows participants to “apply for permanent residency after two years in the program” [10]. Permanent residency or citizenship is possible under other aspects of the TFWP only on a limited basis. Provincial governments do have the ability to “nominate” individuals participating in the TFWP to receive permanent residency, but, there are a limited number of spaces available for this and it is at the discretion of provincial governments how they are allotted, with no federal rules existing. One of the consistent demands of both organized labour and migrant advocacy groups in Canada as related to TFWs has been the creation of more “pathways” to citizenship for participants [11]. Despite concern and controversy over its growth in recent years, in particular the expansion of the use of TFWs into “non-traditional” sectors such as customer service and banking, it should be noted that temporary labour migration is nothing new in Canada, and in some areas, such as the agricultural sector in Ontario, it is seen as an essential part of the economic order, with perception of the SAWP as “universally positive” amongst employers [12].

For the general TFWP, as opposed to the SAWP and LCP (which are based on, respectively, the bilateral agreements between states and a request-based system for individuals/families wishing to hire a live-in caregiver), employers wishing to hire a TFW must go through a process administered by Human Resources and Skills Development Canada (HRSDC, a federal government department). Employers are required
to make, “reasonable efforts to recruit citizens and permanent residents” for job openings before seeking to hire a TFW and to pay TFWs no less than the “prevailing wage” for Canadian workers doing the same work in the same area [2]. If an employer is able to demonstrate such efforts, they receive a “labour market option” (LMO) from HRSDC, essentially an authorization to begin recruitment activities for TFWs. TFWs are also subject to the labour codes of the province that they work in on the same terms as Canadian citizens, though there are specific issues, which will be explained further in a subsequent section, which make enforcement more difficult where TFWs are concerned. Furthermore, the manner in which HRSDC calculates the prevailing wage rate has been characterized as “controversial and opaque”, with their also being evidence that “some employers simply ignore the wage set out in the employment authorization agreement” [2]. An aspect of the TFWP that has been particularly controversial is that, with rare exceptions, residency permits issued under the TFWP tie the individual to a particular employer, meaning that if they are fired or otherwise lose employment with the company, they are no longer permitted to remain in Canada. Despite the heavy tilting towards the interests of the employer that this creates in the workplace relationship, particularly for workers coming in through the “low-skill” TFWP track, this restriction has been justified on grounds of protecting the broader Canadian labour market. Though there are, notionally, avenues for TFWs to have their permits switched to a different employer if they wish to change jobs, the reality is that the process is highly bureaucratic and rarely utilized in practice. Furthermore, though some individuals coming into the TFWP believe that it is a path to permanent residency (either due to misleading claims by recruiters or unclear information by the government itself), and ultimately Canadian citizenship, the work permits issued must be renewed every two years. This means that TFWs are located in an inherently precarious situation, with limited employment security.

3. Program Benefits and Drawbacks

Before outlining problematic aspects of Canada’s TFW regime, it is important to acknowledge its positive aspects which are often missed by a media and political focus on negative outcomes. Firstly, though much of the political controversy around TFWs has focused on the “low-skill” portion of the program, historically the majority of workers entering through the program were in high-skilled professions, such as “university teachers, scientists, specialist technicians and entertainers” [6]. Though there has been some downward shift in the skill profile of TFWs coming into Canada, a significant portion of TFWs are still in the high-skill category, with a noticeable increase of recruitment in the high-skill track coming from developing countries such as India and China. Though it can be argued that critiques of the TFWP’s restrictive program design nevertheless still apply to these workers, it is not clear if this is perceived as a problem, either by the workers themselves or by Canadian society. Furthermore, as outlined in a study by [13], “former skilled TFWs had much higher initial earnings than immigrants who first arrived in Canada as landed immigrants”, implying that skilled TFWs are often able to use their experiences to make connections in Canada which allow them to be more successful if they later choose to immigrate permanently. Secondly, as demonstrated in a study of use of TFWs in the construction industry by [4], their presence has tended to have a “stabilizing effect on employment in fast expansionary times”. This means that, in the case of an expansionary environment, the use of TFWs is often necessary to have sufficient manpower to sustain the overall employment on a particular project. Insofar as, “Canada tailors its need for foreign labour based on changing market conditions” [14], the TFWP can be seen as a complimentary program to the general immigration system, which provides a solution for particular, short-term, economic “bottlenecks”. For instance, if a company were unable to use the TFWP option to recruit additional workers, it may have to cancel projects overall, meaning an overall
reduction in employment for Canadian citizens. Thirdly, studies on the SAWP have demonstrated that it is possible for workers employed through the program to “earn in eight months what it takes three to five years to earn at home” and that “two-thirds of SAWP employers develop good relationships with workers”, often seeking to re-hire the same workers for multiple growing seasons [12]. Furthermore, TFWs of all kinds, in particular in those in the LCP and the SAWP, generate significant remittance revenues for their country of origin and allowing those countries to relieve pressure on local labour markets. It is important to remember that, “sending countries like Mexico and the Philippines are equally involved in creating labour migration flows for their economic gain” [14], often explicitly training workers with the intent of their being sent abroad. Though there are undeniably exploitative aspects to the architecture of the TFWP, it remains the case that many are willing to participate in it, even after previous experience.

With this said, there are significant concerns with the condition of persons working under the terms of the TFWP which have been expressed by government reports, journalists and a variety of Canadian civil society groups. In part, these stem from the fact that, “like most receiving countries, Canada has not ratified the instruments that provide rights for migrants and that regulate labour market intermediaries” 6. As such, there is something of a “patchwork” quality to the protection that migrant workers are entitled to in Canada, with various overlapping jurisdictions and agencies that are responsible for notional enforcement. For instance, there are regulations at the federal level governing the TFWP itself (such as the ban on agency recruitment fees), but workers are subject to the terms of the labour code of the province they are employed, which vary in terms of which practices are allowed and not. Furthermore, information about these rights is often not accessible to TFWs, either due to deliberate employer withholding of information or due to practical issues such as language barriers or lack of local knowledge [15]. Researchers of labour policies in Canada have also noted that labour law enforcement is under-resourced in general and is in particular lacking when it comes to TFWs 1. [16]. Training ’expendable’ workers: Temporary foreign workers in nursing. Globalisation, Societies and Education, 10(1), 95-117. doi:10.1080/14767724.2012.6469011. [16]. Training ’expendable’ workers: Temporary foreign workers in nursing. Globalisation, Societies and Education, 10(1), 95-117. doi:10.1080/14767724.2012.646901 [16]. TFWs may also be uniquely afraid to report any issues or abuses due to fear of deportation. Political narratives seeking to justify the TFWP to the broader public also, “shielded employers from public accountability” [6], by placing blame on the TFWs themselves for not raising concerns with appropriate authorities, ignoring the practical barriers to this action.

Another factor is that Canadian officials have limited ability to influence practices outside of Canada, which means that, though certain recruitment practices in relation to the TFWP are de jure prohibited, they have been noted as recurring problems de facto [17]. This has been a particularly persistent problem in terms of the charging of agency recruitment fees, which are illegal under the terms of the TFWP but, given the location of many recruitment agencies in the sending countries, it has proven extremely difficult to enforce this prohibition in practice. In terms of social rights, TFWs do receive access to the public health care system, though not other aspects of the welfare state, of the province in which they are working for the duration of their work permit. However, studies of migrant workers, particularly under the SAWP have noted that they often have difficulty accessing the system due to practical barriers such as lack of transportation, demands of employers to keep working through injuries, language difficulties, and so on. Furthermore, so-called “medical repatriation” of injured migrant workers, where they are sent back to their country of origin after having sustained an injury which prevents them from working, are a rela-

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6E.g. the United Nations’ Convention on the Protection of Migrant Workers
tively common practice under the SAWP, which have been noted by researchers as a “global health equity concern” [18]. In all, such experiences of individuals participating in the TFWP testify to its existence, at least partly, as a situation where, “employment restrictions associated with their legal status can create situations in which unfree labour relations are a direct condition of their status” [3].

In terms of the effects on the Canadian labour market in general, there is evidence that the use of TFWs has had a “moderating effect on wages” [4], in particular in unionized sectors, where “very few migrant workers are unionized” [2]. This is partially because of the practical difficulty involved in unionizing TFWs and the difficulty that some unions have had in balancing responsibilities to their existing membership with outreach to potential new members. For instance, evidence from the union representing nurses in the province of Alberta suggests that the response to issues raised by TFWs working as nurses varied between individual hospitals and bargaining units [16]. Some units were more willing to represent TFWs in disputes with the employer, but others saw TFWs as a threat to the interests of their existing membership, and a tool to undermine wages and working conditions. This ambivalence of organized labour in regards to economic migration in general and TFW-type programs in particular is common throughout the developed world, though it should noted that “by the 1960s, Canadian trade unions had developed a more positive attitude towards immigration” [11]. In part, this was simply due to a pragmatic concern to maintain membership levels as immigration to Canada increased and diversified, but, it also reflected a more general shift in Canadian social policy in the direction of multiculturalism and openness to immigration. However, in contrast to continental Europe where, in many cases, “unions participated in the most important legal and administrative initiatives related to immigration” [11], Canadian unions have had limited input as to the actual policies surrounding immigration, in particular the TFWP. As such, most major unions have been, “critical of the temporary migrant recruitment programs and have called for the right of these migrants to permanently settle in Canada [11]. In part, the position of organized labour in Canada may simply reflect Canada’s position, as opposed to European nations, as a “traditional migration country”, but also speaks to a strategic alignment organized labour has pursued with migrant rights activists. This does not necessarily mean that the two groups always agree, however, or that TFWs or new immigrants find organized labour a fully accessible place at first. There are a variety of barriers, both legal and practical, to migrant participation in traditional unions, which has led some to undertake “alternative forms of organizing through workers’ centres” [15], most of which do receive some form of union-based funding. Divisions within the labour movement over the issue of TFWs are likely to continue and do represent a potential area where wages and working conditions of Canadian citizens are affected by the program. Some have also noted that the ability to recruit skilled workers from other nations lessens, “employer incentives to invest in the local workforce” (Taylor & Foster, 2015) and may lead to an overall skills deficit within Canada over time, or more of the burden of skills training being shifted onto either the public sector or individual workers themselves. To some extent, this has been observed in the lack of investment in nursing education in Alberta, which has been compensated for by recruiting TFW nurses from nations such as the Philippines [16]. Though the direct evidence of local workers “losing jobs” as a result of the TFWP is scant, there are clear perverse incentives and difficulties that it create in terms of both worker bargaining power and human capital investment that can function to depress wage and condition outcomes over the long term.

4. Conclusion: Pathways to TFW Reform

Temporary labour migration to Canada has a long history, dating at least since the mid-1960s with the signing of the initial bilateral seasonal agriculture programs between Canada and the various Caribbean nations. Since that time, it has expanded and diversified in ways which are both
distinct from its original intent and now form an essential part of the economy of various sectors and regions in Canada. As such, despite the calls of those such as the Canadian Labour Congress to, “replace the TFWP with a comprehensive expanded program of permanent immigration” [2], it is highly unlikely that the programs will be ended in the foreseeable future (and it may not necessarily be better for either Canadian society as a whole or migrants themselves if this were to happen, given the political context in which such an action would likely occur). With this said, it is not the case that the status quo is the best of all possible worlds, or that there are not serious concerns with aspects of the program. A variety of groups have suggested changes ranging from giving automatic permanent residency to TFWs after a certain period of time to removing program eligibility from employers found to have abused employees to removing the employer-specific nature of the residency permit. All of these would help to make the program more fair and responsive to the concerns it has generated from both migrant and Canadian workers. Studies have also identified a “need for greater clarity and transparency on the recruitment end of the process” [16], either by licensing overseas recruiters in order to curb current abusive and illegal practices, or by having Immigration and Citizenship Canada take over more of the recruiting process directly (such as by maintaining a registered database of individuals interested in TFWP participation and giving access to authorized employers). Finally, it should be noted that the use of the TFWP varies greatly by province within Canada. The province of Manitoba, for instance, “tends to treat the TFWP as a step towards attracting long-term residents” [16] with a much higher percentage of TFWs moving into permanent residency status than in other provinces. This is likely due, at least in part, to the fact that provincial government of Manitoba throughout the expansion of the TFWP in the mid-00s was the social-democratic and organized-labour supported New Democratic Party, but it nevertheless speaks to an important distinction in purpose view of the program itself. Insofar as it has been demonstrated that many of the individuals entering Canada as TFWs do wish to permanently resettle there, the program is operating less as its stated intent and more as another layer of immigration restriction. Greater pathways to permanent resettlement in Canada should be provided to TFWs, for those who want the option. If the economic demands of the country are such that it is willing to accept in a large number of overseas workers, it should also be willing to provide them with the full, and not partial, rights of citizenship.

References


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Footnote:

7Manitoba’s labour code also has much fewer exemptions for areas in which TFWs are commonly employed as compared to other provinces.


