

Labor Market Liberalization In North America

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Mobility of labour has been described as the missing link in globalization.¹

How can migration be used to stimulate national and individual development? Is it possible to design policies that do not unfairly benefit some types of human capital —skilled— over others —semi-skilled or unskilled?

Solimano notes that a country may wish to “solve” its internal employment problems either by expecting foreign investment to generate jobs or by allowing people to migrate.² This second option releases the pressure caused by a surplus of labor on domestic markets. He notices that neither of the options occurred with the North American Free Trade Agreement

(NAFTA), which was expected to increase investment in Mexico by U.S. and Canadian companies and reduce migration up north. This is so because investment was not enough to stop emigration; furthermore, developmental gaps and wage differentials with the United States and Canada maintained Mexican migration, both documented and undocumented. As Solimano appreciates, the dilemma of capital going where cheap labor is available versus labor going where the jobs, higher wages, and capital are available tilted toward the second option.

NAFTA, which came into effect in 1994, stipulates special visas for businessmen, investors, professionals, and experts in information technology and communication. While the U.S. has designed the TN visas to facilitate the importation of Mexican and Canadian professionals, Canada has

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continued the same points system as before NAFTA. Mexico simply took advantage of the new emigration conditions. The Mexican president at that time, Carlos Salinas, declared that the agreement would allow the country to export goods, not people. Nevertheless, the evolution of migration ever since shows a significant increase in the migration of Mexican professionals to the U.S. and Canada.

UNITED STATES

We invited guest workers, and got human beings.

Max Firsch³

The United States, the main immigrant destination country in the world economy, is currently a net importer of both capital and people, although in certain periods of the twentieth century it was a net exporter of capital. The U.S. has an “alphabet soup of visas,”⁴ a system criticized by the skeptics who say that U.S. employers invent the scarcity of national skilled workers to justify importing cheaper, younger migrants.

The majority of skilled workers enter the country with the H-1B visas. Based on NAFTA, the U.S. also offers the TN visas, which are attractive for employers as they are easier to get: they require less documentation and are cheaper than the H-1Bs. Annual admission quotas are also bigger than for the H-1. In 2005, 50 000 Canadians were admitted on TN visas, compared to only 2 500 Mexicans. This difference is quite surprising taking into account that the same year, Mexico had a workforce of 43.4 million, compared to only 16.3 million in Canada.⁵

The United States offers special visas for investors: the E-2 visa, for which investors must show a net worth of US \$1 million and intend to invest around US\$750 000 in the country. It also offers the L-1 visa program, related to the productive sector and designed to facilitate the intra-company transfer of personnel. Finally, the U.S. O-1 visa program deals with cultural and academic talent.

Apart from skilled migrants, the U.S. has to deal with an estimated 12 million unauthorized migrants who are fewer than the ones who enjoy permanent legal status but are treated as second-class citizens.⁶ Their circumstances and public opinion against migration were exacerbated after 9/11 and the 2008 crisis.

After the 2008 recession, restrictive bills for local control of illegal immigration were adopted or discussed in several U.S. states, some of which were challenged in federal court.

The most controversial one was the Arizona law passed in April 2010 that, to quote CNN, “orders immigrants to carry their alien registration documents at all times and requires police to question people if there’s reason to suspect they’re in the United States illegally. It also targets those who hire illegal immigrant laborers or knowingly transport them.” A 2010 Gallup poll showed 51 percent support for and 39 percent opposition to the Arizona law. Furthermore, legislators in about half of the U. S. states have promised a bill similar to Arizona’s, and Southern conservatives are “stampeding to express solidarity with the Arizona governor and legislature.”⁷

It is no wonder that President Obama was criticized for his “comprehensive immigration reform” that includes amnesty for “illegal aliens,” loose enforcement, and higher levels of future legal immigration.⁸ Krikorian, the leader of an anti-immigrant movement, also criticizes Obama for the e-verifying system. In his opinion, “a system that doesn’t detain regular illegal aliens along with irregular ones” is a system that can’t work.⁹ The U.S. “e-verify” electronic employment eligibility verification system was a temporary, voluntary program that ended September 2012. A bill to establish a permanent, mandatory national electronic verification system is under review.

The good news is that in 2012, the Dream Act was passed, permitting regularization for undocumented high school graduates who came to the United States as children and who have at least two years of either military service or college attendance.

CANADA

*There is nothing more permanent than temporary foreign workers.*¹⁰

According to the 2006 census, 19.8 percent of Canada’s population is foreign born, a figure second only to that of Aus-

tralia (22.2 percent) and much higher than that of the United States (12.5 percent).¹¹ Canada is a significant host society: with 6.1 million migrants in 2005, it is among the top seven hosts of international migrants.¹²

Before the 1960s, immigration to Canada was racially based;¹³ migration mainly came from Europe, the source of 90 percent of Canada's immigrants. Only 3 percent came from Asia.¹⁴ By the 1990s, the leading source of immigrants to Canada was China, followed by India, the Philippines, Hong Kong, Sri Lanka, Pakistan, and Taiwan.¹⁵ According to figures collected for the 2006 census, 83.9 percent of immigrants to Canada between 2001 and 2006 were non-European.¹⁶ Because of these changes, Canada experienced a threefold increase in its visible-minority population between 1981 and 2001.¹⁷ Three-quarters of the immigrants who arrived in Canada between 2001 and 2006 were visible minorities.¹⁸ In the 2006 census, 16.2 percent of the Canadian population was reported belonging to a visible minority.¹⁹ StatsCan predicts that by 2017, if current immigration trends continue, between 19 and 23 percent of Canadian residents will belong to a visible-minority group.

These changes are mainly due to the point system for skilled workers introduced in 1967 and further reformed in 1993 and 2002. Points are calculated according to educational level, language skills, work experience, age, a job offer in Canada, and adaptability. Individuals who get more than 67 points on a scale of 100 are eligible for permanent residency. Despite the fact that it responds to the market needs, the Canadian system attracts fewer skilled workers than the U.S. one.²⁰

Although immigrants constituted about 19.8 percent of Canada's population in 2006, they accounted for 45.7 percent of Toronto's population and 39.6 percent of Vancouver's that year.²¹ In fact, in 2002 close to 50 percent of Canada's approximately 230 000 immigrants settled in the Toronto Census Metropolitan Area (CMA) alone.²²

StatsCan predicts that Canada's visible minorities, most of whom are foreign-born, are likely to continue to locate in urban areas and that in 2017 close to three-quarters of Canada's visible minorities will be living in Toronto, Vancouver, or Montreal. According to StatsCan's projections, by that year the Toronto CMA will be home to 45 percent of Canada's visible minorities and the Vancouver CMA to 18 percent.²³ Visible minorities will be the "visible majority" in both CMAs.²⁴

TEMPORARY WORKERS PROGRAMS

Temporary foreign workers may stay in Canada only for a limited time, while the use of permanent residence pathways is encouraged if applicable, and departure if not. Transitions from temporary to permanent resident status are facilitated through avenues including the Canadian Experience Class, the Federal Skilled Worker Program, and the Provincial Nominee Program.

In 2010, Canada changed its integration program funding to a "modernized approach," uniting separate programs for settlement programming. Newcomer services are covered by a single funding agreement, simplifying the administrative process for immigrant-serving organizations, and allowing them to tailor their offerings to suit newcomers' needs. Since their introduction, the use of settlement services by newcomers has increased by 8 percent.

An evaluation of the Federal Skilled Worker Program (FSWP) 2002-2008 was published by CIC in 2010. While identifying several critical issues with the current selection system, principally fraudulent job offers, the evaluation showed that skilled workers with prior employment offers performed better, and that the 2002 changes led to selection of more highly educated workers, with better language proficiency, and more diversification of both countries of origin and occupation.

Nakache and Kinoshita observe that Canada's growing focus on short-term labor migration is unfair to the vast majority of temporary foreign workers and will not help the country meet its long-term employment needs.²⁵ They also consider a discrepancy between policy and practice with regard to temporary foreign workers' rights. A significant factor is the restrictive nature of the work permit: temporary foreign workers are often tied to one job, one employer, and one location, which can have the practical effect of limiting their employment rights and protection. Other problems include illegal recruitment practices, misinformation about migration opportunities, and lack of enforcement mechanisms. In the con-

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text of employment, Canada seems indifferent to temporary foreign workers' future position in society.

On family unity and access to permanent residency, there are significant differences in their treatment, depending on their skill levels. Skilled workers are offered opportunities to access permanent residency to which the semi-skilled do not have access. The spouses of highly skilled workers are able to acquire open work permits, and highly skilled workers have the opportunity to get permanent residency from within. In contrast, the spouses of lower-skilled workers must apply for a restricted work permit, and lower-skilled workers, with few exceptions, have very limited opportunity to migrate permanently. Yet they can renew their temporary status so long as they have employment. Nakache and Kinoshita argue that Canada encourages the integration of highly skilled workers and is indifferent to that of lower-skilled workers.

MEXICO

*Migration is a neighbourhood affair.*²⁶

Mexico is by far the leading sending country to the United States. There were 11.7 million Mexican-born persons in the United States in 2007. More than half of these (55 percent) were unauthorized.²⁷

Annual flows from Mexico to the United States have declined from 1 million to 600 000 from 2006 to 2009, largely as a result of a drop in illegal immigration. Legal immigration levels have remained largely unchanged. As a result, the overall number of Mexicans in the United States (constituting the country's largest immigrant group) has remained essentially unchanged during a period when it would have been expected to grow by 1 million.

U.S. population survey data show that while the annual number of new arrivals from Mexico to the United States was 653 000 between March 2004 and March 2005, and 424 000

between March 2007 and March 2008, the estimated annual inflow dropped to just 175 000 between March 2008 and March 2009, the lowest total this decade. This finding is reinforced by analyses of U.S. Border Patrol apprehension data showing that fluctuations in migrant apprehensions closely track changes in labor demand.²⁸

Apart from the big "U.S." problem, Mexico has been subject to the reintroduction of a visa regime for Canada in 2009, due to the abuse of the Canadian refugee system by Mexican visitors. Mexico is also a transit country for irregular migrants from Central America heading to the United States; here, too, the flow has decreased steadily since 2005. In 2010, it was estimated at 140 000, 30 percent of the 2005 estimate. The same factors explain the decline of transit migration as Mexican emigration: lower labor demand in the United States; increased cost of cross-border smuggling; increasing risks and rising violence affecting migrants; and a relative increase in employment opportunities in Mexico. Kidnapping of and violence against migrants has increased in recent years as drug cartels have moved into human trafficking. Mexico signed a regional plan with Central American countries to coordinate cooperation, exchange information, educate migrants, and dismantle cartels involved in human trafficking.

THE MEXICAN MIGRATION LAW

Given all these problems, 2011 certainly was an important year for migration legislation in Mexico, a country known for its "policy of no policy" on these issues and its difficulty in recognizing its Diasporas abroad. In January 2011, Mexico passed the Law on Refugees and Complementary Protection. In May 2011, Mexico adopted its first migration legislation, replacing the 1994 General Law on Population. The new law establishes the conditions for the entry and stay of persons in Mexico and addresses the social, economic and cultural integration of immigrants into Mexico. The number of migrant categories is reduced to limit the margins for immigration authorities' operating at their discretion. The migration law defines regularization procedures for undocumented migrants. It also doubles prison sentences for human trafficking and violence against migrants. Among the main changes is the acceptance of asylum applications after entry, the creation of the status of complementary protection, and the recognition of gender violence and discrimination as valid grounds for asylum. The Mexican

government is still preparing the regulations that will flesh out the implementation of the new law.

A constitutional reform in July of the same year improves the legal regimen for immigrants, so that Mexico now recognizes the right to asylum and refugee status, grants foreign citizens subject to expulsion the right to a prior hearing, and limits the maximum detention period, eliminating discretionary expulsion with no legal basis or court decision.

DISCUSSION

According to Solimano, inequalities and disparities among the three economic systems and migratory flows in the NAFTA countries have determined the idea of a social contract on migration as an international task. This would be the only way to represent all the stakeholders: the migrants, the governments, employers' associations, labor unions, and civil

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society organizations in origin countries and destination nations. Advancing toward a social contract on international migration would require destination countries to be willing to obey the rules of international migration set in negotiated and consensual ways among origin and receiving countries and to refrain from consistently benefiting from a shadow labor market of instantly available foreign labor.

Is this idea pure utopia? Perhaps it can be used as a basis for negotiating such difficult and apparently unsolvable problems such as Mexican migration to the U.S. **MM**

NOTES

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