TEMPORARY WORKER PROGRAMS AS PRECARIOUS STATUS

Implications for Citizenship, Inclusion and Nation Building in Canada

ABSTRACT

This article is based o the premise that immigration and citizenship policy play a fundamental role in nation building. The concept of precarious status is presented, and temporary worker programs are situated in relation to precarious status. The discussion is intended to contribute to public debate in Canada (and elsewhere) regarding the implications of temporary worker programs for citizenship as an institution, set of practices, social inclusion more generally, and nation building. In doing so, it raises questions about policy choices that both affect and reflect the ongoing work of nation building.

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Temporary foreign worker programs have been both passionately criticized and applauded. They have been analyzed from multiple stakeholder perspectives – employers, workers, governments and unions – and in relation to various thematic arenas, including labour markets, employment standards, communities, health, and so on (see other authors in this issue). The implications of temporary workers and these programs for rights and citizenship have also been taken up (Basok 1999 and 2002, Preibisch 2004, Sharma 2006, Bauder 2007), although such discussions circulate less widely than those focused on employment. My purpose here is to situate temporary worker programs in relation to the concept of *precarious status* in order to contribute to discussions regarding citizenship and nation building – where the latter invokes questions about political community, rights, bases for membership, and belonging. I make a two-fold argument: 1) that temporary worker programs should be understood as one of several elements of policy practice that contribute to precarious status in Canada; and 2) that the connection between precarious status and citizenship needs to be analyzed and debated because it has important implications for citizenship and nation building in Canada.

Since the 1970s, Canadian immigration and citizenship policy has selected immigrants and focused on supporting their transition to settled citizens, creating a nation where membership is framed in civic and multicultural terms. Recent policy shifts establish a two-tier system, with settled residents and citizens and an array of presumably temporary "others."At the heart of the matter is whether Canada wants to pursue immigration and citizenship policies that entrench legal exclusion and discrimination based on migratory status, and potentially erode rights for all by virtue of reducing or eliminating them for some, or whether Canadians want to develop policies and strategies that provide alternatives, such as expanding social, civil and perhaps political rights for non-citizens, as well as earlier and more effective pathways to citizenship. Debating these issues can contribute to the ongoing process of defining and negotiating Canadian identities, values and norms as well as policies designed to expand social inclusion – for citizens as well as non-citizens in Canada. The discussion is organized into three sections. The first defines *precarious status*. The second situates temporary worker programs as contributing to a form of precarious status. The third section outlines and discusses implications of precarious status for citizenship, inclusion and nation building.

Defining precarious status

Colleagues and I use the concept of *precarious status* to capture the insecurities of "less than full legal status" (Goldring et al. 2007).[1] In Canada, this refers to migratory statuses or categories that are outside citizenship and permanent residence; these categories may change over time.[2] We defined precarious status as involving the *absence* of any of the following elements normally associated with permanent residence and citizenship[3] in Canada: 1) work authorization; 2) the right to remain permanently in the country (residence permit); 3) not having to depend on a third party for one's right to be in Canada (in the case of a sponsoring spouse or employer, for example); 4) public goods available to permanent

residents (such as public education, public health, benefits considered as parts of the social safety net, etc., most of which are normally associated with social citizenship); and 5) the right to sponsor family members within policy parameters available to citizens and permanent residents, such as family reunification (Goldring et al. 2007, 2009).

Precarious status can include *legal* or *authorized* statuses such as 1) temporary workers, most of whom depend on an employer for authorization to live and work in the country; 2) students, whose right to work has changed with modifications to rules concerning the number of hours worked, the types of employers, and authorized work and residence period after graduation; 3) refugee claimants; 4) visitors, who do not have work authorization; 5) others awaiting status determinations (including sponsorship), appeals, and so forth. Precarious status also includes individuals in two broad categories of *unauthorized* status: formerly documented people such as visa over-stayers, rejected refugee claimants, or those whose family sponsorship broke down; and people whose initial entry was undetected or undocumented.

This approach to precarious status emphasizes the variability of its manifestations. It also shows that there are multiple pathways to loss of status and unauthorized status, and illustrates the role of policies and changes in administrative procedures that contribute to the production of precarious status (Goldring et al. 2007). Precarious status also offers a way of conceptualizing illegality that is empirically more suited to the Canadian context, where legal entry followed by some form of overstaying is more important than undocumented border crossing.[4]

Perhaps more importantly, this approach questions dichotomous approaches to migratory legal status. Such approaches divide migrants into authorized and unauthorized, or legal and illegal groups. They assume that the boundary between the two is clear and fixed, and that coherent and non-overlapping sets of membership norms, rights, regulations, public benefits, and so forth are associated with each. In this view, migrants end up on the unauthorized side of the divide by breaking laws – by physically entering a country without authorization or overstaying a visa, for example. In contrast, the concept of precarious status points to fuzziness in the boundaries between the authorized and unauthorized. Migrants may end up on the "wrong" side of the line as a result of overstaying or entering without authorization, for example, but they may also fall through the cracks because of confusing, lengthy, or expensive procedures. The line may also move on them due to changes in policies or administrative procedures. Taking a longer view, the boundary may shift over time due to historic shifts in nation-building priorities, conceptions of membership and patterns of state formation (Ngai 2004, Bosniak 1994 and 2000). Canadian examples of shifting boundaries of membership and citizenship would include the removal of explicitly racist elements from immigration policies, including the end of Chinese exclusion and the introduction of the point system (Simmons 1998). These policies brought more people under the tent of potential Canadian citizenship, and contributed to the construction of multiculturalism as an ideology and state policy.

The binaries of authorized/unauthorized, citizen/non-citizen, permanent/temporary capture significant dimensions of security and rights versus insecurity and vulnerability. However, non-binary approaches such as precarious status[5] offer at least three additional advantages. First, they capture the realities of and potentially multidirectional movement between various categories that do not necessarily fit into the binary classification. That is, they allow one to view temporary workers as "authorized" yet having precarious status; to consider that individuals with expired visas or permits might apply for regularization (and sometimes obtain it); and to understand that there are variable forms of precarious status, as well as documented and undocumented illegality.

> At the heart of the matter is whether Canada wants to pursue immigration and citizenship policies that entrench legal exclusion and discrimination based on migratory status…or develop policies and strategies...as well as more effective pathways to citizenship.

Second, these non-binary approaches highlight the way broader transformations and policies can shape the content and meanings of citizenship and migratory statuses. For example, national citizenship continues to exist, but norms, duties and rights associated with state-citizen relations and the institution of citizenship are changing, as witnessed by disparate trends including supra-national EU citizenship, the neoliberal erosion of national citizenship, and so forth.

Third, they go beyond analyses of binaries (legal/illegal) or particular categories (e.g. temporary workers) and instead offer tools for investigating the systemic relationships between various migratory and citizenship categories, which in turn helps to question how changes in particular categories affect society as a whole, as well as institutions like citizenship, and conceptions of the nation. One example of this would be the broader social implications of the presence of non-citizens and non-residents who have no opportunity or pathway leading to residence and citizenship.

Temporary foreign worker programs and precarious status

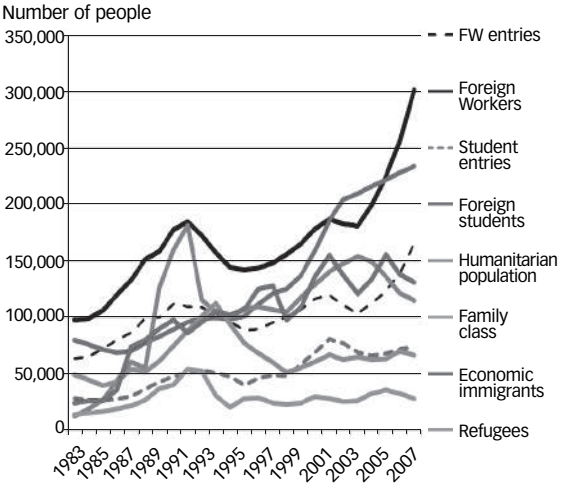
Before discussing the implications of temporary worker programs and precarious status for citizenship and nation building, it is important to consider three empirical trends: the rise in temporary workers; the expansion of this form of precarious status; and the potential permanence of temporariness.

The rise in temporary workers. Canada has stepped up the admission of temporary foreign workers (Sharma 2006,

Preibisch 2007, Hennebry 2009). These programs now bring workers to a number of sectors, under various sub-programs, regulatory frameworks and skill classifications (Elgersma 2007, Hennebry 2009), from a range of source countries (mainly the U.S., France, Mexico and the Philippines) (CIC 2008: 70).

Citizenship and Immigration Canada's *Facts and Figures 2007* provide the most recent publically available data on permanent and temporary entries. In 2007, a total of 165,198 foreign workers entered the country as temporary residents. Adding this to the 137,105 temporary workers already in Canada brought the total to 302,303 foreign workers living and working in Canada on temporary visas. Foreign workers represented 38% of all temporary resident admissions in 2007, which also include humanitarian admissions (mainly refugee claimants), students and others. In comparison, a total of 236,758 people entered Canada as permanent residents. Of these, 131,248 came under the Economic Class and 66,230 under the Family Class, together accounting for 83% of Permanent Residents (CIC 2007).[6]

Figure 1
Canada: Temporary and Permanent Residents, 1983-2007



Source: Adapted from *Facts and Figures 2007* (CIC 2008).

Figure 1 presents data on selected categories of permanent and temporary entry to Canada for the 1983 to 2007 period. It puts the 2007 data in perspective, as it shows that the 2007 numbers for temporary foreign workers and students represent a dramatic increase compared to both earlier years for these same categories, and the number of permanent entries in the economic and family classes. Figure 1 also identifies a turning point (1993 and 1994), as demonstrated by two trends that illustrate the importance of economic and labour market priorities over family unification and humanitarian claims. On one hand, family class entries and refugee admissions began to drop, and humanitarian admissions rose for a time, then dropped following the 2002 passage of the *Immigrant Refugee Protection Act*. On the other, temporary foreign worker and student entries began to increase steadily, as did the totals in these categories. At the same time, economic class migrants began an uncertain and gradual increase marked by a zigzagging pattern, climbing for a few years then dropping before increasing again.

These patterns throw into sharp relief the increase in the number of temporary foreign workers (TFWs) (and students) and the enduring value attached to economic immigrants. They also point to the ongoing and growing importance of temporary workers as a form of precarious status in Canada.

Temporary entrance categories and the growth of precarious status. Forms of precarious status associated with temporary entrance categories are likely to persist and increase through two mechanisms: 1) as a continuation of the increase in temporary entries as well as the number of temporary residents present in Canada. The current economic crisis may put a dent in the admission of temporary workers (Galloway 2009), but this is unlikely to alter their long-term increase;[7] and 2) through movement from authorized to unauthorized precarious statuses. It is possible to transition from temporary status to permanent resident status, as when foreign students or refugee claimants become permanent residents. This possibility is, however, extremely limited for most temporary workers; exceptions include those in the Live-in Caregiver Program and the recently created Canadian Experience Class, as well as through the Provincial Nominee Program, which has been used as a pathway to permanent residence for small numbers of workers in some provinces (Elgersma 2007, Byel 2007). What is also possible is movement from authorized to unauthorized precarious status. However, there are no systematic data relative to overstaying for the temporary resident category.

The permanence of temporariness. Temporary workers are not as temporary as the name of this entrance category might suggest might. In her analysis of the Seasonal Agricultural Worker's Program (SAWP), Preibisch (2007: 440) found that although many Caribbean and Mexican workers spend 8 to 12 weeks in Canada, the average duration of stay for workers for an important share of these workers – particularly in the case of Mexicans – is over nine months. Moreover, many workers return year after year (Preibisch 2007). Recent changes to TFWPs have extended the length of permits and made them easier and faster to obtain (HRSDC 2007). Employers can obtain TFWs sooner, and these workers and their employers do not have to apply for new permits as often as used to be the case. It follows that the period of time that individuals spend in entrance statuses designated as temporary will extend both in the context of specific work permits and over the life course. Rather than being temporary, this form of precarious status has the potential of becoming long-term, if not indefinite.

Implications of temporary workers and precarious status for citizenship and nation building

What are the implications of understanding temporary worker programs in relation to precarious status for those interested in citizenship, social inclusion, and nation building?[8] Why is it important to consider these implications? If precarious status is a growing but under-examined dimension of social exclusion and marginalization, then it is something Canadians need to consider, deliberate, and

debate – rather than ignore. I close by outlining some of the implications of the connections between precarious status and exclusion.

Precarious status is growing and it isn't so temporary. Temporary worker programs are only one form with precarious status, but the discussion in the previous section indicates that the growing use of temporary foreign worker programs increases the number of people of precarious status. While the language of temporariness and non-citizenship may serve to justify the differential conditions under which temporary workers and people with other forms of precarious status live in Canada ("they are only temporary, and not a permanent part of the nation"), the temporariness appears to be long-lasting.

Precarious status is associated with social exclusion. The duration of temporariness may not be as central to those more concerned with the legitimated and structured inequities that accompany forms of precarious status. In the case of temporary workers, most of these inequities are linked to the terms and conditions of employment that accompany this entrance status (Basok 1999 and 2002, Preibisch 2004, Sharma 2006, Hennebry 2009). In general, forms of precarious status imply difficult or no access to public goods including health services and education (Oxman-Martinez et al. 2005, Goldring et al. 2007). In other words, precarious status means precarious well-being and differential inclusion and social exclusion. From this perspective, TFWPs contribute to the long-term presence of resident workers with unequal status.

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Implications for citizenship and nation. Immigration policy and citizenship policy are critical to citizenship and conceptions of the nation. Immigration policy determines who is allowed to enter the country and under what terms, while citizenship policy establishes eligibility criteria, rules and timelines for the acquisition of citizenship. Together, they mediate several fundamental aspects of society, citizenship and nation. First, they define the boundaries and composition of formal membership in the political community, and establish the political and civil rights, duties and social benefits associated with this membership. Second, they affect electoral political participation and representation. In the context of liberal democracies, immigration and citizenship policies can shape the landscape of political opportunities as well as the balance of power through regulations about voting rights and the terms of citizenship. Third, in conjunction with related social policy – including multiculturalism policy in Canada – they lay out ideal values concerning the role and management of ethnic, cultural, racialized and other social differences and inequalities. These policies and related ideology also shape implicit and explicit ideals and claims about who is of the nation, and who is (really) Canadian.

Canadian immigration and citizenship policy, together with settlement programs and multicultural policies, has aimed to turn immigrants into settled citizens in a relatively short timeframe. Research on citizenship acquisition confirms that Canadian immigrants do turn into citizens quite readily, particularly compared to those who settle in the United States (Bloemraad 2002). To the extent that people whose status is precarious are not on an effective path to permanent residence, and much less to citizenship, current policy practice will entrench a two-tier membership in Canada, where no pathway leading to formal political participation and where they are not considered members of the nation where they live and work.

Locating temporary foreign worker programs under the *precarious status* rubric does two important things: it makes the connection between an authorized entrance category and the expansion of the precarious status, and it raises normative questions about the growing numbers of people living in Canada without full rights. Others have noted that temporary worker programs generate a class of unfree labour or *workers* (Basok 1999 2002, Preibisch 2004, Sharma 2006, Bauder 2007). This can be taken one step further by asking whether the programs also produce second-class *residents*, friends, neighbours and community members – people who live and work in Canada for long periods of time under conditions of social exclusion. Is this consistent with "Canadian values," and with what Canadians want? After struggling against inequity and exclusion based on racialization, gender, religion and ethnicity, are people comfortable retaining discriminatory practices based on migratory status? Do Canadians envision their future in a country where citizenship and migratory status determine well-being and inclusion?

My purpose in raising these questions is to generate debate and consider alternative policies aimed at mitigating the vulnerability of people with precarious status, and to contribute to discussion about the future of Canadian citizenship, inclusion and nation building. Activists have already begun to address the vulnerability of some forms of precarious status. One set of options that would warrant discussion might be the expansion of the rights of people with authorized precarious status, such as temporary workers, so that they are covered by the same employment legislation (including the right to organize), labour standards, workplace regulations and health coverage, as permanent residents and citizens – that is, so they are treated like any other worker rather than as mere temporary workers. Questions about citizenship, inclusion and nation building can be debated in a parallel fashion: for example, by considering which rights and benefits should be restricted to citizens and permanent residents, and which might be extended more generally and under what conditions.

Considering ways of reforming immigration and humanitarian determination systems would also be part of the discussion. An understanding of the concept of precarious status and how temporary worker programs and other policy instruments are linked to it should inform and contribute to these debates.

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Notes

[1] See also Oxman-Martinez et al. (2005).

[2] The specific status categories might also vary depending on the citizenship regime.

[3] The high profile case of Maher Arar is a reminder of the potential insecurity of naturalized citizenship.

[4] See Goldring et al. (2007, 2009) for a conceptual discussion of the legal production of illegality in Canada (cf. De Genova 2002).

[5] Menjívar's (2006) concept of liminal legality also offers a non-binary approach.

[6] Refugees accounted for 12% of permanent admissions in 2007 (CIC 2008). These accepted refugees include government-assisted refugees and are distinct from refugee claimants, who are classified as "humanitarian" admissions and counted under temporary entries.

[7] Although there are reports that the number of temporary workers may decline next year, it is too soon to know. It is also impossible to determine how long such a decline might last. Such a decline would not alter the argument of this article because the growth of temporary workers over time still holds, as do questions regarding the implications of temporary worker programs and forms of precarious migratory status.

[8] My response rests on a critical, feminist and communitarian approach to citizenship that understands citizenship as negotiated, contested, changing, and embedded in global and other hierarchies at multiple scales (Bakan and Stasiulis 1994; Lister 1997), and at the same time recognizes the endurance and role of citizenship as a status and political community (see Marshall 1950; Kivisto and Faist 2007). From this perspective, citizenship as a status matters because it involves rights and obligations, which can affect well-being and social inclusion/exclusion. The Marshallian promise of universal citizenship as a counter to the structured inequalities of class is tempered by the understanding that many other inequalities also structure differential inclusion, e.g. racialization, gender, ethnicity, dis/ability, and so forth. In addition to recognizing inequalities within the confines of citizenship, this perspective questions inequalities based on the boundaries of citizenship itself by calling into question difference based on whether one falls within or outside the boundaries of citizenship.

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