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Battles in Time: the Relation between Global and Labour Mobilities

Dr Bridget Anderson

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Abstract

How is it that migrants, among the most highly controlled groups of the population, provide such de-regulated labour? This paper argues that rather than a tap regulating entry, immigration controls are a mould constructing certain types of workers through the requirements and conditions of immigration status. In particular state enforced immigration controls, themselves a response to global mobility, give employers greater control over labour mobility. Migrants both manipulate and are constrained by immigration status. An analysis of migration and labour markets must consider matters of time: length of period in a job; the impact of working time on retention, length of stay, changing immigration status etc. Attention to these temporal dimensions is particularly important in theorizing the relation between immigration status and precarious work.

Keywords: illegal immigrants, labour migration, labour mobility, precarious work

Author: Bridget Anderson is Senior Researcher and Programme Head at Email: COMPAS, bridget.anderson@compas.ox.ac.uk

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Introduction

Examining the relationship between precarious work and immigration in the UK one is immediately struck by a contradiction: migrants are often portrayed as being at the sharp end of de-regulated labour markets, working in sectors such as hospitality, construction, sex, agriculture and private households, in jobs often characterised by low wage, insecure employment and obfuscated employment relations (May et al. 2006; TUC 2006; Shelley 2007). These kinds of workers provide hyperflexible labour, working under a range of types of arrangements (not always "employment") available when required, undemanding when not. But if immigration control is a tap, regulating the flow of labour and skills to the UK labour market, it is a very rusty tap, bureaucratic and demanding of employers and workers alike, and non citizens, particularly new arrivals, are among the most highly controlled and surveilled of the population (FLYNN 2006) and their access to the labour market is ostensibly highly regulated. How is it that such a highly controlled group of workers can provide such flexible labour?

The UK Home Office response is "illegality": migrants working illegally are a pool of flexible labour, highly vulnerable to exploitation at the same time as undermining employment conditions. The policy solution is to make illegality harder, requiring heightened surveillance, increased entrance controls, post-entry controls and employer sanctions. The thoughts of former Home Secretary John Reid are worth citing:

> That is why the time is now right to tackle the exploitation underpinning illegal immigration. We have to tackle not only the illegal trafficked journeys, but also the illegal jobs at the end of them. We need to make living and working here illegally ever more uncomfortable and constrained.
> (Foreword to Enforcing the Rules Home Office 2007)

In this paper I will argue that such approaches are simplistic, and overlook the dynamic inter-relationship between immigration controls and precarious labour. In practice rather than a tap regulating entry, immigration controls might be more usefully conceived as *constructing* certain types of workers, and facilitating certain types of employment relations, many of which are particularly suited to precarious work. I'll begin by briefly describing the UK context. I will go on to examine how immigration controls shape workers in

terms of the requirements and conditions they place on them and the additional mechanisms of control they hand employers, particular over labour mobility. I will also examine how migrants both manipulate and are constrained by immigration status and how immigration controls interact with other labour market factors and labour characteristics.

Precarious employment in the UK

It has long been recognised that the "standard employment model" in which a worker works full time for one employer at the employer's place of business principally describes skilled and semi-skilled white male workers. That is, it is doubtful whether it is, or ever has been, "standard". Non-standard work arrangements may cover a variety of employment relations and practices including part-time employment, temporary employment (including agency work), own account self-employment (a self-employed person with no paid employees) and multiple job holding (Vosko et al. 2003). While one might query the optimistic finding that "temporary workers are among the happiest in the workforce" (Department of Trade and Industry 2007) nevertheless for some people some non-standard work arrangements may in the employee's as well as the employer's interest. Most obviously, part-time work may be preferred by some workers because they positively want to spend time with children for example. So *flexibility* of employment relations can be presented as a win-win situation, in this instance enabling employees to attain a healthy "work-life balance"[2]. Even bearing this in mind this picture is rather partial. While the parent of a pre-school age child might want to spend some time caring for them, they might also feel that they have no other affordable childcare options. And how much a worker benefits from flexibility depends more broadly on other factors in the labour market.

While many of these arrangements (depending on national legislation) may limit workers' access to certain benefits and employment protections and rights, their growth should not be necessarily equated with a growth in 'precarious' work. The term "precarious" has not been particularly prevalent

[2] Walby (2002)] argues that this standard example of 'flexibility' is in fact less to do with de-regulation and more to do with the regulation of gender relations in the labour market, the 'modernisation of the gender regime'..

in the UK literature (though it has in other European states, particularly France, Germany, Spain and Italy). Rodgers and Rodgers (1989) defined precarious work as related to:

a) the degree of certainty of continuing work;
b) the degree of control over working conditions, wages, pace;
c) the extent of protection of workers through law or customary practice
d) income.

> the elements involved are thus multiple: the concept of precariousness involves instability, lack of protection, insecurity and social or economic vulnerability…. It is some combination of these factors which identifies precarious jobs, and the boundaries around the concept are inevitably to some extent arbitrary"
> (Rodgers and Rodgers 1989)

While it has been developed and refined (Vosko et al. 2003; Dorre et al. 2006; Waite 2007) this basic definition still stands. It should be noted that precarious work is not by necessarily informal. As Samers (2004) points out, just because work is poorly paid, part-time or temporary does not mean that it is informal.

More recently we have seen the rise of the term "vulnerable worker". This has been defined by the Department of Trade and Industry as someone working in an environment "where the risk of being denied employment rights is high and who does not have the capacity or means to protect themselves from that abuse" (Department of Trade and Industry 2006). The concept of "vulnerable worker" does seem to provide an opportunity to mainstream concerns about abuse of workers and poor conditions. The Trades Union Congress have clearly seized on this apparent patch of common ground with the DTI with their Commission on Vulnerable Employment. While their delineation of the broad categories of vulnerable groups (agency workers, migrants, informal workers and home workers) certainly overlap with groups that tend to be in precarious employment, the term "vulnerable" has distinct implications from "precarious". The challenge of "vulnerable worker" is that it emphasises the worker, "someone", rather than the political, institutional context within which these relations are forged. It risks

leaving structures and relations untouched in favour of pursuing "evil" employers. This enables the argument that while:

> A worker may be susceptible to vulnerability… that is only significant if an employer exploits that vulnerability
> (Department of Trade and Industry 2006)

Notably it is the worker's vulnerability that is "exploited" rather than the worker themselves.

A key aspect of precarious work that is not captured by the term "vulnerability" is the first point in Rodgers and Rodgers' definition, "the degree of certainty of continuing work" i.e. its insecurity. Precarious is "not safe or firmly fixed", "likely to fall". The association of precariousness and insecurity draws attention to the sub-contracting of risk to workers by employers. An employer, or perhaps better "labour user", since often, as with agency workers, there is not a direct relation between labour users and workers, can finesse the exact period of time that they require labour, pay for that period, and that period only. Thus they can meet fluctuations in demand, providing round the clock cover, and use fixed assets more efficiently etc through having access to "just in time labour". Time matters, both in terms of the period of employment (temporary or permanent) and the hours of employment (how many; sociability); and for both these aspects the issue of regularity and predictability are crucial. Different aspects of time may be traded off one against the other, most particularly unfavourable hours (anti-social, too many, too little) may be tolerated if work is insecure. Precarious work is a key part of the "insecurity and uncertainty about tomorrow that testifies to the return of mass vulnerability" (Castel 2005). Temporary workers may feel that they cannot refuse certain jobs for example, or join a trades union, because they may lose the opportunity to work in the future. It limits opportunities for planning: any chance to work must be grabbed for it may not come round again. It is this that risks "hyperactivity" (the imperative to accommodate constant availability), "unsettledness" (continuous experience of mobility) and "affective exhaustion" emotion as element of control of employability and multiple dependencies (Tsianos and Papadopoulos 2007). Chaotic and unpredictable

working times can undermine other social identities. Here we have the flipside of the celebration of the "Work-Life Balance" where one's economic productivity becomes the overwhelming, the only priority.

> Precarity means exploiting the continuum of everyday life, not simply the workforce. In this sense, precarity is a form of exploitation which operates primarily on the level of time
> Tsianos and Papdoupoulos (2007)

However, loosening the relations between labour user and worker so that effectively an employer can hire and fire at will, may have the concomitant effect of increasing labour mobility. In general the rise and rise of flexible labour markets has ostensibly increased mobility opportunities as employment relations become diluted and confused. The worker is presented as a "consumer" of workplaces, and will move on if not satisfied (Smith 2006). This may be negative for employers, as labour turnover costs money. Thus while it may be that employers wish to have ease of hire and fire, they nevertheless want to be able to hold on to workers for the time that they need them – i.e. they want to be able to control the length of time for which the worker works; for workers on the other hand, while they want security of employment, they also want to be able to leave if they have a better offer (Anderson et al. 2006). Highly de-regulated labour markets highlight the question, intrinsic to capitalism of *who controls labour mobility*.

An analysis of migration and labour markets must consider not only mobility across borders but mobility within labour markets. This requires us to consider matters of time: length of period in a particular job; the impact of working time (shifts, length of day etc) on recruitment and retention; length of stay. Time has received little attention in research on migrants. But immigration status is not static, and an individual's or group's status may change. A group's status may alter when the state changes sets of categories, or the laws or rules governing those categories, or moves people within existing categories, as was the case when the EU enlarged or, more generally, under any regularization exercise of illegally resident migrants. A migrant's immigration status may also change because of the migrant's actions rather than because of changes in the state's laws and policies.

Examples include migrants who naturalise, who overstay or who switch permits. Attention to temporal dimensions of migration, and of labour migration in particular, can enrich our analyses of migratory processes, and their relation with labour markets.

Mobility Across Borders: immigration policy and the shaping of workers

Immigration and poor working conditions, insecurity and lack of protection tends to be associated with "illegality" and with working informally. Certainly the image of the "exploited illegal immigrant" "vulnerable and often desperate" who is taken advantage of by "abusive employers" who thereby give themselves an unfair advantage over more seemly competitors, is a trope of government policy documents (see for example Home Office 2007) This presents illegality and consequent precarity as an aberration, outside the immigration system, and as something that can be prevented by immigration controls.

But while legal status is often used as if it were a characteristic attributable to individuals – "She is 'illegal', he is 'legal' – this obscures its inevitable relational nature. Migrants are not "illegal" until they are constituted as such by their border crossing, and for many not until well after they have crossed the border. Immigration statuses are not a natural set of categories but are created by the state. Illegality is "produced" by state laws and policies (Black 2003; Samers 2004). The law is not a neutral framework through which we can categorise legal and illegal but is itself productive of status (De Genova 2002; Sciortino 2004; Ruhs and Anderson 2006). The law itself creates legality and its obverse. With selection and rules come exceptions, rule breakers, grey areas. To have a completely documented, well-ordered population is a utopia or a dystopia that requires powers beyond the state – much like open borders, but unlike open borders this is a chimera the state is willing to pursue.

In one rather narrow sense the role of immigration controls in constructing a labour force is broadly recognised. It is a given that immigration laws and rules can require particular categories of entrant to

have certain skills and experience, that is they can be used to filter out certain groups and allow in others. Indeed is actively harnessed as part of "making migration work for Britain".

Table 1
Characteristics required of permit holders October 2007

Characteristics required	Student	Work permits (not incl SBS and entertainers)	Sector Based Scheme	Seasonal Agricultural Worker (Bulgaria/ Romania)	Seasonal Agricultural Worker (non EEA)	Working Holidaymaker	Au Pairs
Skills/experience	No requirement	NVQ level 3 equivalent	No requirement	None	None	None	None
Age	No requirement	No requirement	18-30	Over 18	Over 18 but must be student	17-30	17-27
Country of origin	No requirement	No requirement	Since 2007 Bulgaria and Romania only	40% of quota Bulgaria and Romania.	60% of quota 60% non EEA	Commonwealth countries only	Must be on designated list of countries
Dependants	No requirement	No requirement	No requirement	No requirement	No requirement	No children aged 5 or older	No dependants allowed
Marriage	No requirement	No requirement	No requirement (but may not accompany)	No requirement	No requirement (but may not accompany)	Single OR married to a WHM who will accompany you	Unmarried

As is apparent from Table 1 while *work* permits generally require particular types of experience, other types of permit effectively emphasise life stage (age, educational stage, dependants). Moreover, just because a visa category effectively 'permits' the applicant to be married or have children does not of course mean that the spouse or children are eligible to enter the UK. The "problem" of dependants – a labour market drag since it limits availability, may be further eliminated by making them ineligible to enter, or with no recourse to public funds.

This is uncontentious. However, what tends to be ignored in considerations of how immigration controls shape migrant workers is the issue of conditions of stay (Sharma 2006). Once non-citizens have entered the UK (legally) they are subject to particular conditions depending on their visa status. Some may not access the labour market at all as a condition of their stay; others may enter only if they are working. Most non-citizens who are admitted to work have their access to the labour market limited in some way. This is most clear for work permit holders. In this case a visa is granted

for a recognised work permit holding employer only, and they may only move to another employer – or job - if that employer successfully applies for a work permit. If for any reason the work finishes – or indeed if the employer claims that the work is no longer available, or if the employer deems the worker unsuitable, the permit is revoked and the worker is no longer eligible to remain in the UK. People entering to work in specific sectors who do not fall under the work permit scheme are limited in different ways. Those holding Seasonal Agricultural Worker visas (SAWS) can change employer, but only to another registered farm or (in practice not easy); au pair visa holders can change host family but are not allowed to "work" or indeed to earn too much for their work inside the home as this might risk them being a "domestic worker" which requires a different type of visa; domestic worker visa holders can move to new employing households, but only if they are "abused or exploited" and the change must be registered with the Home Office on visa renewal.

The legality of a migrant's entry, residence and employment (and legality in one category does not entail legality in the others) depends on compliance with state policies governing admission (such as visa regulations) and, once the migrant has entered a country, with the rules and conditions attached to the migrant's immigration status (Ghosh 1998; Tapinos 1999). As complexity of conditions of stay increases so does the possibility of people falling foul of the rules – whether by accident or deliberately. That is while illegality is an inevitable product of systems of immigration controls, particular policies may further entrench it. Martin Ruhs and I have argued with reference to UK immigration policy that there are a potentially large number of migrants who are compliant with certain aspects of the law, but not with others. In particular, because of the complex web of rules and conditions attached to the various immigration statuses, there is a potentially significant number of migrants who are legally resident ("i.e. with leave to remain in the UK") but working outside the employment restrictions attached to their immigration status. We describe situations where a migrant is legally resident but working in violation of some or all of the employment restrictions attached to the migrant's immigration status as *semi-compliance*. We distinguish this from situations of *compliance,* where migrants are legally

resident and working in full compliance with the employment restrictions attached to their immigration status and *non-compliance* which applies to migrants without the rights to reside in the host country (i.e. those "illegally resident"). We demonstrate how the discussion and practice of where and how the line should be drawn between semi-compliance and non-compliance – or indeed between compliance and semi-compliance - is highly politicised or one often resting on a personal judgment (Ruhs and Anderson 2006). Different actors may draw the line in different places, an example of how illegality is "socially constructed" (Engbersen and Van der Leun 2001). While all semi-compliant migrants, that is, those residing legally but working in breach of conditions may technically be liable for removal under the 1971 Immigration Act, they may not all be pursued with the same vigour. Indeed, there are even distinctions when it comes to straightforward illegal residence. For example a distinction is made between overstayers who cause more or less "harm":

> From our analysis of detected overstayers, some may be doing so inadvertently, of whom many are thought to be young and from countries with reasonably high GDP per capita and perhaps with high levels of education. Anecdotal evidence suggests that these groups do not intend to stay long term in the UK and require low levels of encouragement to return home. Some groups overstay deliberately as a way of evading immigration controls and some of these may then go on to make an unfounded asylum claim"
> (Home Office 2007)

Having acknowledged that immigration controls construct non-citizens' access to labour markets it is easier to recognise the space that this offers for migrants' engagement with immigration processes. Immigration controls are not able to discriminate deepest intentions. Thus people can enter on certain types of visa, not because they want to "be" a student, an au pair, a trainee etc but simply because this is for them the easiest way of entry and legal residence (Anderson et al. 2006)[3]. Take the case of self-employment which as well as indicating a certain type of employment and/or taxation status, is also an immigration status with particular arrangements for

[3] They may also enter under visas because they facilitate semi-compliance (Anderson et al 2006).

nationals of states that are potentially joining the EU. This does not mean that all self-employed visa holders or applicants are entrepreneurs eager to open businesses and exploit new opportunities in the UK, rather that migrants from certain states who wish to work legally in the UK consider the option of self-employed visas because they can reside and work (to some extent legally). This has implications for their employment when they enter the UK. Similarly while some people may be on student visas because they are interested in studying, others may use them because they offer the opportunity of legal residence and limited but legal employment. Students can work in any sector for any employer but they must not work for more than 20 hours a week in term time. The possibilities this offered for residency and employment resulted in a proliferation of "bogus language colleges" offering visas in exchange for money and precious little education. This resulted in the Home office establishing a Student Task Force charged with visiting suspect institutions[4] and in January 2005 a Register of Education and Training Providers managed by the Department for Education and Skills. Of 45 colleges visited in 2005 21 were deemed not genuine (Select Committee on Home Affairs Additional Written Evidence Fifth supplementary memorandum submitted by the Immigration and Nationality Directorate, Home Office) and there continue to be issues around non-enrolment and discontinuation of study. Other student visa holders may indeed be studying, but only in order to ensure the validity of their student visa and the legality of their employment. Thus immigration controls construct workers, but particular statuses may also be strategically used by migrants themselves.

Mobility Within Labour Markets: immigration and shaping precarity

Once we have acknowledged the role of immigration law in producing certain types of worker and, in some cases, certain types of employment relations, the question still remains in what ways do immigration controls produce

[4] Between April and December 2004 1,218 educational institutions were visited, of which 314 (25%) were found not to be genuine (Hansard Written Answers 10th November 2005, Andy Burnham Parliamentary Under Secretary Home Office response to John Bercow, MP Buckingham, Conservative).

precarious labour? I will first argue that precarious labour is not restricted to those working illegally; and then examine why it is that non-compliant and semi-compliant migrants often work in precarious work, and that this is not simply a case of immoral employers. It will become apparent it is important to consider temporal dimensions of migrant labour, whatever its legal status.

Precarious work and Legal Migration

At first sight to argue that the main work permit scheme may produce precarity seems almost a contradiction in terms. Employment relation and conditions of employment must be clearly established for the work permit to be granted and most work permits are for "skilled work" where vacancies must have been established, that is, the labour is not easily replaceable. However work-permit holders are on fixed-term contracts that may be terminated at the employer's discretion, and the termination of these contracts has implications beyond the workplace. They are dependent on the goodwill of their employer for their right to remain in the UK. While permits may be given for up to 5 years (after which a non-citizen may apply for settlement), they are usually given for less. In 2005 out of 91,500 work permits, 40,300 were given for less than 12 months[5] and immigration instructions favour shorter periods. Renewals must be supported by the employer and in the same year there were 68,980 applications for work-permit extensions (Home Office 2005a). (It is worth observing that if the worker's salary has "significantly" increased since the initial application i.e. above annual increments, the extension will not be granted as it is argued that UK/EU nationals may be more interested in applying for the job.) The combination of temporariness and labour market immobility, both requirements of the work permit, reinforces migrants' dependence on employers. For migrants on work permits then, not only is their employment mobility limited by the state, but employers are handed additional means of control: should they have any reason to be displeased with the worker's performance, should the worker not be cooperative or indeed even have a personal grudge against them, they can be removed. The notion of

[5] Of these approximately 15,000 would have been SBS permits and therefore not eligible for extension

sponsorship of workers by employers, which is being developed in the Government's new migration policy, risks further increasing this control. Thus compliant workers too may feel unable to challenge employers because of concern about jeopardising their immigration status. In some instances employers may explicitly take advantage of immigration status as a means of exercising control over work permit holders including forbidding union membership (Anderson and Rogaly 2005). I am not making claims for the extent of such practices, merely that certainly does happen at times, and that those on work permits may be highly conscious of this possibility to the extent that they may police themselves (Anderson 2007).

The work permit means that employers have powers of labour retention without jeopardising their ability to fire (though hiring may indeed be more cumbersome). When asked why they employ migrants employers have been found to frequently refer to *retention* as an advantage of migrant labour (Waldinger and Lichter 2003; Anderson et al. 2006; Dench et al. 2006). Other perceived advantages, often racialised by employers, such as reliability, honesty and work ethic must also taken into account the level of dependence work permit holders have on their employers.

Labour mobility tends to be thought of as a particular problem for the employers who require the kind of "skilled" work that the work permit system is designed for. However other "low skilled" schemes also facilitate retention. Research at COMPAS and conducted by COMPAS and the University of Nottingham has found that one of the key advantages employers and host families attach to the SAWS, au pair and domestic workers schemes, all "low skilled", is *retention*. This is at first sight somewhat surprising as, unlike many work permit holders, au pairs, SAWS and domestic worker visa holders are in theory free to change employer/host family as long as they continue in the same sector and, for SAWS workers, to an employer who permitted to employ SAWS workers. However, agricultural employers themselves acknowledge that there are practical difficulties with finding new employers in rural areas and often described SAWS workers as "tied" by their permit. Non-SAWS workers in contrast can "easily move between jobs" or "simply move on to other work". In practice au pairs are more likely than SAWS workers to change families. However host families and agencies identify a

clear difference between au pairs who are visa holders and those who are working as au pairs but who are not required to have visas. The latter were considered far more likely to use au pairing as a "stepping stone" to other forms of work, staying with a family a few months until they found their feet, and then moving on to another type of employment. Those on au pair and domestic worker visas were more likely to stay and provide the kind of stability required for childcare (Anderson 2007).

However, while the work permit system may have advantages to employers in terms of retention, it is not particularly flexible. It requires employers to submit documentation within tight deadlines, to anticipate demand, and to take on employment responsibilities, in some instances even accommodation responsibilities, for workers. They risk tying themselves tied into obligations that are not necessarily profitable. For highly-flexible workers employers must avoid being tied into sponsorship and other obligations, and turn to labour already in the UK. These workers may or may not be UK nationals, but if they are not, they are rarely work permit holders and are not necessarily entrants on schemes. It is here we see the imagined distinction between "migrant worker" and other types of migrant (King 2002), migration for employment and mobility, start to break down, held together only by the administrative rules and practices that claim to describe rather than form them. These are groups that may work and indeed are not restricted to named employers or to sectors, but are not principally constructed as workers, including working holidaymakers and students. In 2005 284,000 students were given leave to enter, and 56,600 working holidaymakers – that is the numbers are not insignificant when compared with the numbers of work permits granted.[6] In these instances while immigration status does not ostensibly restrict them to particular sectors, the restrictions on time are important. Students for instance may work 20 hours in term time and 40 hours a week in the holidays; working holidaymakers[7] may work for up to 12

[6] There were also 13,200 dependants of students, 45,500 dependants of work permit holders and 41,600 spouses. More details needed to determine eligibility to work.
[7] WHM granted visas before 8 February 2005 could work in the UK without restrictions on the type or amount of work they can do throughout their two year visa.

months of their allotted 2 year stay[8]. That is, if they want to work legally they may only work part time or temporarily.

"Fire at will!": Immigration status and constructed illegality

The construction of a category of people who are residing illegally is in part an inevitable function of any form of immigration control and nation-state organized citizenship. Those workers who are "illegal" are generally recognized to be highly vulnerable to exploitation and abuse. However a proportion of those who are "illegal" are working on documents which are false or belong to other people. They may therefore be working conforming to certain immigration requirements to protect this false status. Those who are "illegal" and who are not trammelled by working on false documents are in theory highly mobile and can leave employers if they are given a better offer. Of course the problem is, as is frequently pointed out, that employers can use their lack of legal status to threaten and control them, and in practice they may be grossly over dependent on their employer (Anderson and Rogaly 2005; Anderson 2007). Curiously the contradiction between state condemnation of such 'abuse of vulnerability' (threats of reporting to the authorities which in some cases may amount to the heinous crime of 'trafficking'), and state enforcement of the employers' threat, has not been challenged. Indeed in October 2007 Home Secretary Jacqui Smith, while condemning trafficking as a "shocking" form of "modern day slavery", said that those rescued from abuses might nevertheless face deportation as to do otherwise might be to encourage a "pull factor" (Travis 2007). Employing migrants without permission became a criminal offence in 1996 twenty-five years after the offence for migrants of working without permission was introduced. In 2004 there were 1098 successful illegal working operations, and 3,332 illegal migrant workers detected (Home Office 2005b). There were 11 prosecutions under the 1996 Act for employing a person subject to immigration control and 8 convictions (Home Office 2005a)– though we don't know whether these prosecutions were brought as a result of the illegal working operations. We do know that the courts "continue to impose fines far

[8] Spouses of work permit holders and students who have more than 12 months leave to stay in the UK have no restrictions on employment

below the maximum, although account is taken of the defendant's ability to pay the fine and admission of guilt" (Home Office 2005b). Of the 10 fines listed as imposed 2004-2005[9] the lowest was £60 and the highest £2,050. However, the risks and sanctions for migrants of being caught in an illegal employment situation are substantially greater for they may be summarily "removed". Unlike employers, there is no likelihood of any account being taken of their particular circumstances.

One of the weaknesses of current UK employment law enforcement is that it relies mostly on the workers themselves making Tribunal claims or testifying. Currently only migrants working legally are able to access such processes and even then this may expose them to the risk of dismissal and possible removal. However the problem for those working "illegally" is not just one of access. They are covered by the doctrine of illegality which holds that a person should not profit from their wrongdoing. Thus even if they have an employment contract, this cannot be enforced, and neither can any statutory rights, nor indeed statutory protection against discrimination (Ryan 2005). Precarious work for this group of workers is structurally produced by the interaction of employment and immigration legislation.

For employers to take explicit advantage of immigration status requires knowledge. However the distinction between knowing and not knowing is unclear: one can know, strongly suspect, wonder, choose not to know, choose not to find out etc. While this is scarcely unique to the employment of migrant workers, this is structurally reproduced by immigration law most particularly in the statutory defence against a charge under 1996 legislation as long as employers have carried out specified document checks and retained copies of these documents. The relation of semi-compliance to precarity potentially lies in the scope for 'turning a blind eye' and in exploiting the grey area between knowing and not knowing. Iskander describes how semi-formal employment arrangements or "hybridized forms of informality" can be preferred to undocumented migrant labour, with employers preferring to have "employment arrangements with one or more facets that are declared and above board" (cited in Samers

[9] Dates were not specific and the document was published in June 2005, so it is not clear whether this is an annual figure

2004). That is semi-compliance may result in part from a lack of fit between flexible labour markets and the supply of flexible labour including that provided by migrants. It is difficult for employers for example to police the numbers of hours students are working in term time or how many months working holidaymakers have been working given the possibilities for multiple job-holding and high turnover. As with straightforward apparent "collusion" between employers and workers working illegally immigration status potentially gives the employer increased powers of retention and dismissal and an additional means of controlling and disciplining the workforce. Blind eyes easily regain their sight if workers become unnecessary or too demanding.

It is also worth considering the ways in which precarious work may "produce" semi-compliance. While it might be argued that some people may select certain types of visa because they facilitate "semi-compliance" as they never intended to keep to the conditions of entry, others may "slip into" semi-compliance. If one is not committed to being a student, self-employed, or an au pair in the first place, but is simply concerned with ease of entry and legal residence, then breaking the rules attached to these forms of immigration status arguably becomes more likely. Moreover, if work is insecure and unpredictable then the likelihood of a student visa holder for example taking the opportunity to work above the allocated 20 hours a week surely increases.

Migrants: unexceptional precarity

Immigration controls matter, but they interact with other social and labour market factors. Migrants are not the only precarious workers, and migrants who are not subject to immigration controls may also be in precarious work. Consider the case of "A8 nationals", those migrants who are citizens of states that joined the EU in the 2004 Enlargement. They are no longer subject to immigration control other than the registration requirement. They are not tied to employers through work permits and have no restrictions other than a requirement to register for 12 months with the Workers Registration Scheme (WRS). Yet there are many press reports of the kinds of exploitative employment conditions that tend to be associated with "illegal" migrants. The

suggestions are not purely anecdotal. Of the total number of A8 nationals who had registered[10] up until June 2007, 77% were earning minimum wage and the registered top 15 occupations all "low skilled". While 97% were working "full time", this is defined as 16 hours or more a week, and includes multiple job holding. Crucially many of these registrants are agency workers, archetypically precarious. Over 40% of those registered were working in administration business and management, and the compilers note that the "majority of these" are agency workers working in a variety of occupations. A survey of registered Polish and Lithuanian workers conducted for the TUC (Anderson et al. 2007) found that working for an agency clearly increased chance of reporting problems[11]. Not surprisingly one of the most notable differences related to problems to do with the erratic and insecure nature of their work.

While emphasizing the role of immigration controls in creating a group of workers trapped in precarious work, or particularly susceptible to precarious employment we must not miss the overall picture. The state does not just regulate immigration, but also sets the framework for employment laws and protections. Certain visa holders may be more likely to be agency workers, and while recognizing the particularity of the situation of those subject to immigration controls, any analysis of their employment situation must be related to the positions of agency workers in general. Similarly the employment of student visa holders must recognise the significant overlaps with student employment more generally in the UK. Student employment is now recognized to be an extremely important and growing segment of the UK youth labour market particularly in retail and hospitality, where it is now recognized as a structural feature (Curtis and Lucas 2001; Canny 2002). These are both sectors where non-standard forms of employment have always been a feature and are increasing. Flexibility, in particular availability to work unpopular shifts, has meant that students who are combining study with employment constitute a useful pool of labour for hospitality, but also for retail, where extended trading hours have had a significant impact.

[10] WRS give caveats about WRS stats

[11] 65.4% (n=68) of those working for agencies reported problems at work, compared to 49.7% (n=187) of those with other employers.

Employers employ students because they provide a high-quality as well as a flexible labour force (Canny 2002). This has parallels with employers' rationale for employing migrants (Waldinger and Lichter 2003; Anderson et al. 2006). Much research remains to be done on the impact of the growth of student employment on other types of workers – there is some evidence that currently students are working in jobs that previously were taken by unqualified young people (Canny 2002; Hofman and Steijn 2003). Student (and arguably working holidaymaker) visa holders need to be situated within these broad patterns of employment[12]. The experiences of migrants on self-employed visas need to be situated within the context of a steady increase in self-employment in the UK with an increase of 8.9% in the single year September 2002-2003. This increase has continued steadily if less dramatically. It is particular noticeable in construction where "false self-employment" has resulted in widespread loss of employment rights, social rights and has serious implications for health and safety in one of the country's most dangerous industries (Harvey 2001). The concentration of nationals from Central and Eastern Europe, the only group eligible for self-employed visas, in the construction sector must be analysed within this light. Particularly since, as migration scholars such as Massey have demonstrated networks of employment and immigration have their own dynamic over time. Once networks have become entrenched in particular sectors they may continue to function even if the legislative framework shifts.

Migrants are not the only precarious workers, and just because one is a migrant does not mean that one is not young, female or Black. People with certain personal characteristics are more likely to be precarious workers. Age for example affects tenure with 52.4% of 16-19 year olds in April-June 2006 having left their last job in 2005 as compared to 12% of 50-54 year olds. Youth and lack of dependants help make flexible workers insofar as they are more likely to tolerate irregularity and unpredictability and are available to work anti-social hours that those formally typically in non-standard forms of employment are not – women with young families for example. In this

[12] A small scale survey of Central and East European migrants suggested that those of the sample on student visas were more likely than other groups (apart from dependents) to be working for agencies, with 10 out of 44 saying that they worked for an employment agency in their main job.

respect then, the favouring of youth and limitations on dependents placed by schemes helps encourage the legal migration of a population prepared to accept flexible working. We must not forget too the importance of physical characteristics of embodied labour, how race and ethnicity are stratified through immigration controls for example, and the role of these factors in demand for labour (Wolkowitz 2006). Immigration controls must be understood as working in conjunction with other factors.

Conclusion

The relation between immigration status and precarious employment has been insufficiently theorized. Examining the relation between mobility across borders and labour market mobility as it is constructed by the state and experienced and manipulated by employers and by migrants can offer new perspectives on labour migration. The temporal dimensions of migration and of labour markets and their interaction enrich our analyses of both: their intersection with life stage, the changing nature of immigration status over time, the struggle for control over labour mobility, the institutionalization of insecurity through immigration controls. Such an approach draws attention to practical and political questions too: if immigration controls inevitably illegalize how can precarious work be “regulated out” without attention to immigration as well as employment? If workers actively seek labour mobility how can they protect themselves against insecurity? What is clear is that immigration controls on their own cannot act as a mechanism for protecting low-wage labour markets, neither are they a means of protecting migrants from exploitative employment practices.

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