

Designing viable and ethical labour immigration policies

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Abstract:

There is an urgent need to develop a framework for a comprehensive discussion of labour immigration policy, that separates the normative from other aspects, and places the debates and design of labour immigration policies on an informed and reasoned footing. To this end, it is useful to distinguish between three fundamental questions:

- (i) What *are* the consequences of international labour migration?
- (ii) What *should be* the objectives of labour immigration policy?
- (iii) What policies are best suited to achieve these objectives?

This paper aims to provide a framework for discussion of each of these questions in a structured and comprehensive manner, and to suggest basic policy principles for a general “shell” or set of guidelines for country-specific policy making.

The first part of the paper categorises the main consequences of international labour migration and identifies the most important potential trade-offs between them.

The second part outlines some ethical issues to be addressed when evaluating these consequences and choosing policy objectives. It suggests five core considerations for a balanced approach that is both realistic, in taking account of existing realities in labour immigration policy making, and idealistic, by striving to improve existing labour immigration policies and outcomes for all involved, especially for migrant workers and their countries of origin.

Based on this approach, the third part makes a case for liberalizing international labour migration through new and expanded temporary foreign worker programmes, especially for low-skilled migrant workers. It argues that such programmes are both desirable from an ethical point of view and feasible in the sense that new and innovative policies could help avoid the adverse consequences associated with many past guest worker programmes.

CHAPTER 10

DESIGNING VIABLE AND ETHICAL LABOUR IMMIGRATION POLICIES¹

The design of labour immigration policies has become one of the most contentious and divisive issues of public policy making in many countries. Public debates have been hampered by a lack, or distortion of facts about migration and its consequences, thus leaving policymakers in the difficult position of having to design labour immigration policies based on incomplete and highly contested evidence. Increasing the range and quality of information about the consequences of international labour migration must undoubtedly be one of the most important steps toward improving the quality of public debate and the policy choices for governments. It will, however, not be enough.

International labour migration generates a complex set of economic and social costs and benefits for the receiving country, migrant workers and their countries of origin. These consequences may sometimes be in conflict with each other, and therefore policies cannot be made without certain trade-offs. Difficult decisions need to be made about which of the multifaceted and interrelated consequences of international labour migration should be given more importance in the design of national labour immigration policies, and why. Labour immigration policymaking is an inherently moral exercise that requires a discussion of values and ethics, not just of facts.

There is therefore an urgent need for a framework for the comprehensive discussion of labour immigration policy that separates the normative from other

aspects, and places the debates and design of labour immigration policies on a more informed and reasoned footing. To this end, it is useful to distinguish between three fundamental questions that require separate discussions in the debate and design of a country's labour immigration policy:

- i) What *are* the consequences of international labour migration?
- ii) What *should be* the objectives of labour immigration policy?
- iii) What policies are best suited to achieve these objectives?

While some of the facts about migration and its consequences (question (i)), the values underpinning a country's labour immigration policy (question (ii)) and the resulting optimal national immigration policies (question (iii)) may be similar across countries, each of these questions requires answers that are country-specific. This is because the design and implementation of immigration policy remain principally the domain of *domestic* policymaking of sovereign and self-determining states.² Furthermore, there are significant contextual differences between countries that are manifest in differences in, for example, levels of economic development, regulation of labour markets, culture, establishment of democratic institutions, international relations with the migrant-sending countries and the world community as a whole, the role and independence of the judiciary, and the actual capacity of the state to act and implement certain policies.

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2. Note that the existing regional consultative processes on international labour migration are all informal and non-binding; see Klekowski 2001.

Rather than suggest ready-made, one-size-fits-all answers based on “international experience” or “best practices”, this chapter aims to provide a framework for discussion of each of these questions in a structured and comprehensive manner, and to suggest basic policy principles for a general “shell” or set of guidelines for country-specific policymaking.

The first part of the chapter categorizes the main consequences of international labour migration and identifies the most important potential trade-offs between them.

The second part outlines some ethical issues to be addressed when evaluating these consequences and choosing policy objectives. It suggests five core considerations for a balanced approach that is both realistic, by taking account of existing realities in labour immigration policy making, and idealistic, by striving to improve existing labour immigration policies and outcomes for all involved, especially for the migrant workers and their countries of origin.

Based on this approach, the third part makes a case for liberalizing international labour migration through new and expanded temporary foreign worker programmes, especially for low-skilled migrant workers. It argues that such programmes are both desirable from an ethical point of view, and feasible in the sense that new and innovative policies could help avoid the adverse consequences associated with many past guest worker programmes.

IMPACTS AND TRADE-OFFS IN INTERNATIONAL LABOUR MIGRATION

INTERNATIONAL labour migration generates a complex set of economic, social, political, cultural, environmental and other consequences for individuals, communities and countries as a whole. At the risk of over-simplification, Table 10.1 categorises

the major types of impact (each indicated by an “x”) on non-migrants in the migrant-receiving country, non-migrants in the migrant-sending country, and on migrants themselves.

TABLE 10.1

TYPES OF IMPACTS OF INTERNATIONAL LABOUR MIGRATION

	RC	SC	M
Economic efficiency	X	X	X
Distribution	X	X	
National identity	X	X	
RC citizens' rights	X		
SC Citizens' Rights		X	
Migrants' Rights			X

(RC=Receiving Country; SC=Sending Country; M = Migrants)

A comprehensive discussion of the consequences of international labour migration would need to consider all types of impacts identified in Table 10.1.³ In the context of this chapter, it suffices to explain their meanings and identify the potential trade-offs between them.

The consequences of international labour migration for *economic efficiency* and distribution in the receiving country and sending country include, *inter alia*, impacts on national income and its distribution among non-migrants (e.g. income per capita, economic growth, structural change, inequality, poverty rates); the national labour market (e.g. wage levels, unemployment rates, labour market participation rates, labour market segmentation), and the fiscal balance (e.g. public services, tax revenues, etc.). The “economic efficiency of migrants” is meant to capture migrants’ economic welfare, as primarily reflected by their wages and employment prospects.

National identity may be loosely defined as the shared beliefs and values of a country’s residents. The meaning and substance assigned to national identity – and thus the way in which international labour migration may impact on it – largely depend on how

3. Other chapters of this Report provide further discussion on the state of knowledge about some of those impacts. See, e.g., the chapters “Economic Costs and Benefits of International Labour Migration” and “Migration and Poverty: Some Issues in the Context of Asia”.

countries “see themselves”. For example, a receiving country that sees itself as culturally homogeneous, such as Japan and Korea, may view the immigration of people with different cultural backgrounds as “diluting” its national identity. In contrast, in countries with long histories of immigration, such as the US, Canada and Australia, national identity may, arguably, be partly defined by cultural diversity, thus making immigration a potential tool for preserving or even increasing that diversity.

At the same time, there is little doubt that large-scale emigration (such as from Mexico and the Philippines) also impacts on the national identity in sending countries, mainly through the return of emigrants who have acquired some of the receiving country’s values and habits, the activities and influence of diasporas on social and political affairs in their home countries, and through imported consumer goods purchased with remittances.

More recently, the above listed considerations of national identity have been further conflated with considerations of public order and national security, especially in the receiving country. For example, since the 9/11 terrorist attacks, national security has been a major concern in the immigration policies of the US, and increasingly also of other high-income countries, such as the UK. Similarly, efforts to “localize” the predominantly foreign labour force in most oil-rich Gulf states are largely motivated by security concerns about hosting a foreign population that is larger than the citizenry.

In addition to impacting on collective notions of economic efficiency, distribution and national identity, international labour migration also affects the *rights of individuals*. Most obviously, by virtue of their change in location and legal status (from citizens in their countries of origin to foreigners in their countries of employment), migrant workers necessarily experience a change in the range and scope of their rights – and obligations. For example, a migrant worker employed abroad under a temporary foreign worker programme is usually required to work only for the employer specified in the work permit,

which restricts the migrant’s right to freedom of movement in the labour market – a right that most people enjoy in their home countries. In other cases, employment abroad may increase the number and scope of rights enjoyed by migrants. This is typically the case where migrants come from undemocratic regimes and gain permanent residence or citizenship in more democratic high-income countries.

Immigration may also positively or negatively affect the rights of citizens of the receiving country. For example, granting migrants the right to own certain types of property, such as land, may adversely affect the value of the corresponding right of a citizen, who needs to compete with non-citizens in the market for land, and may thus have to pay a higher price. Similarly, extending the right to certain social security benefits or public services, such as free public health care, to non-citizens may adversely affect the value of the corresponding right of a citizen, who may have to wait longer before receiving medical treatment unless the capacity of the medical system is also increased. At the same time, when effective control of the border is economically and politically too costly, legalizing illegal foreign workers, i.e. giving illegal migrant workers the right to legal residence and employment in the receiving country, could enhance the rights of citizens, as migrant workers with more rights are less likely to undercut citizens in terms of wages and working conditions.

The impacts of international labour migration identified above are likely to be *interrelated* and potentially *conflicting*, which means that the relationship between them may be characterized by *trade-offs*.

One of the most frequently discussed potential trade-offs is that between the impacts on economic efficiency and distribution in the receiving country. Analysis based on the most simple model in labour economics suggests that, in the short run, immigration marginally increases national income (the *efficiency effect*) and, more significantly, redistributes national income from workers to the owners of capital (the *redistribution effect*) (Borjas,

1995). In other words, local employers and capitalists gain from immigration at the expense of competing local workers, whose wages are depressed by the employment of migrant workers. Trade theorists argue that some of these effects may disappear in the long run, when the increase in labour supply, and the subsequent decline in real wages may be counterbalanced by an increase in labour demand (Trefler, 1997). Empirical labour economists also point out that, in practice, the impacts of immigration on local workers are minor or insignificant (Dustmann, 2003; Card, 2004). Nevertheless, most observers would agree that, just like aspects of international trade and investment flows, labour immigration has the *potential* to adversely affect wage and employment outcomes of some competing local workers in the short run (Borjas, 2003).

The level of immigration that maximizes economic efficiency may also differ from that considered socially desirable, based on the perceived impact on national identity. This may especially be the case where national identity is defined in terms of cultural homogeneity. It may, however, also apply to already diverse and multi-ethnic societies who view further immigration as a threat to social cohesion and solidarity. The UK has recently seen a fierce debate about whether immigration is making Britain too diverse to sustain the mutual obligations behind a good society and the welfare state.⁴ A recent commentary by Samuel Huntington, entitled “The Hispanic Challenge”, recently ignited a similar debate in the US.⁵

Trade-offs may also arise in the context of the migration of highly skilled workers from less to more developed countries. For example, while potentially increasing economic efficiency in the receiving country and improving the economic outcomes for migrant workers themselves, granting highly skilled

workers permanent residence status may adversely affect the economy of the migrants’ sending countries through the potential permanent loss of human capital (“brain drain”) and likely decline in remittances usually associated with permanent emigration.

Another frequently ignored potential trade-off is that between the rights and economic welfare of migrant workers. In some cases, migrant workers experience significant restrictions of their rights in return for incomes that are multiples of what they would earn in their home countries. Two extreme examples are migrant workers from developing countries who choose to migrate temporarily to the oil-rich Persian Gulf states and Singapore, despite sharp restrictions of many of their employment-related and other rights. For a more recent example, since the recent EU enlargement on 1 May 2004, workers from the ten EU accession countries have been able to freely migrate and take up employment in the UK and Ireland.⁶ However, mainly due to pressure from the tabloid media and the opposition parties in the weeks preceding EU enlargement, they face extended restrictions on accessing certain social welfare benefits. Arguably, the latter were the “political price” the UK and Irish governments had to pay in order to sustain their liberal migration policies toward workers from the accession states.⁷

Finally, as already mentioned, extending rights to migrant workers may, in some cases, adversely impact the rights of citizens. The discussion above showed how extending rights to migrant workers may negatively, or positively, affect the *value* of the corresponding rights of citizens (e.g. the right to buy land). A more direct infringement of citizens’ rights may occur if the receiving country grants migrant workers access to the national labour market in the absence of an effective mechanism encouraging

4. See Goodhart 2004 and responses.

5. See Huntington 2004 and responses.

6. Together with Sweden, the UK and Ireland were the only ones among the pre-enlargement EU countries to open up their labour markets to workers from the ten EU Accession states immediately on 1 May 2004.

7. Phil Martin (2003) refers to the migrants’ welfare vs. migrants’ rights trade-off as the “numbers-rights dilemma. He cites the conclusion of a classic study by Fisher on Californian agriculture in the 1950s: “The brightest hope for the welfare of seasonal agricultural workers [in the US] lies with the elimination of the jobs upon which they now depend” (Fisher 1953, p. 148). In other words, according to Fisher, the only way of improving migrant workers’ rights was to eliminate them from the workforce.

employers to first ascertain the availability of equally suitable local workers. This is most obviously the case where migrant workers can be employed illegally and without much fear of detection. The UK's decision to grant nationals from EU accession states immediate and free access to its labour market is another case in point. It could be argued that the right accorded to migrant workers to take up employment in the UK is a direct trade-off against local workers' preferential access to the UK labour market.⁸

It is important to emphasize that these trade-offs are not inherent to international labour migration. Sorting out potential from actual trade-offs is an important task for empirical research. However, where they are real, the various trade-offs in international labour migration need to be acknowledged and considered in the debate and design of labour immigration policy.

A BALANCED APPROACH TO THE DESIGN OF LABOUR IMMIGRATION POLICY

HAVING discussed the multifaceted and interrelated consequences of international labour migration, the next step in the design of labour immigration policy is to define its policy objectives. This requires policy makers to assign weights to the ten types of impacts listed in Table 10.1.⁹

In practice, the decision about which consequences of migration are more important than others is usually observed, and typically analysed, as the result of political negotiations and power struggles between the key political stakeholders and various interest groups. It is important to realize, however, that any politics of migration¹⁰ is conducted within a certain

ethical framework. This means that, although played out in the political domain, the assignment of weights to the ten types of impacts in Table 10.1 is, in the end, an inherently normative exercise. This opens up an important, but all too often neglected, discussion of the values and ethical considerations that inform, or *should inform*, the choice of policy objectives and the subsequent design of a labour immigration policy.

It is useful to distinguish between two key questions in this discussion of the ethics of labour immigration policy:

- (i) to what extent, if at all, should the outcomes for collectives, such as economic efficiency, distribution and national identity, and the economic welfare of individuals be given priority over individuals' rights, and
- (ii) to what extent, if at all, should the interests of citizens be given priority over those of migrant workers and their countries of origin?

The answers to these questions, which differ from one ethical theory to another, constitute an ethical framework. For a discussion of the desirable degree of consequentialism, i.e. the degree to which the ethical evaluation of public policies (or private action) should be made in terms of outcomes (ends) rather than processes (means), see, for example, Scheffler, 1998. For a discussion of the "moral standing" to be accorded to non-citizens, see, for example, Nussbaum, 1996 and Goodin, 1988. Different ethical frameworks naturally give rise to very different definitions of the objectives of a "desirable" labour immigration policy, as reflected in the different weights given to the impacts in Table 10.1. It could be argued that the policy principles espoused in the ILO's Migrant Worker Conventions or the UN's International Convention on the Protection of the Rights of All Migrant Workers and the Members of their Families (MWC) are based on an ethical framework of "rights-

8. This trade-off is not necessarily undesirable, but it needs to be acknowledged.

9. One could argue that, if labour immigration policy is made at the national level, the process of assigning weights to the various migration impacts in Table 10.1 defines the "national interest". This framework for defining the national interest would be in line with Nye, who suggests that, "(...) global interests can be incorporated into a broad and far-sighted concept of the national interest". See Nye, 2002.

10. For a recent discussion of the politics of migration, see Spencer, 2003. Spencer argues that managing migration is about trying to balance the following high-level objectives (some of which may be conflicting): achieving labour market objectives, protecting national security, minimizing public expenditure, promoting social cohesion, honouring human rights obligations and promoting international development and cooperation.

based cosmopolitanism”, which emphasizes the individual’s rights rather than the individual’s economic welfare, or the consequences for society, and accords a very high degree of “moral standing” to non-citizens. The outcomes for citizens and non-citizens are given (almost) equal weight in the ethical evaluation.¹¹

In contrast, the current labour migration policies of many migrant-receiving countries appear to be based on an ethical framework of “consequentialist nationalism”, which focuses on the consequences for the community, rather than the rights of individuals, and accords a significantly lower moral standing to non-citizens than to citizens. In other words, the preferred labour immigration policies of most receiving countries tend to place most weight on economic efficiency, distribution and national identity (including security) of their citizenry as collectives, less weight on individual rights (related to the employment of foreign workers), and least weight on the impacts on migrants and non-migrant citizens of sending countries. This is perhaps best illustrated by the popular appeal of “manpower planning exercises” behind many countries’ labour immigration policymaking,¹² and by the disappointingly low numbers of ratification of the three global legal instruments developed for the protection of migrant workers.¹³

Given the multitude of competing ethical theories, it needs to be recognized that there is no single most “correct” starting point for theoretical reflection in the ethical discourse on immigration (Carens, 1996). However, if the objective of the ethical discourse is to

yield practical policy implications, as is the case in this chapter, there is a strong argument to be made for adopting a *balanced approach* that is both *realistic*, in that it takes account of existing realities in labour immigration policymaking (such as the consequentialist nationalism underlying many migrant receiving countries’ current policies), and *idealistic*, by actively promoting the interests of migrant workers and their countries of origin (ibid). Such a balanced approach would be based on the following core considerations:

i) All the impacts in Table 10.1 may be *potentially legitimate* determinants of a viable and ethical labour immigration policy. This implies that discussions about labour immigration need to address the impacts of international labour migration in an explicit, well informed and open manner. This requires, among other things, a thorough understanding of the consequences of international labour migration, including relevant trade-offs, and active discouragement of the kind of “polarization” of immigration debates currently occurring in many countries.

ii) If one accepts the legitimacy of nation states, national policy makers have an obligation to assign more weight in their policy decisions to the impacts on residents and citizens than to those non-citizens. Thus, a balanced approach to the design of labour immigration policy would, at a minimum, require policies that protect a citizen’s right to preferential access to the national labour market;¹⁴ ensure that the receiving country derives net economic benefits from the employment of migrant workers, and prevent

11. In line with the Universal Declaration of Human Rights, the rights contained in the UN’s MWC are intended to be universal (i.e. they apply everywhere), indivisible (e.g. political and civil rights cannot be separated from social and cultural rights), and inalienable (i.e. they cannot be denied to any human being and should not be transferable or saleable, not even by the holder of the right).

12. In immigration policy, manpower planning usually results in discussions about the number and type of migrant workers that will maximise economic benefits and minimise distributional consequences for the receiving country.

13. They include the Migration for Employment Convention of 1949 (ILO Convention No.97), the Migrant Workers (Supplementary Provisions) Convention of 1975 (ILO Convention No.143), and the International Convention on the Protection of the Rights of All Migrant Workers and the Members of their Families, adopted by the UN General Assembly in 1990 (MWC). ILO Convention No. 97 (which came into force on 22 January 1952) has been ratified by 42 member states, while ILO Convention No. 143 (which came into force in 1978) has been ratified by only 18 member states. As of February 2004, the MWC had been signed by only 25 member states, most of which are predominantly migrant-sending rather than migrant-receiving countries.

14. Of course, there are instances in which citizens may collectively decide to waive this right. The freedom of movement and employment within the countries of the pre-enlarged European Union is a case in point.

immigration from adversely affecting national security, public order and the social and political stability of the receiving country.

iii) Migrant workers face particular vulnerabilities in international labour migration and their *interests* therefore need special promotion and protection. Furthermore, these interests are multifaceted, comprising both migrant workers' rights and economic welfare (see Table 10.1). Given that the promotion of migrant workers' rights and economic welfare may sometimes be negatively correlated, an extreme rights-based policy would imply that no level of improvement of foreign workers' welfare justifies the restriction of some of their rights. Considering that many migrant workers migrate for economic reasons, giving such minimal weight to their economic welfare seems unlikely to be in their overall interest.

At the same time, it is equally obvious that policies driven and justified by an almost exclusive concern for the economic welfare of migrant workers, with little or no regard to their most basic human rights (the voluntary slavery or sweatshop argument), would be equally objectionable in an approach that purports to be concerned with the overall interest of migrant workers. It is well known that international labour migration frequently takes place in an environment of exploitation, sometimes involving the violation of the most basic human rights of migrant workers.¹⁵ Rather than insist on a very comprehensive set of inalienable rights for migrant workers, as the UN's MWC currently does, a balanced approach would first identify and effectively enforce a basic set of rights that cannot be violated, and then give migrant workers at least some voice/agency in, and the necessary information for, choosing whether and how to balance an increase in their income with a restriction of their rights while employed abroad.

iv) The vulnerabilities of sending countries are significant and stem from inherent asymmetries in the

regulation of international labour migration. It is a human right to leave and return to one's country of origin, but there is no corresponding right to enter another country. As a result, there are relatively fewer opportunities for sending countries to regulate emigration than for receiving countries to regulate immigration. For example, receiving countries may effectively restrict the immigration of a highly skilled worker from a developing country if deemed necessary to protect the receiving country's labour market. In contrast, there is relatively little that sending countries can do to restrict the emigration of a highly skilled worker, even if the loss of human capital has significant adverse effects on the sending country's economy.

These asymmetries in the regulation of international labour migration create at least some obligation for receiving countries to make their labour immigration policies "development friendly" for sending countries. This could be achieved by creating legal and readily accessible channels for the flow of remittances, discouraging the permanent immigration of highly skilled migrant workers, where such migration would constitute a serious loss to the sending country, and by encouraging the return and/or circulation of migrant workers. The best way of promoting sending countries' interests in international labour migration would be to adopt a more inclusive approach in the design of labour immigration policies, and to cooperate with sending countries in at least some aspects of policy design.¹⁶

v) In order to avoid policy conflicts, the choice of the objectives of labour immigration policy should not be too dissimilar from those of policies regulating other aspects of a country's economic openness, such as international trade and capital flows.

International labour migration and international trade and capital flows are not symmetrical phenomena. While most of the purely economic

15. For a discussion, see, for example, Taran, 2000.

16. Weil, 2002, makes the case for a coherent policy of co-development based on more cooperation between migrant receiving and sending states, and migrants themselves.

effects could be similar, e.g. the labour market impacts of immigration could be similar to those of imports or investment abroad, the international flow of workers also generates a number of non-economic effects, e.g. on national identity and on the rights of individuals, generally not associated with international trade and capital flows. For this reason, there is no *a priori* inconsistency in receiving countries' policies of encouraging the liberalization of international trade and capital flows to a greater degree than that of international labour flows.

A balanced approach to the design of labour immigration policy would, however, ensure that the *degree* of asymmetry between the restrictions on international flows of labour and capital reasonably reflects the differences between their economic and non-economic impacts. Looking at the current globalization trends, it could be argued that the existing imbalances are significantly greater than such considerations of consistency would demand. As of 2000, the ratios of exports, and the stock of outward foreign direct investment, to world GDP were 22.1 and 18.7 per cent, respectively,¹⁷ while the ratio of the estimated *stock* of total migrants to total world population was only about 3 per cent (based on an estimated global stock of 175 million migrants, the great majority of whom are migrant *workers*).¹⁸

A balanced approach would include policies to encourage a greater degree of liberalisation of international labour migration, especially of low-skilled workers whose international mobility is the most restricted, than is currently the case. This would enhance consistency between international trade, investment and migration policies. Because the integration of international labour markets is significantly lower than the integration of

international markets for capital and commodities, such liberalization would also generate significantly higher economic benefits than those derived from a further liberalization of international trade and capital flows (Rodrik, 2002).

THE CASE FOR NEW AND EXPANDED TEMPORARY FOREIGN WORKER PROGRAMMES

THIS CHAPTER argues that a balanced approach to the design of labour immigration policy calls for the liberalization of international labour migration through *new types* of temporary foreign worker programmes (TFWPs) for skilled *and especially for low-skilled foreign workers*. In contrast to the widely held arguments against such programmes, it is suggested that new and expanded TFWPs are both *desirable* from an ethical point of view, and *feasible*, since innovative policy designs, if effectively implemented and enforced, could help avoid the adverse and unintended consequences of most past and existing guest worker programmes.¹⁹

DESIRABILITY

The ethical argument against TFWPs typically rests on universalistic rights-based theories that emphasize the universality and priority of migrants' rights over narrowly defined national interests of receiving countries. Rights-based theories tend to oppose the *active promotion* of new policies that are based on an explicit distinction between the rights and entitlements of different categories of residents (such as temporary residents, permanent residents, and citizens) and on the idea that it may be desirable to trade certain personal rights against increases in their

17. In 2000, the ratio of FDI outward flows to total fixed capital accumulation was 17.8 per cent (UNCTAD, 2001). Of course, FDI figures are not strictly comparable to GDP and fixed capital accumulation figures. The idea here is to merely give an indication of the overall magnitudes under consideration, rather than identify the exact degree of the integration of international capital markets.

18. See UNPD, 2002. It is interesting to note that, while today's levels of international trade and capital market integration are roughly comparable to those prevailing in the early 20th century (Williamson, 2002; Baldwin and Martin, 1999; Taylor, 1996), the scale of international labour migration since 1950 has been significantly smaller (as a percentage of world population) than that prevailing in the "age of mass migration" of 1820–1913 (Hatton and Williamson, 1998).

19. Of course, the issues of desirability and feasibility are interrelated in practice. For example, it could be argued that it cannot be desirable (or ethical) to promote a policy which is clearly unfeasible to implement, i.e. desirability requires feasibility. The reason for separating the two concepts here is to facilitate a more structured discussion of the arguments for and against implementing new and expanded temporary foreign worker programmes.

and other peoples' economic welfare.²⁰ Criticisms of TFWPs based on rights-based theories also point to the strong presumption in liberal democracies that residents acquire rights over time. Within this framework, it is immoral to invite foreign workers to immigrate and take up employment, without at the same time enabling them over time to acquire the rights and entitlements typically granted to citizens.

A very similar argument is also made by some communitarian writers. For example, Michael Walzer, a communitarian who argues that restricting immigration could be ethically justified,²¹ suggests that if foreign workers are admitted into the political community, they must be given equal rights and opportunities and be set on the road to citizenship.²² Any other arrangement would constitute a 'family with live-in servants'. Walzer summarizes the issue of guest workers as follows:

'Democratic citizens, then, have a choice: if they want to bring in new workers, they must be prepared to enlarge their own membership; if they are unwilling to accept new members, they must find ways within the limits of the domestic labour market to get socially necessary work done. And those are their only choices. Their right to choose derives from the existence in this particular territory of a community of citizens; and it is not compatible with the destruction of the community or its transformation into yet another local tyranny' (Walzer 1983, p. 61).

Based on the discussion in the above two sections, it can be seen that some arguments against TFWPs are well served by ethical references that are narrow and place their emphasis on a relatively small subset of the migration impacts in Table 10.1. For example, and as mentioned before, migrants' rights advocates who

oppose TFWPs on the grounds that they restrict migrant workers' rights unacceptably, frequently fail to acknowledge that TFWPs typically increase the economic welfare of (often economically underprivileged) migrant workers. Similarly, communitarian arguments such as Walzer's are primarily concerned with the collective interests of the community in the receiving country, and less so with the interests of individual potential migrants (still in the sending country, and seeking employment abroad), or the interests of the sending country in general.

As a result of this narrow focus on a few selected migration impacts, critics of TFWPs have in fact contributed to maintaining the status quo, as characterized by restrictions on international labour migration, especially of low-skilled workers, and high levels of illegal immigration. Most illegally employed migrant workers are found in relatively low-wage jobs and have very few rights.

Based on a balanced approach, the ethical case for new and expanded TFWPs is motivated by the argument that a managed liberalization of international labour migration, especially of low-skilled workers for whom international migration restrictions and thus also international wage differentials are greatest, would benefit all sides; and that of all the possible ways to manage and liberalize labour immigration in a world of sovereign states, TFWPs are the most *realistic* policy option.

TFWPs could benefit receiving states by providing them with a highly motivated workforce that can carry out jobs in sectors and occupations where the following conditions are met: (i) local workers are unavailable to fill existing vacancies; (ii) existing

20. This assertion holds as a general statement about the nature of rights-based ethical theories (such as libertarian theories based on Nozick, 1974). It needs to be acknowledged, however, that some rights-based approaches, including the one embodied in the international human rights treaties and migrant worker conventions, allow for a (limited) distinction between different categories of residents based on legal status and citizenship (for a discussion, see, for example, Ghosh, 2003).

21. Walzer, 1983, suggests that the political community can be thought of as a national 'club' or 'family'. As clubs can regulate admissions, but cannot bar withdrawals, there is a legitimate case for national immigration restrictions that serve to 'defend the liberty and welfare, the politics and culture of a group of people committed to one another and to their common life' (p. 39).

22. This includes the right to family reunion. Walzer argues that the notion of the country as a 'family' suggests that 'one cannot admit them (foreign workers) for the sake of their labour without accepting some commitment to their aged parents, say, or to their sickly brothers and sisters' (p. 41).

vacancies are advertised at “decent” wages that are above the official minimum wage; (iii) a change toward less labour-intensive production technology is difficult in the short term; (iv) relocation abroad is difficult or impossible, and (v) the complete elimination of the occupation or sector is considered to go against the country’s national interest. Arguably, the number of jobs in high-income countries meeting all of the five criteria is significant.²³ They exist at both the high and low-skill end of the labour market and include jobs in the IT sector, health care, agriculture, food processing, construction and a number of service industries, including cleaning and, especially, hospitality.

In addition to filling genuine labour shortages that meet the above five criteria, TFWPs could also enable receiving countries to minimize the potentially adverse impacts of the employment of migrant workers on the wages and employment opportunities of the local workforce. This could be done, for example, by restricting the employment of foreign workers to sectors that suffer from labour shortages (a restriction impossible to impose on foreign workers with permanent residence status). Because of the possibility of protecting local workers, and the general expectation of return, TFWPs are more likely to be politically feasible than large-scale permanent immigration programmes. If effectively implemented, they are also more desirable than a policy of benign neglect towards illegal immigration,²⁴ which could easily lead to a race to the bottom in the wages and employment conditions offered in certain jobs, thus adversely affecting local workers and potentially discouraging employers from modernizing production processes.

While they do not adequately address fundamental issues of poverty and economic development in low and middle-income countries, expanded TFWPs may benefit sending countries through the increased inflow of remittances and return of workers with potentially more skills and knowledge about modern technology. The temporary nature of migrant workers’ employment abroad, and their eventual return home, prevents the permanent loss of human capital (brain drain²⁵) and the decline in remittances (which often sets in after the family joins the migrant worker abroad). There is thus a convergence of interests of receiving and sending countries in *temporary* labour migration.²⁶

From the migrant workers’ point of view, the main benefit from new and expanded TFWPs lies in the prospect of increased access to legal (but temporary) employment in higher-income countries. In a way, the creation of new and expanded TFWPs would increase the “choices” for migrant workers, offering them the opportunity to legally earn higher wages abroad at the (potential) cost of restricting some of their rights. It is a trade-off, but it may be a welcome one, especially for workers with little or no other opportunities to economically better themselves and their families.

It could also be argued that temporary employment is desirable, as it maximizes the potential number of migrant workers able to benefit from employment abroad. Long or permanent stays of workers currently abroad naturally make it more difficult for potential newcomers to gain access to a given foreign labour market.

23. The number of advertised vacancies in high income countries that meet only (i) is significantly greater than those meeting all five criteria cited in the text! This is why the extent of illegal immigration, or even the vacancy assessments by some employer associations, is likely to overstate the demand for migrant workers.

24. A frequently cited example of such benign neglect over the issue of illegal immigration is US policy towards undocumented workers in agriculture, where internal and border enforcement efforts have been systematically relaxed during periods of high labour demand (Hanson and Spilimbergo, 2001).

25. Note that encouraging return is not the only possible policy option to address the brain drain (although, if implemented successfully, it may be the most effective). Many recent contributions to the brain drain debate have focused on a “diaspora approach” that aims to mobilise migrants abroad to engage in activities that benefit their home countries (through, for example, remittances, investments and transfer of technology). For a discussion, see Wickramsekara, 2003.

26. It is important to recognise that – for the reasons mentioned in the text – sending countries are likely to prefer temporary emigration to a completely free international flow of labour.

FEASIBILITY

The second charge against TFWPs is that they are simply unfeasible. This argument is based on the fact that many of the past and existing TFWPs, most notably the *Bracero* programme in the USA (1942-64) and the *Gastarbeiter* programme in Germany (1955-73), failed to meet their stated policy objectives and instead generated a number of adverse, unintended consequences. The three most important adverse impacts included the exploitation of migrant workers in both recruitment and employment; the emergence of labour market distortions, and the growth of a structural dependence by certain industries on continued employment of migrant workers and, perhaps most importantly from the receiving country's point of view, the non-return and eventual settlement of many guest workers.²⁷

In light of these policy failures, it is indeed fair to say that past experience with TFWPs has been overwhelmingly negative. However, to conclude that such programmes are therefore inherently unfeasible ignores the fact that most failures of past guest worker programmes can be traced to a common set of mistakes in policy design. The remainder of this section identifies the three major policy mistakes of past programmes and proposes key policies to avoid them, and their adverse consequences, under new and improved TFWPs. It also acknowledges and addresses the significant challenges to implementing the proposed policies, including especially the need for effective enforcement of immigration and employment laws, especially those designed to combat illegal immigration and employment. Without the latter, any TFWP, including the policies proposed below, is bound to fail.

i) *First*, foreign workers' vulnerability to exploitation in employment mainly arises from the fact that work permits made available through TFWPs are usually specific to a job and employer. Programmes that allow migrant workers to change employers without leaving

the country typically require the new employer to apply for a new work permit – a time and resource consuming process. Unless they are willing to return home, foreign workers may thus find it difficult or impossible to escape unsatisfactory working conditions. The problem may be exacerbated by some employers' illegal practices of retaining migrant workers' passports and by the provision of "tied accommodation", i.e. accommodation provided by the employer to their migrant workers on the condition that, and as long as, the migrant continues to work for that employer. This may naturally lead to employers gaining excessive control over migrant workers, and to exploitation.

A first core policy element of new and improved TFWPs is to grant migrant workers at least some freedom of movement (and thus the freedom to choose and change employers) in the receiving country's labour market. This could be done, for example, by issuing work permits specific to a certain sector or occupation (rather than to a certain job and employer), where the work permit holder is allowed to change employers at will. Important supplementary policies would need to include making it a criminal offence for employers to retain their workers' passports, and providing information to migrant workers about affordable housing opportunities, if they exist, other than those offered by the employer.

Importantly, in addition to reducing foreign workers' vulnerability, granting foreign workers more freedom of movement also benefits the receiving country. It increases the efficiency of that country's labour market by enabling foreign workers to better respond to wage differentials, thereby helping to equalize the value of the marginal product of all workers across labour markets. This point has been made by Borjas, who argues that, "immigration greases the wheels of the labour market by injecting into the economy a group of persons who are very responsive to regional differences in economic opportunities" (Borjas, 2001). Efficiency gains may be particularly pronounced

27. There is a plethora of studies providing empirical evidence for these and other "policy failures" of past guest worker programmes. For overviews, see, for example, Castles, 1986; Martin and Teitelbaum, 2001; Martin, 2003; and Ruhs, 2003.

where the mobility of native workers is relatively low (such as in the EU).²⁸

None of the major existing and past TFWPs has ever experimented with granting migrant workers freedom of movement within certain occupations and/or sectors. The main obstacle appears to be resistance by employers who run the risk of losing migrant workers before the employers' recruitment costs have been recovered.²⁹ One way of addressing this problem could be to organize collective recruitment by all employers within the occupation and/or sector within which migrants are allowed to move freely.³⁰ A more modest policy alternative would be to offer migrant workers freedom of movement after a relatively short period of employment with the employer who initially recruited them (that period should reflect the time needed for the employer to recover recruitment costs).

ii) Labour market distortions and a structural dependence on the employment of migrant workers stem from the failure of many existing and past TFWPs to offer employers the right incentives to recruit migrant workers. Although under most existing TFWPs work permits for migrant workers can be issued only if an employer can reasonably demonstrate that no equivalent local workers are available, this so-called "labour market test", aimed at securing the important objective of protecting citizens' rights to preferential access to the national labour market, has typically failed in practice. Whenever necessary, employers have shown considerable ingenuity to ensure that no local workers are found to fill their vacancies (Martin, 2003).

In addition, the work permit fees employers pay under most past and existing TFWPs are relatively low.³¹ As a result, migrant workers tended to be both easily

accessible and available at relatively low cost to local employers. Although systematic empirical evidence on this issue is scant, an effectively "unlimited" supply of readily available and cheap workers may discourage some employers from modernizing production processes, and thus lead to a situation where inefficient companies and industries remain viable only because they are subsidized by a readily available and cheap immigrant workforce.³²

Another key policy principle for new and improved TFWPs is, therefore, to "get the price of migrant workers right" by charging employers a monthly fee for each foreign worker they employ. The fee would need to be set at a sufficiently level high to provide local employers with the necessary incentives to: a) search for local workers and avoid paying the fee (this would effectively help to protect the local workers' right to preferential access to the labour market), and b) look for alternatives, such as the mechanization of the production process, or outsourcing, before considering the recruitment of migrant workers. Something similar is occurring in Singapore, where the government sets and regularly revises flexible "foreign worker levies" specific to the sector of employment and the skill level of the migrant worker.

In addition to levelling the playing field, the revenues from work permit fees could also be used to generate funds for enforcement and integration assistance (Martin, 2003). They could also be used as a tool of industrial policy. For example, fees could be raised in order to encourage mechanization or technological change in certain industries. Fees could be set at prohibitively high levels in industries considered to have lost their comparative advantage relative to those in low-income countries. For most high-income countries, labour-intensive manufacturing and, more

28. In 2000, only 225,000 persons (0.1 per cent of the total EU population) moved their official residence to another EU country. This is only a fraction of the mobility observed in the US, where about 2.5 per cent of the population change states every year (European Commission, 2002).

29. Indeed, granting migrant workers freedom of movement within certain occupations and/or sectors may initially decrease the number of workers recruited, as employers become more careful about their "recruitment investments". It is, however, argued that this would be a desirable development as it would help to remove unacceptable risks of exploitation.

30. See Weinstein, 2002, for a discussion of this proposal.

31. The exception is Singapore, which is discussed immediately below.

32. See, for example, Martin and Olmstead's (1985) discussion of the mechanization controversy in US agriculture.

controversially, parts of agriculture, may be cases in point.³³

To charge a work permit fee could also serve another important purpose, namely, to reduce local workers' opposition to TFWPs by distributing part of the work permit revenues (e.g. through periodic hand-outs) to native workers in those sectors where the hiring of foreign workers has verifiably depressed wages and/or working conditions.³⁴ Under such a system, the government would need to carefully determine the appropriate level of such a fee able to compensate local workers while also leaving local employers better off.

Alternatively, in countries where union membership is high, a more market-based system under which native workers collectively decide on the compensation in exchange for their agreement to the employment of a certain number of foreign workers could be foreseen. Such a system would essentially be based on a bargaining process, where local employers, local workers and the government come together and collectively bargain over the number of foreign workers to be admitted and employed, and over the price (work permit fee) that native employers would pay to compensate local workers.³⁵ This system has, in part, been operating in Australia, where the government consults interest groups and the public about the size and composition of migrant intakes.

Where direct compensation of local workers is considered to be undesirable, for example, because of the potentially adverse impact on the perception of immigration as inherently threatening the employment prospects of local workers, the revenues raised through fees could still be used to mitigate the potential adverse impact on local workers by funding their retraining and skill development.

To implement fees effectively, two main challenges need to be overcome. First, the government of the receiving country needs to accept the proposition that the merits of micro-managing the employment of migrant workers by setting employer fees justify and outweigh the costs associated with increased government intervention. This may be difficult for governments with a strong preference for *laissez-faire* and minimal intervention in the domestic economy. Second, there is a danger that some employers will illegally deduct work permit fees from migrant workers' wages. If this happens, the fees will achieve none of their intended objectives and simply reduce the wages of migrant workers. To prevent this, work permit fees need to be effectively enforced with credible and stiff penalties for employers who pass the fees on to their workers.

iii) One of the biggest policy mistakes under past guest worker programmes, and especially in the German *Gastarbeiter* programme, was the assumption that guest workers were essentially available on tap, i.e. that their numbers could be increased or decreased at will, depending on the economic needs of the receiving country. This assumption was based on the idea that guest workers were labour units without agency, i.e. without the capacity to make independent decisions or revise their decisions based on new information and circumstances (Castles, 2004). In practice, changing expectations on the part of the foreign worker, and pressures on liberal and democratic receiving countries – by the judiciary and civil society – to grant workers employed for a certain number of years the right to family reunion, create dependencies that limit the receiving country's ability to reduce the number of admitted foreign workers at will.³⁶

33. European and US agriculture is heavily subsidized not only through price supports but also through cheap immigrant labour (sometimes from the very countries that would be most efficient at producing these agricultural products in the first place).

34. It should be acknowledged that, given disagreements within the theoretical and applied literature about the effects of labour immigration on the labour market outcomes for locals, this is likely to be a formidable and highly controversial exercise.

35. For a more detailed analysis of this mechanism, see Weinstein, 2002.

36. Compare the discussion in ILO, 2004.

It should therefore be recognized already at the stage of policy design, that some foreign workers may apply to remain in the host country on a permanent basis and to bring their families. The implementation of new and improved TFWPs must therefore include transparent mechanisms and rules for a *regulated* and *conditional* (i.e. *non-automatic*) transfer into different and “better” programmes that grant *some* foreign workers permanent residence status and the right to family reunion. This could be done, for example, through a points system that places particular emphasis on criteria considered essential for the long-term integration and employability of the migrants in the receiving country. Proficiency in the receiving country’s language may be a case in point.³⁷ Such points-based programmes have been tried and tested, as a means of direct entry, for decades in Australia and Canada, and have helped to give immigration policy a semblance of certainty and measurability.

At the same time, new and improved TFWPs must necessarily remain based on a *general expectation* of *temporariness* of employment and stay of the majority of migrant workers who join the programme. To make this a realistic expectation, policies should discourage a situation in which a foreign worker decides to overstay a temporary work permit because his/her savings target could not be achieved during the period of validity of the work permit. This requires strict enforcement measures against employers and recruiters who give foreign workers wrong information about employment conditions and living costs in the receiving country, and steps to prevent the illicit sale of visas.

A mixture of incentives and enforcement is needed to facilitate the return of migrant workers who exit TFWPs without changing their status to permanent programmes. For example, migrant workers with a valid work permit need to be given the right and opportunity to travel freely, or at least without too

many restrictions, between the sending and receiving countries. This will help them maintain networks in the home country, which in turn will increase the probability of their return.

Financial return incentives could include the transfer of migrant workers’ social security payments to the workers’ sending country. Another policy would be to create special savings accounts which offer migrant workers the opportunity to save part of their wages at special high interest rates subject to the condition that the savings will only be released to migrant workers upon their return to their home countries. Such financial return incentives have been tried before with mixed success. The most infamous example is the Mexican *Bracero* programme that required a portion of migrants’ earnings to be deducted for retirement in Mexico. The policy ultimately failed as migrants never received the money, and their claims for deferred wages have been under investigation for decades.

Clear and effective procedures to remove migrant workers who illegally overstay their temporary worker visas are needed, as well as to penalize employers who employ migrant workers without valid work permits. This is primarily a question of political will and depends on the resources made available for internal enforcement measures such as detection, persecution, enforcement of employer sanctions, and deportation. The record of most liberal and democratic receiving countries in enforcing employer sanctions is less than encouraging.

The success of any TFWP ultimately depends on the receiving country’s willingness to strictly enforce the law against all parties, recruitment agents, employers and migrant workers, who circumvent the programme.³⁸ In the absence of effective law enforcement, employers and migrant workers may have very few incentives to join the TFWP and prefer

37. Great sensitivity is needed to use proficiency in language as a criterion for improved status: the government has to provide adequate and accessible courses, and ideally insist that workers get time off to do them; and it must address the needs of special groups, especially women with child-care responsibilities.

38. In fact, some critics of TFWPs agree that the list of policies outlined above may, in theory, make a TFWP work. They argue, however, that the policies are simply impossible to enforce and, therefore, ultimately unfeasible.

(the continuation of) illegal employment arrangements instead.³⁹ Also, the toleration of illegal immigration and employment will obviously undermine any policy to encourage the return of migrant workers upon the expiry of their work permits. Between 1998-2002, only eight employers were found guilty of illegally employing migrant workers under Section 8 of the UK's Asylum and Immigration Act 1996, the law preventing illegal work in the UK (Home Office, 2003). Similarly, in 2002, only 53 employers were fined for immigration violations in the whole of the US (Cornelius, 2004).

There are two compelling arguments in favour of effective enforcement of the proposed policies and measures against illegal immigration. First, the ethical case for new and expanded TFWPs – which includes a strong economic argument – could provide a politically powerful justification for devoting resources to law enforcement, and for implementing measures sometimes deemed undesirable in a liberal democracy, such as restricting some migrant workers' rights in exchange for greater access to legal employment opportunities abroad. In other words, if it can be successfully argued, as suggested in this chapter, that a well functioning TFWP is an ethical immigration policy in the interests of all actors involved, one could realistically hope for a more serious commitment to enforcement. This is why the discussion of the ethics of labour immigration policy is of critical importance.

Second, given the convergence of interests of migrant receiving and sending countries in ensuring the temporariness of migrant workers' employment abroad, those countries may find it mutually advantageous to cooperate in supporting and implementing immigration control measures necessary to make a TFWP work. The sending country could, for example, take measures to regulate its migrant worker recruitment industry and assist with the return of migrant workers who have been

apprehended and deported by the authorities of the migrant receiving country. Receiving countries could only solicit such support from sending countries if they operate liberal and orderly TFWPs for migrant workers from those countries.

At a minimum, these are sufficient grounds for taking the idea of new and expanded temporary foreign worker programmes seriously, and for testing some of the above policy options. The UK's Sector Based Schemes (SBS) for employing migrants in selected low-skill jobs in hospitality and food processing are a welcome case in point. While lacking most of the policies outlined above, they are a welcome step towards experimenting with new policies for temporary migrant workers in low-skill jobs.⁴⁰

CONCLUSION

IN AN EFFORT to order what are currently fairly confused debates about labour immigration, this chapter identified three issues for consideration in the design of labour immigration policy: the *consequences* of international labour migration for the receiving country, the sending country and migrants themselves; the values and *ethical considerations* underlying any evaluation of these consequences and informing the choice of policy objectives; and the *policies* best suited to implement the objectives.

Having reviewed the main types of migration impacts and potential trade-offs between them, a case has been made for a balanced approach to evaluating the consequences of international labour migration and subsequent design of labour immigration policy. The key elements of such an approach include:

i) an open, transparent discussion of all economic, social, cultural and other impacts of international

39. This has been one of the main criticisms voiced against President Bush's proposal of introducing a new guest worker programme-cum-amnesty for Mexican workers seeking employment, or already employed, in the US. The argument is that the policy will be ineffective unless illegal immigration is brought under better control.

40. For more information about the SBS, see www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/work_permits/sector_based_schemes.html.

labour migration for migrants and non-migrants in receiving and sending countries;

- ii) the acknowledgement of the need for national policymakers to give at least some preference in their policy decisions to the interests of citizens;
- iii) the recognition that the interests of migrant workers need to be actively protected and promoted, including both migrants' rights and economic welfare, two factors that may sometimes conflict;
- iv) the responsibility of receiving countries to make their labour immigration policies "development-friendly" for sending countries, and,
- v) the need to avoid policy contradictions by aligning the objectives of labour immigration policies more closely with those of international trade and investment policies.

It has been further suggested that these considerations can be used to make an ethical case to liberalize international labour migration through new and expanded temporary foreign worker programmes, especially for low-skilled migrants. To make such programmes feasible, the policy mistakes of past guest worker programmes must be avoided. Three key policies are needed:

- i) some freedom of movement for labour migrants in the receiving country's labour market;
- ii) regulation of employers' costs of migrant workers by setting flexible work permit fees, and,
- iii) mixed incentives-enforcement measures to encourage the return of migrants on expiry of their work permits.

As stated, these policies will be difficult to implement, and their success will ultimately depend on effective enforcement, especially of the laws against illegal immigration and the illegal employment of migrant workers. While intensely contested, the feasibility of effective enforcement could be greatly enhanced by making a convincing ethical case for a well functioning and mutually beneficial Temporary Foreign Workers Programme, and by greater cooperation between receiving and sending countries in the design and implementation of appropriate migration laws and policies.

The discussion of the ethics of labour immigration policy, the potential trade-off between migrants' rights and their economic welfare, and the attendant feasibility of temporary foreign worker programmes raises questions that are inherently difficult and contentious. That is precisely why they are frequently avoided in labour immigration debates. It is important to close this "values gap" in the discussion. One may not agree with the policy recommendations made in this chapter, but it is important to address and answer these hard ethical questions, and to have the courage to follow through their policy implications, particularly for innovative temporary migrant worker programmes, that many countries already urgently need.

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