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2014

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#### Citation Details

Catherine Dauvergne & Sarah Marsden, "The Ideology of Temporary Labour Migration in the Post-Global Era" ([forthcoming in 2011]) 18:2 *Citizenship Stud* 224.

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## **The Ideology of Temporary Labour Migration in the Post-Global Era**

Catherine Dauvergne and Sarah Marsden, University of British Columbia

Temporary labour migration is becoming intellectually topical once again. Slightly behind renewed government interest in temporary labour migration on a global level, migration scholars are now showing renewed interest in the area.<sup>1</sup> In this chapter, we seek to explore the potential of these two movements, by states and by scholars, to yield different outcomes than earlier dialogues surrounding guestworker programs in the 1980s and 1990s. By looking at key ideological elements of temporary labour migration we assess the potential for an alternative trajectory for understanding and reframing the discussion in terms which are capable of responding in a more emancipatory way to the lived experiences of migrant workers.

We are drawn to an analysis of the ideology of temporary labour migration because we are interested in interrogating the common premises underlying current conversations about temporary labour migration. We aim for an understanding of the function of certain concepts which form the core of the central questions about temporary labour migration, regardless of one's position. We have identified three concepts central to most analyses of temporary migration policies and programs: temporariness, the labour market, and rights. Our central contention is that these concepts function ideologically, and as such they constrain innovation with regard to temporary migrant labour programs. We draw on Hannah Arendt's work in *The Human Condition* to work toward an alternative conception of what is at stake in temporary migration programs.

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<sup>1</sup>See, e.g. Stuart Rosewarne, "Globalisation and Commodification of Labour: Temporary Labour Migration" (2010) *Economic and Labour Relations Review* Vol. 20 Iss. 2; Stephen Castles, "Guestworkers in Europe: A resurrection?" (2006) *International Migration Review* Volume 40, Issue 4, 741; Joseph Carens, *Immigrants and the Right to Stay* (Cambridge, MA: MIT Press, 2010); Philip Martin, *Managing Labor Migration in the 21<sup>st</sup> Century* (New Haven: Yale University Press, 2006); Steven Vetrovec "Circular Migration: the way forward in global policy" (2007) *International Migration Institute (IMI) Working Papers* WP-07-04.

Our aim is to build on earlier waves of scholarship regarding guestworker programs. Accordingly, we take as known quantities those insights of the guestworker scholarship which have been so well established that they appear almost as trope in contemporary conversation. Primary among these are that once temporary migrant labourers arrive, it is difficult to ensure their departure, and the longer they remain, the harder it is to develop a theoretical argument for their exclusion from the polity and the territory. Similarly, we seek to build upon the insight that while workers may be invited, it is human beings who arrive. These touchstones are vital to understanding the linkage between temporary labour migration and illegal migration, and the policy trade-offs between the two categories which underpin state policy but which, for fairly obvious reasons, are rarely articulated by policy makers (Dauvergne 2008). We situate our analysis in the post-global era because a key difference from earlier guest worker programs is the backdrop of advancing globalization. This affects each of our key starting points: temporariness, labour markets, and rights.

Hannah Arendt's acute formulation of citizenship as 'the right to have rights' has become a touchstone of migration analyses (Arendt 1951). But her work has far greater and more complex reach in this area. We draw on Arendt's perspicacious treatment of the human condition (Arendt 1958) to help envision a way through the ideology of temporary labour migration. Arendt's rich treatise could be read in almost its entirety as a study of labour under conditions of globalization. In this chapter, we draw out potential Arendtian responses to the key ideological elements of temporary labour migration. We also invoke the spirit of *The Human Condition* in two ways. A great admirer of Marx, Arendt was also a limning critic, believing that his account of labour and of its relation to ideology was insufficiently complex and sometimes simply wrong. She honours Marx's contributions with a deep respect, and we hope that some trace of this respect will be found in our engagement with the concept of ideology and the notion of rights for migrant workers. Arendt is also an inveterate optimist. The underlying structure of *The Human Condition* relies on a succession of redemptive movements. Man is saved: an enormous moment in her trenchant engagement with technology, knowledge and post-

modernity. Arendt's optimism builds directly from her understanding of forgiveness as a fundamental distinction of humanity, that which allows us to amend the unchangeable consequences of our actions. Arendt's optimism is compelling, and we draw on it unabashedly as we seek to imagine a way out of what has become a political and legal gridlock.

Following a brief discussion of ideology as a framing concept, we first sketch the shape of temporary labour migration, paying attention to what is 'new' at present and to points of convergence between the states we take as examples (Canada, Australia, the United States and the United Kingdom). This sketch grounds our consideration of the notion of temporariness and the aims and interests it serves. The subsequent section considers the representation of national labour markets within temporary labour migration programs. Following this, we turn to the possibilities and impossibilities of rights remedies for temporary workers. In concluding we draw on Arendt's insight that labour is a vital aspect of the human condition to consider new ways of conceptualizing temporary migrant labour programs.

## **1. Ideology**

In electing to use the concept of ideology, we draw on its intellectual tradition, and in particular, upon its acute focus on social relations of domination and how such relations are replicated without resort to violence. This perspective is particularly useful in the field of temporary migrant labour, in which it is increasingly purported within national and international discourse that a relationship that is facilitated by legally enshrined inequality can nonetheless be rendered 'beneficial' to both the parties to an employment relationship –the employer and the migrant worker – and the shadow parties to the relationship – the host state and the state of origin. What we reject of ideology's intellectual freight, in the company of much contemporary post Marxist work, is the notion of ideology as false consciousness. This particular shorthand goes further than is

necessary and opens the way for an irresolvable debate – in a paper such as this – about the nature of truth.

What is most compelling and appropriate about the concept of ideology for our analysis is what Purvis and Hunt have termed its ‘directionality’. In their words, ‘...ideology always works to favour some and to disadvantage others.’ (Purvis and Hunt, 1993: 478). In this sense, ideology has a sharper edge than other concepts we might have chosen in its place, such as ‘discourse’, or even ‘theory’ or ‘theoretical framework.’ As Purvis and Hunt elaborate:

...the critical project of a theory of ideology is concerned to explain how the forms of consciousness generated by the lived experience of subordinate classes and social groups facilitate the reproduction of existing social relations and thus impede such classes and groups from developing forms of consciousness that reveal the nature of their subordination. *In its simplest and most pervasive form ideology presents the existing social relations as both natural and inevitable; particular interests come to be disassociated from their specific location and come to appear as universal and neutral.* (Purvis and Hunt, 1993: 478, emphasis added)

This edge works well for our analysis, because while we are engaged in advocating for better legal protections for migrant workers, we are also reticent about the promises of rights remedies as permanent solutions to the barriers and difficulties facing migrant workers. Our analysis derives in large part from our desire to express this tension underlying advocacy efforts.

The ideology of temporary labour migration involves the interdependent concepts of temporariness, labour markets and rights. Temporariness is presented as a neutral policy objective, valuable because it facilitates the import of just enough labour to meet particular labour market gaps (Global Commission on International Migration 2005: 12). The framing of people as ‘labour’ opens the way for rights abuses and exploitation, and thus creates the need to protect the rights of temporary migrant workers. Accordingly, a labour market analysis and a rights analysis are not alternative perspectives; they occupy the same ideological terrain. Our objective is to interrogate these concepts and analyze

how they function ideologically to reproduce social relations of domination and to make those relations appear natural and inevitable, and in the case of temporary migrant labour, mutually beneficial. Arendt's imaginative work elucidates the limits of rights-based analysis by identifying both labour and work as aspects of the human condition. This is a strong distinction from current rights discourse, where critical focus is on how human dignity has been subordinated to labour.

## **2. Temporariness**

We are primarily interested in the recent increase in temporary labour migration to industrialized, rich Western nations and how this increase is presented politically. We begin by looking briefly at representative state examples, and have analyzed these numbers in detail in a separate paper (Dauvergne and Marsden 2011, forthcoming).

According to the Organization for Economic Cooperation and Development (OECD), approximately 2.5 million temporary labour migrants entered its member states in 2006, about three times the number of permanent migrants to the same countries that year (OECD 2008). This figure is based on a definition of temporary which includes mandatory return to country of origin as a condition of entry into the receiving country, and thus includes intra-company transferees, working holiday visa holders, and 'free circulation' migrants. The International Organization for Migration (IOM) indicates that there has been a 'significant growth in temporary labour migration' in most developed countries since 1990, and again since 2000 (IOM 2008: 32). The IOM describes the potential of temporary migration programs, and particularly low-skilled labour migration programs, as a 'win-win-win' situation. The first two ostensible 'wins' are for the migrants and the labour economies of receiving countries. The third 'win' of temporary labour migration, as described by the IOM, is to the economy of the sending nation, which improves through remittances, job creation, and ongoing connection of the migrants to their home country (IOM 2008: 92).

In order to understand how this high-level story takes shape in particular policy and legal frameworks, we examined trends in four countries: the United States, the United Kingdom, Canada and Australia. As English-speaking Western liberal democracies with common law traditions, they are logical comparators for us.

In the United States, temporary migrant worker entries have consistently exceeded both the total number of permanent residents from all categories (including economic, family, refugee, etc.), and the total number of employment based permanent resident entries over the past decade, as illustrated by Chart 1:

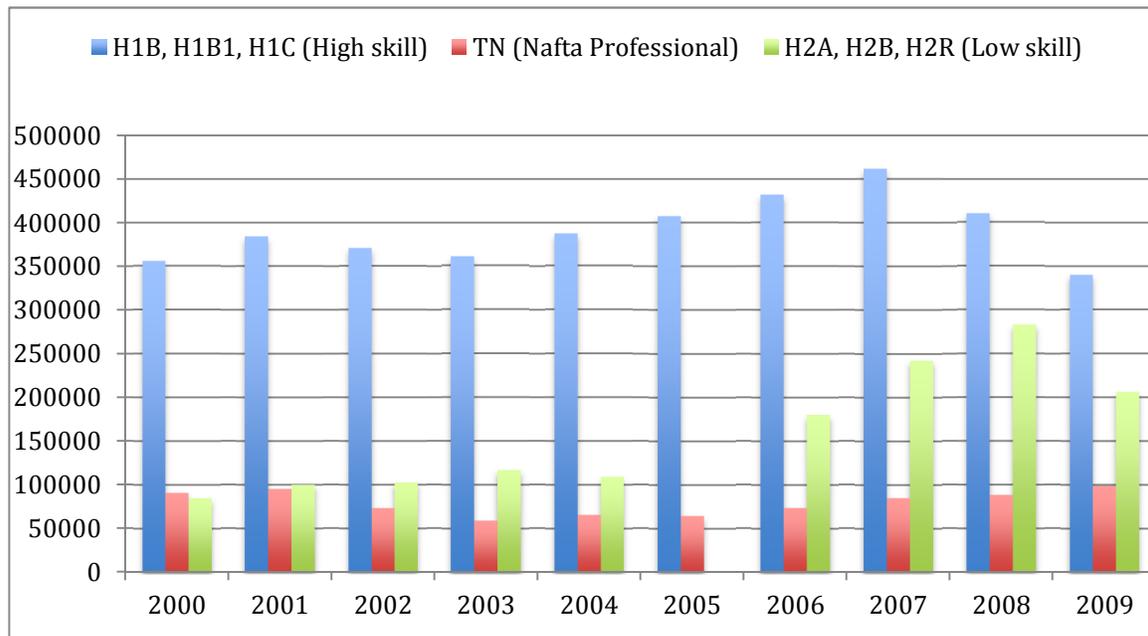
**Chart 1: Permanent and Temporary Migration to the United States (Admissions, including family members) (Department of Homeland Security, 2009).**



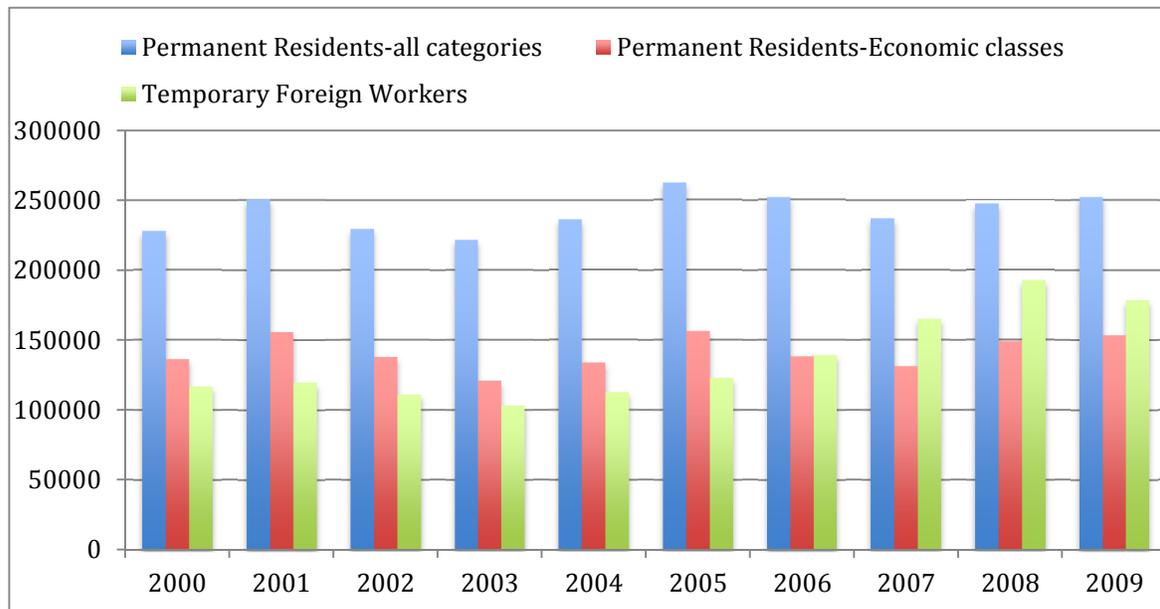
These data show only a modest increase in temporary migrant admissions, and also confirm that temporary worker admissions have consistently outnumbered permanent

worker admissions to the U.S. At this level, no recent shift is apparent; however, within the temporary worker category, there has been a shift toward admissions of temporary workers categorized as having lower skill levels (Chart 2). Viewing the two sets of data together, an increase in low skilled worker admissions is evident in both raw numbers and proportionally. While temporary migrants to the U.S. can theoretically obtain permanent residence, the path is arduous and is much more difficult for those in lower skill classifications. The data also suggest a cut in temporary admissions concurrent to the economic downturn in the U.S., which is not evident in the permanent admissions numbers. Interestingly, the flow of illegal entry also appears to have decreased in the past five years (Pew Hispanic Center 2010).

**Chart 2: Temporary Labour Migration to the United States by Skill Classification (Admissions, not including family members) (Department of Homeland Security, 2009).**

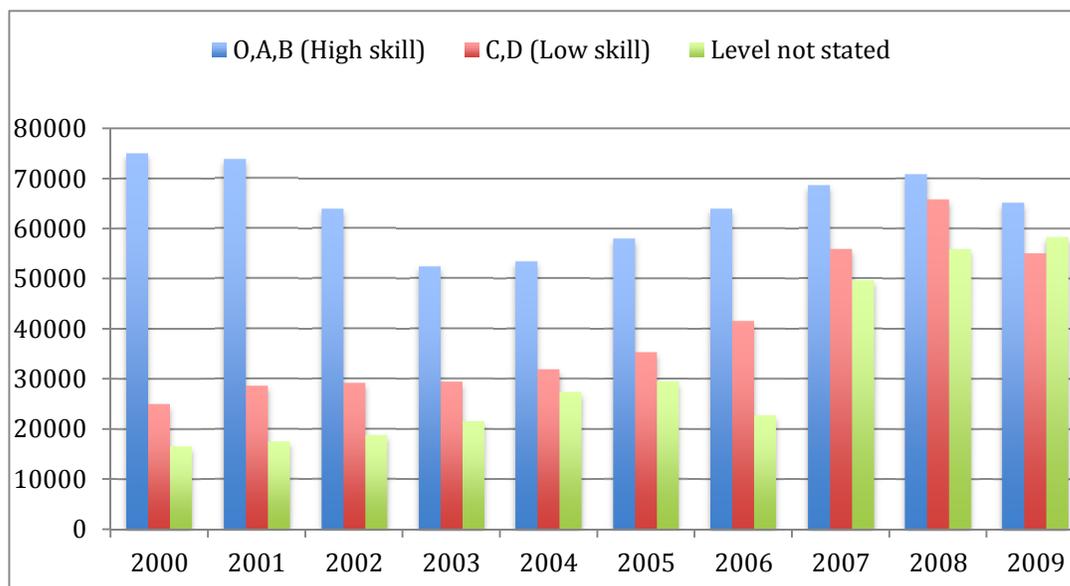


**Chart 3: Permanent and Temporary Migration to Canada (Citizenship and Immigration Canada 2010) (Admissions)**



In Canada, temporary foreign worker entries have been on a gradual increase in terms of pure numbers since 2003, with the exception of the most recent data year (2009). The number of temporary foreign workers entering Canada exceeded the number of economic class permanent residents entering Canada for the first time in 2006, and this pattern has continued since that time.

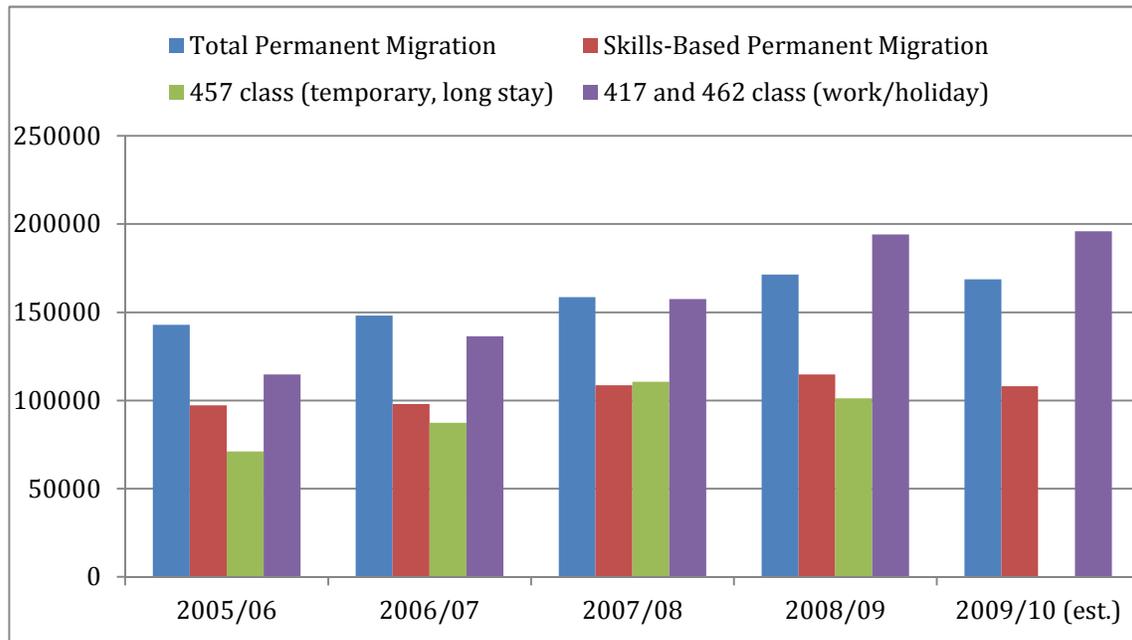
**Chart 4: Temporary Labour Migration to Canada by Skill Level**



As in the United States, work classified as low skilled is on the increase by pure numbers and as a proportion of migrant labour as well. Unfortunately, the large number of ‘level not stated’ entries in government data decreases the transparency of this information. By way of legal regulation, migrant workers in low skilled categories are more likely to be separated from family, have few renewals options and have limited access to permanent residence as compared to those classified as high skilled workers.

Australia has also participated in the trend towards admitting more temporary migrant workers in lower skill classifications, in a somewhat more oblique manner.

**Chart 5: Temporary and Permanent Migration to Australia**



The government data regarding temporary migrant workers focus on the 457 visa class which is based on an employer’s specific labour need, and the vast majority are professionals, managers, and skilled tradespersons or other high skilled positions. The Working Holiday program is available to applicants between the ages of 18 and 30 from a specified list of other rich, highly industrialized nations and is designed ‘to be particularly helpful to regional employers in providing short term casual employment to industries such as hospitality and rural industries’ (Bureau of Statistics 2009). Cumulatively, these two temporary labour-based categories now far exceed the number of permanent skill-based entries per year. In addition, Australia has seen significant growth in student visas since 2006, with which foreign students are allowed to work up to 20 hours per week; in 2008, the work permit became automatically issued alongside the study permit (Department of Immigration and Citizenship 2010). It would appear,

therefore, that the appetite for temporary workers with limited entitlements is being absorbed in two visa categories that mask the labour being undertaken and that in large part do not lead to permanent residence. At the same time, the Minister of Immigration has posted a stated goal of reducing temporary work permits by 50% by 2012, revealing a surprising level of double-speak (Minister for Citizenship and Immigration 2010). In addition to these trends, in 2008, the Australian government started a Pacific Seasonal Workers program to bring in a maximum of 2500 workers annually from various poorer Pacific nations to work in low-skilled agricultural positions (Department of Education, Employment and Workplace Relations 2010).

In the United Kingdom, 2004 and 2007 expansions of the European Union have led to dramatic changes in immigration patterns. In 2004, the United Kingdom implemented the Worker Registration Scheme, in which nationals of newly acceded nations must register in order to work in the United Kingdom. This was followed in 2008 with a dramatic reduction in the categories of temporary migration, and further changes to its migration system in mid-2010 which will reduce entry of non-UK nationals. This shift will be achieved in part by raising the ‘points’ bar for skilled migrants (Home Office 2010). Given the policy shifts of the past five years, the focus of British labour migration policy appears to be the entry of accession country migrants for low-skilled positions, with high-skilled and specific program temporary migration available to non-EU nationals on an increasingly limited basis.

While it is being achieved in different ways in each of these four states, the overall trend is for increased entry of workers classified as low skilled. In the United States, this shift is marginal within an overall system where temporary migration has long outstripped permanent migration, and has traditionally been a route – however narrow and circuitous – to permanent status. In Canada, the predominance of the temporary as an explicit category is new, and concurrent with an increase in the proportion of temporary workers in low skill categories. In Australia, it appears that temporary labour migration is being significantly masked by working holiday maker and foreign student

visa categories. In Britain, an influx of low skilled workers from the 2004 and 2007 EU expansions has eclipsed the purported need to admit temporary foreign workers from other countries. Through the use of registration rather than migration per se, this program functions to submerge and make invisible the requirements and restrictions which distinguish this group of workers from citizen-workers in the United Kingdom. In the first three cases, temporariness is emphasized as the low-skill numbers grow. Britain's policy is distinct from that in the states with a longer and more explicit immigration tradition, and thus provides an important counterpoint for testing our argument.

Against this backdrop we can begin to explore how temporariness functions ideologically. At the most basic level, the label is illusory, and is known to be so by those who use it in policymaking. While permission to stay may be time limited, many migrants who arrive on a temporary basis, remain permanently with or without permission (Batalova, 2006; Papademetriou *et al.* 2009; Legomsky 2009: 148). This insight is not new, and indeed close attention to it is at the core of much guestworker scholarship and is embedded in many regulatory structures. Further, it is increasingly true that the jobs filled by temporary migrant labour programs are also not temporary. Immigration policy in each of the countries we examine acknowledges this and, rather than precluding a conversion of temporary status to permanent status, seeks to distinguish who will be able to make that shift. Understanding this as an ideological function means accepting that temporariness, rather than leading to a 'win-win-win', embeds and normalizes a directionality in which workers' rights are limited and states' rights (to expel, to control) are expanded. A second ideological function of temporariness is that it distracts attention from inequality between regulatory regimes applied to 'high-skilled' versus 'low-skilled' workers. That is, a focus on appropriate rights restrictions to ensure that workers will in fact depart at the end of their permitted period masks the fact that the current surge is primarily about giving those with lower skills fewer rights. Attention to 'temporariness' makes it seem natural and inevitable (to return to Purvis and Hunt's phrasing) that these workers will have restricted rights. However, given the overt inaccuracy of the 'temporary' label, the contemporary rise facilitates curbing entitlements

for those categorized as low-skilled because rights restrictions are the only way to ensure actual temporary stays. This equation is the essence of Ruhs and Martin's persuasive 'numbers vs. rights' argument (Ruhs and Martin 2008).

Temporariness is but one of the three components of the ideology of temporary labour migration, but focusing on this criterion alone has explanatory power in analyzing the *divergence* in contemporary programs between our example states. In the United States, where migrant rights have the longest and most sophisticated history of political contestation and where illegal migration is vastly higher than in the other three states, temporariness predominated long before the current surge (Durand *et. al* 1999).<sup>2</sup> In Australia, the surge in low-skilled temporary work is almost completely hidden, reflecting the longstanding (and atypical for Western democracies) consensual approach to migration management that marks Australian party politics. In Canada, relative transparency about rights restrictions based on skill level has attracted the most intense scholarly critique of these three countries (Preibisch 2007; Carens 2008; Fudge and MacPhail 2009). Finally, in the United Kingdom, where EU expansion has fractured the linkage between temporariness and low-skilled admissions, the immigration system has undergone a full-scale overhaul, with responses ranging from High Court review of permanent migration caps to crisis rhetoric (BBC 2010; Guardian UK 2010).

We can begin here to see the acuity of Arendt's lens. Two points are directly linked to temporariness. The first is the very broad point that labour is but one of the three aspects of the human condition. It is impossible to separate it from the others (work and action). Arendt builds this argument in part by drawing on Marx's introduction of the vital idea of 'surplus', asserting that labour's productivity '...does not lie in any of labour's products, but in the human "power" whose strength is not exhausted when it has

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<sup>2</sup> Illegal migration provides a pool of workers with almost no access to rights, as an alternative even to the restricted rights of temporary low-skilled workers. In the United States, where the current estimated illegal population is approximately 11 million (as compared with an estimate of 3 million in 1993), some rights protections, even for this group, are beginning to emerge. This trend is broadly the subject of Dauvergne's 2008 book *Making People Illegal*.

produced the means of its own subsistence and survival but is capable of producing a surplus beyond what is necessary for its own “reproduction”.’ (Arendt 1958/1998: 88). The fact that labour is never self-contained, but is always productive of something more than itself, *and* is an aspect of being human, goes a great deal of the way to explaining why it is impossible for states to simply ‘import labour’.

The second Arendtian insight at this point is her suspicion of the distinction between skilled and unskilled labour. ‘Every activity requires a certain amount of skill, the activity of cleaning and cooking no less than the writing of a book or the building of a house’, ‘...unskilled work is a contradiction in terms’ (Arendt 1958/1998: 90). Arendt makes this point in part to emphasize the distinction between her conceptions of work and labour, but it is useful beyond that objective: within the current division of labour, all requirement for skill is eliminated in the face of fragmentation. As such, skilled/unskilled labels communicate social valuations rather than inherent truths. With these insights in mind, we turn to consider the second element of the ideology of temporary labour migration, the labour market.

### **3. The Labour Market**

In post-global conditions, migration is analyzed and understood almost exclusively in economic terms (Dauvergne 2008: 29-49). One consequence of contemporary globalization is that we are remarkably unselfconscious about a reductive economic analysis. The insistence on economic paradigms is at its most acute when talking of temporary labour migration, because the insistence on temporariness attempts to turn people into ‘pure’ economic inputs who will depart when their labour is no longer necessary. Temporary labour migration programs are driven by employer demand and mediated by state policy, which matches migrants to defined gaps in the national labour market. This objective rests on a number of assumptions: that labour shortages can be identified with a high degree of specificity; that training is globally transferrable; that

migration programs can be tailored to provide a kind of ‘just-in-time’ delivery of workers.

As temporary migrant labour schemes come under increasing scrutiny, the labour market analysis tends to become increasingly focused. Typically, checks are introduced to ensure, at least ostensibly, that citizen-workers are genuinely unavailable and to ensure that the labour market is a level playing field by ensuring that temporary workers are not simply more desirable because they are being paid less or otherwise exploited. For example, in Canada, prospective employers of temporary workers are required to obtain a ‘labour market opinion’ documenting demand for a specific position (CIC 2010); in the U.S., the law requires a similar process of ‘labour certification’ (USCIS 2010). In Australia, the new Pacific Seasonal Worker program requires employer to be approved in advance of recruiting foreign workers (DEEWC 2010).

The presumption behind these policies is that a better understanding of the labour market, and regulations based on this knowledge, will produce better temporary migrant worker programs. To summarize simplistically, the improvements will be tripartite. From the perspective of industry, the right workers will be made available at the right time. From the state perspective, production will rise as quickly as possible and the temporary nature of the program will ensure that in slow times unemployment is exported and thus non-existent. There ought even to be benefits from the perspective of the worker through wage parity with citizen workers and close matching of skills with vacancies.

This sounds quite straightforward, and not particularly novel, which is telling. We gain insight into why labour market proposals are front and centre to improving temporary migrant worker programs from a state point of view, yet meet with limited success, through attention to how labour markets function ideologically. All workers rely on remunerative work to support themselves; migrant workers also rely on the endorsement and approval of employers to obtain basic status, and contingent

membership, in the states where they work or seek to work. Thus, the basic condition of any migrant worker is marked by an inherent degree of subordination that identifies the labour market analysis as a directional ideological terrain. In the 'win-win-win' analysis this subordination is justified by the presumption that the migrant worker is better off under these conditions than she would be at home. The fact that this may well be the case reinforces the ideological function of the discourse.

In this terrain, the idea of a 'market' is presented as natural and politically neutral, an arena where employers and workers engage in free exchange, which is regulated primarily to protect the interests of workers. Adam Smith's depiction of the free market was a thought experiment devised in a time of horrendous abuse and exploitation of workers. What remains firmly embedded in the policy talk is the assumption that labour markets are naturally occurring; that given the existence of supply, demand and, yes, government regulation, they spring into being, as measurable and impartial as a forest or a stream. Thus, one can presumptively assess and prescribe, as one would to address a blight or groundwater pollution. But the labour market is an analytical and theoretical tool. It is made up of layer upon layer of assumption, regulation, absence of regulation, choice and agency by individuals and collective actors such as firms and states. The prevalence of economic discourse in immigration policy means that the labour market is pervasively employed to justify regulatory strategy with little recognition that it is construction and not a force of nature. The aspiration to tailor temporary migration programs more and more closely to the labour market simply cannot be fully achieved because the labour market remains theoretical, while people are not. In addition, labour market analysis within migration policy occurs at the national scale. It thus ignores globalization and the increasingly international function of labour supply and demand, but because the labour market is built on a national premise, this feature becomes understood as an assumption of the model rather than a flaw.

One of the ideological functions of the labour market construct is, therefore, to make this device seem natural and inevitable, masking the on-going efforts by many

actors to ensure its continued existence and function. The labour market also embeds the characteristic of directionality, especially in the case of temporary migrant workers. Because temporary migrant workers depend on employers for their very 'existence' they are much more vulnerable within the market than the other actors in the triple 'win' equation. The vulnerability of all workers, countered to a degree by the organization of labour, is magnified in the case of migrant workers, and efforts to organize migrant labour are in their infancy.

Arendt argued that the contemporary world was marked by the ascendancy of labour over both 'work' and 'active life'. One consequence of this reversal of the hierarchy of the ancient world, is that the 'public' realm has been largely replaced by the 'social' and by the concomitant rise of social sciences. These transformations in human life account for the impaired political life of post-modernity as well as the hegemonic rise of technological knowledge. Unpacking this transformation assists in analyzing how the idea of the labour market works in discourses about temporary labour migration.

Arendt traces the rise of labour from the time of Locke's 'discovery' that labour is the source of all property (Arendt 1958/1998: 101). This led in a relatively short time to '...the new social realm [that] transformed all modern communities into societies of labourers and jobholders; in other words, they became at once centred around the one activity necessary to sustain life.' This does not mean that all members of society are labourers, or even workers, '...but only that all members consider whatever they do primarily as a way to sustain their own lives and those of their families' (Arendt 1948/1998: 46). Under these conditions, and supported by the division of labour, labouring activity moves from the private into the new and ever expanding 'social' realm – neither completely private nor completely public. Arendt remarks that, 'the striking coincidence of the rise of society with the decline of the family indicates clearly that what actually took place was the absorption of the family unit into corresponding social groups' (Arendt 1958/1998: 40). Within the social realm, labour grows 'unnaturally', leading to a constant acceleration in the productivity of labour (Arendt 1958/1998: 47).

This constant acceleration in productivity maps precisely onto the economic assumption of infinite growth as the mark of a healthy economy. It is, thus, no surprise that Arendt reserves particular disdain for economics:

Economics – until the modern age a not too important part of ethics and politics and based on the assumption that men act with respect to their economic activities as they act in every other respect – could achieve a scientific character only when men had become social beings and unanimously followed certain patterns of behavior, so that those who did not keep the rules could be considered to be asocial or abnormal (Arendt 1958/1998: 42).

The reliance of economic analysis on statistics (notably, much of current economics, half a century after Arendt's work, is completely absorbed in mathematic modeling) drew particular concern from Arendt. Statistics, which she called, 'the mathematical treatment of reality' denote an era of conformism, behaviourism and automatism in human affairs. The harm of this view of the world is that it transforms our way of knowing and experiencing reality; 'statistical uniformity is by no means a harmless scientific ideal; it is the no longer secret political ideal of a society which, entirely submerged in the routine of everyday living, is at peace with the scientific outlook inherent in its very existence' (Arendt 1958/1998: 43).

This sharp critique could have been aimed directly at the idea of a labour market: a mathematically-based economic fiction. All efforts to improve temporary labour migration programs, by improving our understanding of labour markets, rely on having better statistics. But this treatment of reality is both a step removed from reality, and an apolitical, life-denying treatment at that. It follows then, that this path to 'improvement' offers little for improving circumstances of individual human beings caught up in the labour market. Arendt's insights, besides simply raising a general skepticism, locate this concern with the shift through which labour has come to predominate over other aspects of the human condition. This returns us to a central problem in recrafting temporary labour migration programs: they reduce people to labour alone. Arendt's understanding of the social realm is also predictive of key pitfalls in migrant labour programs: where a

diminishing of family rights and a loss of privacy often parallel the exclusive focus on labour and skill levels.

Arendt's critique of the social realm also suggests some insights into the dilemma of equality as a corrective tool, an issue which falls within both our discussion of the labour market and our following section on rights. The idea of a labour market assumes equal parties striking a mutually beneficial bargain. This is the classic win-win, on which win-win-win riffs. Few inroads have been made into correcting inequalities within the labour market, despite the triteness of this observation. One avenue to re-thinking this can be drawn from Arendt's observation that equality in the social realm is based on conformity – much impoverished in comparison with the Greek concept of political equality: '...the victory of equality in the modern world is on the political and legal recognition of the fact that society has conquered the public realm, and that distinction and difference have become private matters for the individual' (Arendt 1958/1998: 41). This observation turns us towards the law, which has claimed equality as its own, and in which rights are the key *modus operandi*.

## **4. Rights**

It is not surprising that, in response to the expansion of temporary migrant worker programs, legal scholars are increasingly concerned with the rights of temporary migrant workers. Temporary labour migration programs are generally premised on temporary workers having fewer labour, association, and mobility rights than permanent migrants or citizens. At the very least, permission to remain in a host country is time limited. In highly structured examples, employment may be restricted to a particular employer or economic sector (such the direct employer requirement of Australian 457 visas), accommodation may be restricted (such as domestic and some agricultural workers in the United States), and family life may be restricted (such as the mandatory separation from family members within Canada's low skilled migration scheme). The question is whether

rights-based understandings and advocacy can adequately address these problems. Through his thought-provoking consideration of the ethics of temporary labour migration, Reilly concludes that temporary labour migration schemes may not be able to meet the ethical parameters of liberalism (forthcoming, 2011). Yet, liberal states are increasingly and actively recruiting temporary migrant workers or otherwise filling so-called low-skilled labour market demands through classes of migrant workers, whether overt or obscured.

Advances *within* a domestic rights framework are certainly possible. As Martin Ruhs and Philip Martin argue, structuring programs to better protect workers' rights can assist in avoiding some of the pitfalls of earlier guestworker programs (Ruhs and Martin 2008), and the counter-hegemonic potential of rights work at the grassroots has a role (Basok 2009). In general terms, two paths towards significant rights advances can be observed. In Canada, a number of legislative and policy initiatives have emerged aimed at protecting temporary workers' rights. These include some innovative and creative measures such as foreign worker hotlines and proactive worker protection procedures such as site visits in Alberta, and foreign worker protection legislation and registration in Manitoba (Fudge and McPhail 2009). The alternative (though not mutually exclusive) path is for temporary migrant workers to receive protections through the support of labour unions. This strategy has had some high profile successes in the United States (Bacon 2008).

On the whole, however, rights protections for temporary foreign workers have not been as successful in practice as their rhetoric promises. Although successful in concrete gains in working conditions and thus beneficial for workers, even in the best possible outcomes, rights protections have not challenged the underlying social relations which are entrenched in and supported by migrant worker programs. Furthermore, all rights entitlements require resources, advocacy and initiative to bring them to fruition. These barriers are exacerbated in the case of temporary migrant workers by virtue of their compromised membership status in the receiving nation, particularly low-wage workers

who would most benefit from enhanced legal protections. Both individual complaints and test-case litigation may be deterred by the very fact of temporary status, given the time it takes to see a legal complaint through. In addition, non-citizen workers cannot advocate for their own rights through representative democratic processes. For all these reasons, although rights may exist on paper, their enforcement is less likely to be monitored in the case of temporary non-citizens. Two recent studies in the Canadian context have focused close attention on the rights of temporary migrant workers. Nakache and Kinoshita have comprehensively described the rights gap for foreign workers in the Canadian province of Alberta (Nakache and Kinoshita 2010). Fudge and McPhail have analyzed a series of attempts to address rights gaps, and have concluded that none are likely to be successful (Fudge and McPhail 2009). In Australia, the Pacific Seasonal Workers program was carefully structured with the rights of workers in mind. Ironically, the program appears underused in its first stages, undoubtedly in part because the program cannot address the identified labour market need with such robust rights protections in place (MacDermott and Opeskin 2010: 288).

On an international level, the saga of the *Convention on the Rights of All Migrant Workers and Members of Their Families* illustrates the failed promise of rights protections for temporary migrant workers. The Convention certainly contains some significant advances for migrant workers with legal status, such as to right to unionize and parity with citizens in terms of social security benefits. Nevertheless, the overall story of the *Convention* is not optimistic. Opened for ratification in 1990, it took 13 years to receive the twenty ratifications required to bring the Convention into force in July of 2003. As of January 2011, there are only 44 states party, none of which are predominantly migrant receiving countries. In addition, the *Convention* has the effect of drawing a stark demarcation between documented and undocumented workers, thus re-emphasizing the paucity of rights entitlements for those working outside the parameters of migration law. For all of these reasons, the *Convention* stands as a beacon of what has not been achieved in the realm of rights (Pecoud and Cuchteneire 2006; Dauvergne 2008: 19-28).

The inability to fully specify a constellation of rights that would alleviate the conditions of temporary migrant workers points us to the ideological elements of the rights discussion. Rights solutions can only ever be partially successful because the condition of temporary migrant work is anchored in a fundamental subordination. This subordination is partially expressed in Reilly's work, in that he queries whether an ethical outcome is possible in the absence of secure and equitable membership status (Reilly 2011 (forthcoming)). Casting concern about the condition of temporary migrant workers in the language of rights is valuable because it can lead to improvements in those rights, and to incremental change in conditions of living and working. It is impossible, however, within rights discourse, to erase the underlying subordination of temporary migrant workers. Talking in rights terms inevitably calls up the 'right' of the state to exclude non-members as an aspect of sovereignty. This exclusion power undermines attempts to articulate rights claims for those with any type of temporary status, and reinforces a fundamental inequality between citizens and non-citizens.

Rights talk about temporary migrant workers is, therefore, imbued with what Purvis and Hunt termed the 'directionality' of ideology. It advantages some (the state, the nationals, national industry) over others (the temporary, the migrants). It cannot do otherwise without undoing the basic parameters of the conversation. The state right to exclude non-citizens is paramount, indeed it is the cornerstone of all legal analysis of migration (*Canada (M.E.I.) v. Chiarelli* [1992] 1 S.C.R. 711). Similarly, the right of citizens to enter and remain in the territory of their nationality is almost the sole exception at international law to the right of states to close their borders. While migrant workers do acquire rights within their state of employment, they must first seek permission to simply 'be' there, at the most basic level. The fundamental condition of temporary migrant work is that this permission will expire.

Further, and vitally, rights talk, with its underlying values of equality and legality presents the subordinate position of the temporary migrant worker as (again in Purvis and

Hunt's language) 'natural and inevitable'. In other words, it is perilously easy to assert that temporary migrant workers *should* have fewer rights than permanent workers or than citizens. Indeed, temporary migrant worker programs begin from this supposition. While the idea that rights have limits is a familiar one within rights discourses, the tendency remains to assume the fairness of rights. This is particularly true with citizenship rights, and is the nub of Arendt's casting of citizenship as the 'right to have rights' (Arendt 1951) and of Shachar's playful casting of citizenship as the prize in the 'birthright lottery' (discussed elsewhere in this volume). The debate about rights protections for temporary migrant workers cannot reach around itself to address its underlying premises. National rights debates provide an important and worthwhile challenge with which to engage. However, rights victories will be partial and contingent and will bump up against strong states' rights claims in this arena. Focusing *exclusively* on rights arguments, therefore, will detract from other work that addresses the question of subordination.

The ideological nature of rights for temporary migrant workers is especially vexed for advocates. Rights arguments are the principal tool within western legal systems in fashioning arguments for individuals against all manifestations of power. In the international sphere, where debates about migration must necessarily drop anchor, human rights have been the hallmark of emancipation. It is important to emphasize, therefore, that we are not asserting that rights arguments are bad for temporary migrant workers. Quite the contrary, they are important tools that we will keep using. Rights are neither false consciousness, nor a twenty-first century opiate for the masses. But even in their most idealized form and perfect effectiveness, they can only ever offer up partial remedies for temporary migrant workers. Without a fundamental reconceptualization of temporary migrant work, they are the best political tool available. This hegemonic sway of rights discourse means that one of its further ideological functions is to distract from the underlying subordination of temporary migrant work. Because there are essential goals that can be achieved within rights frameworks, and because the argument beyond

this is so difficult, and so politically challenging, most advocacy goes no further than rights. This is already hard enough.

Arendt's analysis of the human condition offers insights that exceed her axiomatic right to have rights. With characteristic conceptual force, she contrasts citizenship not with non-citizenship, but with slavery. Her conceptualization could have been tailored to the condition of the temporary migrant worker. She states, 'The chief difference between slave labour and modern, free labour is not that the labourer possesses personal freedom – freedom of movement, economic activity, and personal inviolability – but that he is admitted to the political realm and full emancipated as a citizen'. Arendt's form of expression clearly locates rights – of movement, association, and economic – as being of a different order than citizenship, and her reason for this ordering is because of the location of labour, within society, within history and within the human condition. Arendt continues in this same passage to equate free labourers in antiquity with 'resident aliens', arguing that '...the turning point in the history of labour came with the abolition of property qualifications for the right to vote' (Arendt 1958/1998: 217).

Arendt's analysis of the consequences of the 'emancipation of the laboring classes' further develops a view of the ideological function of rights talk. Arendt contends that '...the emancipation of the laboring classes from oppression and exploitation certainly meant progress in the direction of non-violence. It is much less certain that it was also progress in the direction of freedom. No man-exerted violence, except the violence used in torture, can match the natural force which necessity itself compels' (Arendt 1958/1998: 129). Similarly, the rights struggle may serve to lessen specific instances of oppression and exploitation, but insofar as the main proxy for membership is the formulation of the worker as labour in a free market through an employment relationship, categorical unfreedom for the migrant worker is implied in the basic terms of the relationship. If we consider the likely factors determining a worker's departure to a foreign nation we can readily substitute the term 'necessity' for the term 'economic benefit' as a critical approach to unpacking the dominant ideology. If we see

necessity as what drives the worker's choice to migrate, using Arendt's logic, existing social relations are reconstituted and entrenched under the auspices of a 'natural force' without recourse to violence or coercion.

## **5. Beyond Ideology: Lessons from Hannah Arendt**

Current debate about how to expand temporary labour migration while avoiding the pitfall of the guestworker programs of the 1980s and 1990s is dominated by the concepts of temporariness, labour markets and workers' rights. The ideological function of these concepts limits challenge to the paradigm of temporary labour, and decrease the potential for avoiding past mistakes. In looking for a way forward, we can, paradoxically, turn back again to Arendt.

Perhaps the most significant change in the landscape for current temporary migrant labour programs, in contrast to those of the past, is the progress of globalization. We live now in a post-global era, where the forces of globalization have become part of the backdrop to our social and political reality. This too was foreseeable to Arendt in 1958, and, focusing precisely on what is unresolvable about temporary migrant worker programs, she identified the failure of citizenship to move into a global realm as the most serious problem of globalization for the human condition:

The decline of the European nation-state system; the economic and geographic shrinkage of the earth, so that prosperity and depression tend to become world-wide phenomena; the transformation of mankind, which until our own time was an abstract notion or a guiding principle for humanists only, into a really existing entity whose members at the most distant points of the globe need less time to meet than the members of a nation needed a generation ago – these mark the beginnings of the last state in this development. Just as the family and its property were replaced by class membership and national territory, so mankind now begins to nationally bound societies and the earth replaces the limited state territory. But whatever the future may bring, the process of world alienation, started by expropriation and characterized by an ever-increasing progress in wealth, can only assume even more radical proportions if it is permitted to follow its own inherent law. For men cannot become citizens of the world as they are citizens of their countries, and social men cannot own collectively as family and household men own their private property (Arendt 1958/1998: 257).

The evolution of temporary labour programs in the half century since Arendt's analysis confirms her prescience.

The best example of the inability of citizenship to successfully 'migrate' to the global stage is seen in the expansion of the European Union, and, in our work, in the labour migration consequences for the United Kingdom. While there is much talk, and some legal structure, behind the idea of European citizenship, what is in fact provided for in contemporary Europe is labour mobility. Workers and work seekers are free to move, others are not. The effect of this is the complete transformation of 'citizenship' into 'labour citizenship'. This has all the deleterious consequences Arendt foresaw: political participation is severed from citizenship; inequalities that limit labouring (for example disability, racism, language skills) are removed from the realm of citizenship, impoverishing our understandings of equality; labour 'skill' is not only reified, it becomes the basis of mobility and thus citizenship itself. The predominance of labour that Arendt railed against is perfected in this transformation: one's *existence* as citizen is contingent upon one's value as labourer. This equation hollows the idea of citizenship and deprives it of meaning. In the post-global United Kingdom, conditions of inequality and exploitation are expanding rather than contracting as the (comparative) expansion of borders has facilitated the expansion of exploitive labour practices.

One can hardly conclude that globalization must be 'stopped' or 'wound back' and it is scarcely more realistic to suggest that temporary labour migration programs be halted. What else might an inveterate optimist offer? Arendt's optimism is grounded in the human capacity to both permanently alter the world and to make the future different from the past. In temporary labour migration, we can begin this by recognizing that temporariness brings with it a fundamental inequality. Better policy pays attention to this, and seeks to make amends for it, rather than seeking simply to make it disappear. Because it cannot. Unmasking inequality created through temporariness and through the tight focus on national labour markets is the place to begin remedying. Rights advocacy can continue to blunt the edges of exploitation, but is also vital to remember that this is

all it can achieve. An increase in temporary labour migration is an increase in inequality. We should advocate to roll this back; to ensure trajectories to permanence are available to those confined to the least 'skilled' categories (it is much less necessary for those who are not global citizens but 'multiple' citizens). It is probably the case that states themselves incur a liability to those who remain in a temporary status for too long; this is an appropriate corollary to the massive power to deport and exclude. Economic modeling of labour 'costs' can be made to cost the loss of rights to privacy, family, accommodation, and association. That temporary labour migration can be made to look like a 'win-win-win' is a consequence of profound global inequalities. Our human capacity to both forgive and amend depends upon acknowledging responsibilities and shouldering them.

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