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Numbers vs. Rights: Trade-offs and  
Guest worker programmes

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**Abstract**

This paper examines the trade-off between the number and rights of low-skilled migrants in high-income countries. Countries with large numbers of low-skilled migrants offer them relatively few rights, while smaller numbers of migrants are typically associated with more rights. We discuss the number vs. rights trade-off in theory and practice as an example of competing goods, raising the question of whether numbers of migrants or rights of migrants should get higher priority. There is no easy or universal answer, but avoiding an explicit discussion of the issue – as has been done in recent guest worker debates – obscures an inevitable policy choice.

**Key words**

migrants' rights, guest worker programmes, low-skilled migrants

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## Introduction

Although declared “dead” more than two decades ago (Castles, 1986), guest worker programmes that admit migrant workers to fill jobs in industrial countries are once again in vogue. The World Bank, The Global Commission on International Migration, the World Trade Organization’s GATS Mode 4 negotiations, the International Organisation for Migration and voices in both industrial and developing countries are calling for more guest workers to move from developing to industrial countries (see, for example, World Bank, 2005; GCIM, 2005; IOM, 2005; Winters et al., 2003). The result should be ‘win-win-win’ outcomes, as migrants win by earning higher wages abroad, receiving countries win with additional workers who expand employment and economic output, and sending countries win via greater remittances and the return of workers who gained skills abroad.

Economic theory and experience confirm that moving workers from low-income to high-income countries benefits migrants and raises global income while creating small net economic benefits in receiving countries, largely because the migrants hold down wages and prices (see, for example, Borjas, 1995; Rodrik, 2002; Freeman, 2006). For the US in the mid-1990s, a National Research Council report estimated that the net economic benefits of immigration ranged from \$1 billion to \$10 billion, meaning that US economic output was this much higher because of immigration (Smith and Edmonston, 1997). Proponents of immigration stressed the positive economic benefits of immigrants; opponents stressed that a then \$8 trillion economy expanding by 3 percent grows by \$240 billion a year, or \$10 billion every two weeks.

The new twist in proposals for more guest workers is the argument that developing countries would benefit by sending more workers abroad. The World Bank estimated that moving an additional 14 million migrants from developing to high-income countries would generate a global income gain of over \$350 billion, exceeding the \$300 billion gain from completing the Doha round of trade negotiations (World Bank, 2005). The press release accompanying the World Bank’s Global Economic Prospects report for 2006 argued that more “managed migration programmes, including temporary work visas for

low-skilled migrants in industrial countries ... would contribute to significant reductions in poverty in migrant sending countries, among the migrants themselves, their families and, as remittances increase, in the broader community.” In its report to the Secretary-General of the United Nations, the Global Commission on International Migration recommended “carefully designed temporary migration programmes as a means of addressing the economic needs of both countries of origin and destination” (GCIM, 2005: 16).

If these recommendations are followed, we can expect a new wave of guest worker programmes, increasing the number of migrant workers legally working outside their countries of origin. The new guest worker programmes would, however, also involve restrictions of at least some of the rights of migrant workers. For example, by definition, guest workers have a time-limited right to residence and employment in the host country. Time spent in employment as a guest worker usually does not count or help a migrant earn permanent residence rights. Most guest worker programmes restrict migrants to employment in certain sectors, do not allow migrants to freely change employers, and require them to leave the country if they lose their jobs. Under most proposals for new guest worker programmes, migrants are also likely to have very restricted access to unemployment and welfare benefits and no right to family reunion.

All temporary migration programmes restrict the rights of migrant workers. However, the UN and ILO have enacted a number of international Conventions that outline a comprehensive set of rights for migrants, including the right to equal protections under labour laws, anti-discrimination laws, and family laws (for an overview, see Weissbrodt, 2003). For example, the International Convention on the Protection of All Migrant Workers and Members of their Families (ICMR), adopted by the General Assembly of the UN in 1990, sets out a very broad set of rights for migrants, including those living and/or working abroad illegally. The ICMR has become a cornerstone of the “rights-based approach” to migration advocated by many international and national organizations concerned with the protection of migrants (see, for example, ILO, 2005). According to Grant (2005: 26), the essential elements of a rights based approach include “the observance of international human rights norms, including equality and non-

discrimination, standard setting and accountability, the recognition of migrants as subjects and holders of rights, the participation of communities and the integration of a gender, child's rights and ethnic perspective”.

With some international organizations calling for increasing the number of migrants, while others call for more migrant rights, this paper explores the relationship between migrant numbers and rights. An understanding of this relationship is important for debates on guest workers as well as for more general discussions of labour immigration. The basic argument we make is that there is a trade-off, i.e. a negative relationship, between the number and rights of migrants employed in low-skilled jobs in high-income countries. The primary reason for this trade-off is that employers' demand for labour is negatively sloped with respect to labour costs, and that more rights for migrants typically mean higher costs. The result is that more migrants tend to be associated with fewer rights for migrants, and vice versa.

The paper has three parts. It begins with a discussion of the relationship between migrant numbers and migrants' rights in theory. We distinguish between labour markets for skilled and low or unskilled migrant workers and argue that in high-income countries the demand for low-skilled migrant labour is downward sloping with respect to rights that have costs. The second part presents selected empirical evidence of the numbers vs. rights trade-off in the employment of low skilled migrant workers. The third part of the paper discusses balancing the competing goods of greater numbers of migrants and more rights for migrants. We argue that the numbers vs. rights trade-off needs to be considered by any informed normative position on migrants' rights, regardless of whose interests are given priority.

We do not discuss the equally important question of whether and how guest worker programmes are *feasible* in the sense that they can avoid the unintended consequences of the past. There is a substantial literature that discusses the “failures” and “policy lessons” of past temporary migration programmes, especially of the Bracero programme in the United States during 1942-64 and the Gastarbeiter programme in Germany during 1955 - 73 (see, for example, Castles, 2007; Martin et al., 2006; Abella, 2006; GAO, 2006; Plewa

and Miller, 2005; Martin and Teitelbaum, 2001). Other studies propose policy principles and/or specific policy measures for avoiding past policy mistakes (see, for example, Ruhs, 2006a; Amin and Mattoo, 2005; Schiff, 2004; Martin, 2003). Although considerations of feasibility are obviously of paramount importance, the trade off between numbers and rights that underlies all temporary migration programmes - and, as we argue in this paper, the employment of low skilled migrants more generally - deserves equal attention.

### **Numbers and Rights in Theory**

It is useful to conceptualize the numbers and rights of migrants employed in high-income countries as the outcome of the policies/actions of three key actors: states, employers and migrants. At its core, the design of a labour immigration policy – including guest worker programmes – requires states to make policy decisions on parameters that include the *number* of migrants to be admitted; the *selection* of migrants (e.g. by skill or nationality); and the *rights* that migrants are granted after admission. States' control over immigration is inevitably incomplete, and migration policies may be inconsistent and generate unintended consequences (see, for example, Cornelius et al., 2004; Castles and Miller, 2003). However, high-income countries can and do make decisions on the mechanisms that determine the numbers, selection and rights of migrants in order to achieve certain policy objectives. These objectives can include goals such as: maximizing economic growth and minimizing adverse distributional consequences; minimizing fiscal costs; maintaining social cohesion and national security; and/or maintaining a certain minimum level of rights for all workers and residents (see, for example, the discussion in Spencer, 2003).

In their policy decisions on how to regulate the number and selection of migrants, states may assign employers varying degrees of control. At one extreme, states can – and many do – strictly regulate the maximum number of migrants legally admitted for employment purposes (e.g. through annual quotas) and specify strict criteria for selection (e.g. high skilled migrants to be employed in the IT sector only). At the other extreme, states may decide to have a “*laissez-faire*” admissions policy that allows

employers to determine how many and what type of migrants to employ. In this case, the total number of migrants admitted is simply the aggregate of the recruitment decisions of individual employers. The role assigned by the state to employers in regulating the number and selection of migrants will depend, to a large degree, on the extent to which the interests of individual employers match those of the state. For example, where labour immigration is perceived to have significant social costs that are carried by the state and society at large rather than by employers, the state will be unlikely to let employers decide freely on the number and selection of migrant workers.

Regardless of how the admission and selection are regulated, nation states always decide and “set” the rights that migrants are to be granted after admission. It is useful to think of migrants’ rights as minimum standards that employers must satisfy (unless they choose to employ migrants “illegally”, i.e. outside the legal framework set by the state).

Importantly, the state can only provide the “framework conditions” within which the legal immigration and employment of migrants may occur. In the end, migrants will not be employed in high-income countries unless employers demand migrant labour and workers are willing to migrate and take up employment abroad at the conditions offered. This suggests that any discussion of the number and rights of migrant workers must put employers and migrants at the heart of the analysis while taking account of the state’s role in setting the framework conditions for labour immigration.

Given this simple conceptualization of labour immigration policy and the employment of migrants, what relationship can we expect between the number and rights of migrants employed in high-income countries? From an economic point of view, we can expect an important asymmetry in the relationship between the numbers and rights of skilled and low-skilled migrants.

The international market for skilled and highly-skilled migrant workers is characterized by ‘excess’ demand for labour, i.e. a significant number of high-income countries are competing for a relatively small pool of highly qualified workers willing to migrate. As a result, qualified migrants are able to choose among competing destinations, and their

choice of destination is likely to depend on both expected earnings and expected rights in destination areas. Consequently, countries and employers seeking to attract skilled workers are likely to grant them not only high wages but also substantial rights, generating a positive relationship between the number and rights of highly-skilled migrants.

In contrast, the demand for low-skilled migrant workers is likely to be downward sloping with regard to migrants' rights. There is an almost unlimited supply of migrants willing to accept low-skilled jobs in high-income countries at wages and under employment conditions significantly lower than those mandated by local laws and international norms. Migrants, whose 'frame of reference' (Piore, 1979) is the labour market in their countries of origin, may not demand equal treatment in the labour markets of high-income countries, especially if they plan a limited and relatively short spell of employment abroad.

From the employer's point of view, more employment rights for workers generally mean increased labour costs, generating a numbers-rights trade-off. This trade-off is familiar, as when employers oppose minimum wage increases because they assert that higher labour costs will mean fewer jobs. The analogy to migrants' rights is clear—if migrants have the "full rights" laid out in ILO and UN conventions, including the right to equal wages and all work-related benefits, their cost will be higher and fewer will be employed. On the other hand, fewer and more limited migrant rights mean lower costs for employers and more migrants employed. In this sense, increasing the rights of migrants affects their employment in the same way that a higher minimum wage can reduce the number of jobs (for all workers, not just migrants). Of course, it needs to be added that not all rights create significant costs for employers, just as raising minimum wages does not always lead to reduced employment (Card and Krueger, 1994). Nevertheless, it is clear that *significant* increases in labour costs will, *ceteris paribus*, encourage profit-maximizing employers to reduce the number of jobs on offer.

The numbers-rights trade-off described above rests entirely on the rational behaviour of employers and workers, and can be expected to hold in any competitive labour market,



regardless of the framework conditions set by the state. If the state stipulates a relatively high set of rights for unskilled migrants, employer demand - and thus the number of migrants legally employed in low skilled jobs - can be expected to be lower than what it would be if migrants had fewer rights.

There may also be a second factor, stemming from the interests and policies of the state rather than the actions of employers and workers, that helps to generate a negative relationship between the number of low-skilled migrants and their rights: the fiscal effects of immigration. The public finance impacts of migrants, the balance between the taxes they pay and the cost of tax-supported services they receive, depends largely on their age, wages and eligibility for and take-up of government benefits and public services (see, for example, Smith and Edmonston, 1997). Migrants with lower than average incomes, i.e. those in low-skilled and low-wage jobs, tend to pay less in taxes and, because of their lower incomes, may be eligible for more government-funded services, especially if their families are with them. In order to minimize the fiscal costs of low-skilled migrants, high-income countries may be expected to limit migrant numbers or their access to welfare benefits.

To be sure, the state's interest in setting migrants' rights may be complex and will most likely be determined by a range of economic and non-economic considerations that go beyond fiscal impacts. For example, states that make egalitarianism a key component of their national identity may be reluctant to restrict migrant rights. Restricting migrants' rights may also be seen to generate significant social costs, especially if the restrictions are long term and lead to the emergence of a large group of "second-class residents". These are potentially important considerations that may have an impact on how states establish and enforce migrant rights. Nevertheless, policies that lead to sustained fiscal losses are often politically unpopular and may be unsustainable in the long term, so it is reasonable to expect fiscal considerations to play an important and perhaps dominant role in the "political economy" of migrants' rights.

## Numbers vs. Rights in Practice

This section provides case-study evidence of the relationship between migrant numbers and rights. The labour immigration policies of the major industrial countries generally welcome skilled migrants, roughly those with at least a college education filling jobs that require a university degree, and seek to rotate unskilled migrants in and out of the country (Abella, 2006). Such policies reflect the results of studies that find skilled migrants generate more economic benefits for host nations than unskilled migrants, primarily because they earn higher incomes, pay more taxes, and are quicker to learn the host country language and integrate (see, for example, Productivity Commission Australia, 2006; Coleman and Rowthorn, 2004; Borjas, 1999; Smith and Edmonston, 1997).

Because there is a global quest for talent (Kuptsch and Pang, 2006), high-income countries recognize the need to grant skilled migrants substantial rights in order to attract significant numbers. For example, Canada and Australia, two countries that have long been successful at attracting skilled migrants, grant qualified migrants permanent residence and the associated comprehensive set of rights immediately upon arrival (see, for example, Richardson and Lester, 2004). The UK's Highly Skilled Migrant Programme aims to attract qualified migrants by offering them the opportunity to migrate to the UK without a job offer and with the right to apply for permanent residence after five years of residence in the UK (Home Office UK, 2006a). Ireland is introducing a long-term residence status to attract migrants with scarce skills in short supply in the Irish economy (Department of Justice, Equality and Law Reform, 2006). In contrast, Germany's "Green Card" programme for attracting IT workers from abroad offered a five-year work permit rather than permanent residency status, and attracted fewer than the 20,000 visas offered (for a discussion, see Kolb, 2005).<sup>1</sup>

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<sup>1</sup> Following the failure of the Green Card system to attract significant numbers of highly skilled migrants, Germany passed a new immigration law in 2004 that provides for unlimited residence permits for highly qualified migrants and their families.

In contrast, high-income country policies for regulating low-skilled labour immigration are typically characterized by a negative relationship between migrant numbers and rights. Singapore and many of the Persian Gulf States in the Middle East are examples of countries operating “high number – low rights” policies toward unskilled migrants. Both admit large numbers of migrants to fill low-wage jobs – migrants constitute over 95 percent of Kuwait’s private sector workforce (Kuwait Institute of Banking Studies, 2006) and about 25 percent of Singapore’s low-skilled workforce (Statistics Singapore, 2006) - but severely limit migrants’ rights. In both Kuwait and Singapore, the protections of local labour laws do not apply to certain types of migrants, such as domestic workers. In Singapore, migrants working in low-wage jobs are officially prohibited from co-habiting with or marrying a Singaporean resident, an effort to limit the costs of migrants by limiting settlement (see Iredale and Piper, 2003).

Bell and Piper (2005) contrasted the numbers-rights trade-off in Singapore and Hong Kong for domestic helpers with Canada’s Live-in Caregiver programme, which admits a small number of migrants to be in-home helpers but allows them to earn permanent residence after two years of employment. Bell and Piper note that “the choice, in reality, is between few legal openings for migrant workers with the promise of equal citizenship and many openings for migrant workers without the promise of citizenship” (Bell and Piper, 2005: 209).

Although less extreme, trade-offs between numbers and rights of low-skilled migrants can also be observed in the labour markets and labour immigration policies of liberal democracies in Europe and North America. For example, the UK, Ireland and Sweden granted workers from the eight Central European states (“A8 countries”) that joined the EU in May 2004 the right to enter and work. However, the right to work in the ‘flexible’ labour markets of the UK and Ireland was accompanied by restrictions on migrants’ access to unemployment and welfare benefits (see National Economic and Social Council of Ireland, 2006a; Ruhs, 2006b). By 2006, a million East European workers had migrated to work in the UK and Ireland after EU enlargement (Home Office UK, 2006b; National Economic and Social Council of Ireland, 2006b), but only 5,000 found jobs in Sweden in 2005 (see Tamas and Munz, 2006; Doyle et al., 2006).

Sweden offered East European migrants unrestricted access to the social welfare system. One of the reasons for the paucity of A8 migrants is the tight regulation of Swedish labour markets, which gives migrant workers full employment rights and makes them as expensive as local workers. Most wages and benefits in Sweden are set via collective bargaining and, with most workers in unions, wages and benefits adhere to industry-wide standards. At the time of EU enlargement in 2004, Sweden introduced a number of measures aimed at preventing immigration from undermining the effectiveness of existing labour market regulations and collective bargaining structures (Tamas and Munz, 2006).

With effective labour law compliance, there was little incentive for employers to hire A8 migrants to save money.<sup>2</sup> For example, Eastern European construction firms began operating in Sweden after May 2004, with most bringing workers from home and not signing on to the agreements between unions and local construction firms. When Latvian firm L&P won a contract to refurbish a school near Stockholm, Swedish unions protested. L&P agreed to pay its Latvian workers in Sweden the equivalent of €12 an hour, which was the national minimum wage for Swedish construction workers. However, Swedish unions demanded that L&P pay the equivalent of €16, the wage negotiated for Stockholm-area construction workers, and blocked access to the work site when L&P refused. L&P sued to stop the union's action, lost in Swedish labour courts, and left Stockholm (Tamas and Munz, 2006). The UK's and Ireland's relatively 'low-rights' policies combined with flexible labour markets to attract large numbers of A8 migrants, while Sweden's 'high-rights' policies were associated with far fewer A8 migrants.

Trade-offs between the number and rights of migrants can also be observed in the United States, which in 1996 elected to keep legal immigration high by restricting access to means-tested welfare benefits and adopting a "one-strike and you are out" policy

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<sup>2</sup> Another important reason for the relatively low number of A8 migrants in Sweden, compared to the UK and Ireland, may have been the Swedish language. Recent research has shown that the desire to learn English has been a major motivation of many A8 migrants coming to the UK and Ireland since EU enlargement (see, for example, Anderson et al., 2006).

toward immigrants who committed felony crimes. The Commission on Immigration Reform, reacting to the perceived cost of providing tax-supported services to immigrants that led to approval of Proposition 187 in November 1994 in California<sup>3</sup>, urged Congress to reduce immigrant admissions but maintain immigrant access to social safety net programmes (US Commission on Immigration Reform, 1995). Congress rejected this recommendation, and instead kept immigrant numbers high and reduced migrant access to benefits.<sup>4</sup> In his analysis of the politics of immigration control in the US, Tichenor (2002: 284) described this policy as

“a triumph for free market expansionists, who allied with pro-immigration liberals to sustain unprecedented legal admissions with anti-immigrant conservatives to trim alien substantive and procedural rights. The outcomes of 1996 suggested that large-scale immigration would flow into the United States uninterrupted for the foreseeable future, and that those who arrived would enjoy fewer membership rights until they acquired citizenship”.

Irregular migration represents an extreme end of the numbers versus rights spectrum, the place where high numbers are often associated with very few rights.<sup>5</sup> In the US, for example, there are about seven irregular workers for each legal guest worker, and most are employed in low-skilled jobs (Passel, 2005). In the UK, estimates of irregular migrants range from 310,000 to 570,000, with a median estimate of 430,000, equivalent to about 0.7 percent of the UK population (Woodbridge, 2005). Most illegally resident migrants in the UK are thought to be working in low-wage jobs in agriculture and food processing, construction, the care sector, cleaning and in hospitality. In both the US and UK, the debate over how to deal with irregular migration includes the argument that better enforcement of employment laws would reduce the demand for irregular migrant

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<sup>3</sup> The purpose of Proposition 187 was to deny illegal aliens and their children welfare benefits, non-emergency healthcare, and public education. Proposition 187 was approved by voters in California but later declared unconstitutional by a federal court (see Tichenor, 2002).

<sup>4</sup> Migration News (1996) ‘Welfare Overhaul and Minimum Wage Changes’ Vol. 3, No. 4, September. [http://migration.ucdavis.edu/mn/more.php?id=1022\\_0\\_2\\_0](http://migration.ucdavis.edu/mn/more.php?id=1022_0_2_0)

<sup>5</sup> It needs to be added that that irregular migrants *do* enjoy some rights which vary from one state to another. For a discussion, see, for example, Bogusz et al., (2004).

labour by raising its cost (see, for example, Denham, 2006; Abraham and Hamilton, 2006), suggesting a numbers-rights trade-off.

The discussion of the examples above does not constitute a rigorous empirical “test” of a numbers vs. rights trade-off in the employment of low skilled migrants. The main problem with such a test is that rights do not lend themselves easily to scientific “measurement” and comparison across countries. In our view, the empirical examples we have given provide convincing evidence of the relevance of the numbers vs. rights trade off in practice.

### **Balancing Numbers and Rights**

High-income countries are often encouraged to increase both the numbers and the rights of migrant workers, which they tend to do for the highly-skilled. However, most high-income countries recognize a trade-off between numbers and rights for low-skilled migrants, suggesting that policy tends toward high numbers of migrants and few rights or lower numbers with more rights.

Most liberal democracies have migration policies for unskilled migrants between the extremes of full and no (or very low) rights. The major question is exactly how numbers and rights should be balanced, and whether and how to include the interests of migrants and their countries of origin in policy development. What should be the minimum set of rights that migrants must never be denied or allowed to trade off against economic benefits? Should the numbers and rights balance be changed over time? For example, should migrants gain more rights with duration of employment and stay abroad?

These are complex and important questions that underlie – either implicitly or explicitly - all arguments about labour immigration and migrants’ rights. As with all normative issues, how one views the numbers vs. rights dilemma depends on the underlying ethical framework and on whose interests are taken into account (see, for example, Pritchett, 2006; Ruhs and Chang, 2004; Carens, 1996; Weiner, 1995). For example, a strong

rights-based approach, such as that in the three international conventions on migrant rights, is unlikely to be compatible with a policy of significantly and quickly increasing the number of migrant workers through guest worker programmes that restrict migrants' rights.

ILO Convention 97 - adopted in 1949 and so far ratified by 42 mostly emigration countries - aims to protect migrants and ensure their equal treatment by encouraging countries to sign bilateral agreements<sup>6</sup> regulating temporary labour migration. Its bedrock principle is that migrant wage and salary workers should be treated like other workers in the countries in which they work. ILO Convention 143 – adopted in 1979 and ratified by 18 countries - also calls for “equality of treatment” in wages and other benefits for employed migrants, regardless of legal status. In 1990, the General Assembly of the United Nations adopted the International Convention on the Protection of All Migrant Workers and Members of their Families (ICMR), which outlines a comprehensive set of rights for regular and irregular migrants.<sup>7</sup> Fewer than 35 mostly migrant-sending countries have ratified the 1990 convention, while the Convention on the Rights of Children, adopted in 1989, has been ratified by 191 countries.

The reason that many migrant-receiving countries have not ratified the ICMR lies in the protections that it sets out for migrants in Part III, particularly Articles 25-27. These prescribe equality in wages and working conditions for regular and irregular migrant and national workers, assert that migrants should be allowed to join unions, and call for migrant workers to receive benefits under social security systems to which they contribute, or to receive refunds of their social security contributions on departure. Regular migrants should have additional rights set out in Part IV, including the right to information about jobs abroad as well as a list of “equal treatments” that includes freedom of movement within the host country, freedom to form unions and participate in the political life of the host country, and equal access to employment services, public housing, and educational institutions.<sup>8</sup>

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<sup>6</sup> ILO Recommendation No. 86 includes a model bilateral agreement for migrant workers, and has been used as a model for many of the bilateral agreements that were established.

<sup>7</sup> ILO Convention 97 is about 5,600 words, 143 is 3,000 words, and the UN Convention is over 14,000 words.

<sup>8</sup> Part IV, Article 44 was one of the most contentious parts of the ICMR. It says that “recognizing that the family is the natural and fundamental group unit of society,” obligates states to “take appropriate measures to ensure the protection of the unity of the families of migrant workers...to facilitate the reunification of

An extreme rights-based position would suggest that if migrant workers cannot be granted rights equal to those of other workers and/or those stipulated in the international conventions, they should not migrate. At the other extreme, a strictly “consequentialist” normative framework could, in principle, tolerate restrictions on migrants’ rights if the result was an overall improvement for migrants. A consequentialist position would allow migrants to choose whether to accept fewer rights by comparing their options at home and abroad. For example, a migrant might accept a sub-minimum wage abroad that is nonetheless higher than the wage at home. If the choice is the minimum wage abroad or no migrants, the consequentialist would point out that the migrant who chooses sub-minimum wages abroad may well be better off than workers who stay home. Consequentialists would allow a person’s right to minimum wages to be traded off against the opportunity or “right” to migrate, a trade off rejected by a strict rights-based approach.

This paper does not engage in the normative debate about how to balance migrant numbers and rights. Our goal is to highlight the existence of the trade-off between the number and rights of migrants, and its consequences for receiving countries, migrants and their countries of origin. The numbers vs. rights trade-off should, in our view, be considered by any informed normative position on migrants’ rights, regardless of whose interests are given priority.<sup>9</sup> Acknowledging the need to balance migrant numbers and rights also helps to focus on the interests of migrants and their countries of origin. We now turn to a discussion of how the interests of migrants and sending countries can be affected by the trade off between migrant numbers and rights.

Large numbers of migrant workers are employed in countries that severely restrict migrants’ rights, suggesting that many workers are willing to accept a trade off between

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migrant workers with their spouses... as well as with their minor dependent unmarried children.” Migrant family members are to have “equality of treatment with nationals” in access to education, social and health services, and “states of employment shall endeavor to facilitate for the children of migrant workers the teaching of their mother tongue and culture.”

<sup>9</sup> We recognise that by arguing for the consideration of the numbers vs. rights trade off we essentially reject an extreme deontological position which is only concerned with individual’s rights but not their consequences for numbers.



higher wages and fewer rights. Of course, the mere presence of migrants in countries with “high numbers – low rights” policies does not mean that such policies are in the migrants’ best interests and therefore desirable. Nevertheless, the fact that migrants often pay significant recruitment fees to work in such countries highlights the need for a more explicit discussion of the choices that many workers in developing countries face. Rights-based approaches to migration rarely discuss the agency of migrant workers, i.e. their capacity to make rational and independent decisions when faced with limited options. Instead they often tend to treat migrants as victims of recruiters and smugglers rather than rational economic agents maximizing within constraints.

Bell and Piper (2005) found that NGOs representing domestic helpers in Hong Kong and Singapore were reluctant to promote equal rights for fear of sharply reduced numbers. They suggest three conditions that may justify unequal rights: (a) if they benefit migrant workers, as decided by migrant workers themselves; (b) if they create opportunities for people to improve their lives; and (c) if there are no feasible alternatives to (a) and (b). (Bell and Piper, 2005: 214).

Pastor and Alva (2004) make a similar argument in the context of the US debate on guest workers. Activists and migrant advocates traditionally oppose guest worker programmes but, “behind the scenes, there was some support for such a guest worker programme, including one based on a certain hierarchy of rights, ranging from those considered baseline for humane existence, such as labour protections, to more extensive provisions, such as the rights to vote, that might be more reasonably limited” (Pastor and Alva, 2004: 94). The main reason why some activists have begun to support guest worker policies is the perceived transnational existence of many migrants, so that they are moving between countries with very different rights in the form of labour standards.

Another study based on interviews with East European migrants in the UK (Anderson et al., 2006) found that migrants often recognize and rationalize the trade-offs involved in employment abroad, highlighting the need to include migrants’ voices and actual experiences in the numbers-right debate. Most of the 500 migrants interviewed worked in jobs that offered low wages and poor working conditions. Working hours were

longer than the average for the occupation, and many migrants did not receive paid holidays or written contracts.

Many migrants had far more skills than required to do the job but, in contrast to the usual portrayal of “bad employer-exploited migrant”, most migrants saw themselves as making tough choices and trade-offs. The migrants tolerated low-skilled work and poor conditions because the pay was significantly better than at home, and they could also learn or improve their English. Most important, migrants were prepared for poor conditions because the job was perceived as temporary, with most expecting to eventually move into better jobs or return.

The numbers vs. rights trade-off also affects sending country governments that want to protect and promote the rights of their nationals abroad and maximize the economic benefits from emigration. This can take several forms, including bans on sending workers to particular countries because they do not protect migrant rights, as when the Philippines stopped sending migrants to Singapore after maid Flor Contemplacion was hanged in March 1995 for murdering a child and another maid (see Asia Week, 1995). The anger of Filipinos about their government’s failure to protect citizens abroad led to the Filipino Overseas Foreign Workers Act RA 8042 of 1995, which says that the “State shall deploy overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected.”

Some migrant-sending countries would like receiving countries to restrict the right of migrants to settle in order to maximize remittances and returns, a case of choosing between collective and individual rights. For example, the Mexican Agricultural Seasonal Workers Programme is an MOU under which seasonal workers have gone to Canada since 1974 (see Martin et al., 2006). For most of the past three decades, only married men with children could participate, leaving their families behind and returning with evaluations in sealed envelopes that had to be delivered to Mexican authorities. Other migrant-sending countries are reluctant to ratify the International Convention on the Protection of All Migrant Workers and Members of their Families (ICMR) for fear of losing jobs for their nationals abroad (Iredale and Piper, 2003).

The numbers-rights dilemma for sending countries was also highlighted during the WTO's General Agreement on Trade in Services (GATS) negotiations, which aim to liberalize the movement of "service providers". Services move over borders in four major ways or modes. Mode 1 cross-border supply occurs when the service rather than the supplier or consumer crosses national borders, as with call centres. Mode 2 consumption abroad occurs when the consumer travels to the supplier, as when a tourist visits another country or a patient travels abroad for medical services. Mode 3 commercial presence reflects the movement of capital, as when a bank or insurance company establishes a subsidiary in another country, and Mode 4 "movement of natural persons" involves the supplier travelling to the consumer of a service.

In 2000, about one percent of global trade in services involved Mode 4. Many developing countries would like to see more Mode 4 movements, with India leading a group of countries demanding, *inter alia*, changes in industrial country policies that would open more doors for their nationals seeking to provide services.<sup>10</sup> The goal is a "GATS visa" that would allow access to any WTO member country for one to three years (Chanda, 2001); refusal to allow entry and employment would be a reason to file a complaint with the WTO.

The numbers vs. rights trade-off becomes clear when dealing with minimum wages for GATS service providers. ILO Conventions 97 and 143 call for wage parity between migrant and local workers. However, Chaudhuri et al. (2004: 366) assert that equal wages would limit numbers: "Wage-parity... is intended to provide a nondiscriminatory environment, [but] tends to erode the cost advantage of hiring foreigners and works like a de facto quota." Chanda (2001: 635) goes further, asserting that wage parity "negates the very basis of cross-country labour flows which stems from endowment-based cost differentials between countries". In other words, if GATS opened new channels for migrants, would they be paid local minimum wages, which may limit their numbers, or could they work for lower-than-minimum wages, which would presumably increase numbers?

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<sup>10</sup> The Indian proposal is available at [http://commerce.nic.in/wto\\_mnp.htm](http://commerce.nic.in/wto_mnp.htm)



## Conclusion

Governments that face public opposition to labour immigration often see guest worker programmes as the best compromise between the extremes of no borders and no migrants. The arguments for legal guest worker programmes as “middle path policies” that increase the number of migrants legally employed in high-income countries seem compelling. Employers argue they need guest workers because they cannot find local workers to fill vacant jobs at prevailing wages and working conditions, and many migrants want to fill these jobs because they will receive higher wages than at home. Sending countries can benefit from more guest workers via remittances and the return of migrants with new skills. With worries about integrating second- and third-generation foreigners, and about fiscal and social costs of immigration more generally, receiving-country governments find it appealing to use guest worker programmes to “borrow” workers from lower wage countries, and to restrict the rights of migrants in order to minimize their costs.

Most recent discussions of new guest worker programmes have been concerned with their feasibility, i.e. whether and how to avoid past policy mistakes that have, among other things, led to the permanent settlement of what were supposed to be temporary workers. An equally fundamental but little discussed question that guest worker programmes raise concerns the relationship between the numbers and rights of migrant workers in the global labour market.

This paper argues that the relationship between the number and rights of migrant workers employed in low-skilled jobs in high-income countries is characterized by a trade-off: countries with large numbers of low-skilled migrants offer them relatively few rights, while smaller numbers of migrants are typically associated with more rights. The primary reason for this trade-off is that rights can create costs for employers, and rising labour costs are typically associated with a reduced demand for labour. A second reason stems from the political imperative in most high-income countries to minimize the fiscal costs of low-skilled immigration, either by keeping migrant numbers low or by restricting

migrants' access to the social welfare system. We have given empirical examples that illustrate the relevance of the numbers vs. rights trade off in practice.

We are not trying to determine where high-income countries should locate themselves on the numbers-rights spectrum. Instead, the purpose of the paper is to highlight the existence and implications of the number vs. rights trade-off. Regardless of whose interests get priority, discussions of migrant rights and labour migration should recognize and carefully consider the relationship between migrant numbers and rights.

Most advocates and critics of more guest workers or a strict rights-based approach to migration have not dealt with the fundamental dilemma that inequality motivates the movement of people, but most norms call for equal treatment after arrival. Countries in which this equality norm is ignored have the most migrants ("high numbers - low rights policies"), as in the Middle East, while countries which adhere to the equality norm have fewer migrants ("high rights - low numbers" policies), as in Scandinavia. There is no easy or universal answer as to whether numbers or rights should get higher priority, but avoiding an explicit discussion of the numbers-rights trade-off altogether simply confuses the issue and conceals an inevitable policy choice.

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