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Recommended Citation

Weiler, A. M., Sexsmith, K. and Minkoff-Zern, L.-A. (2021) "Parallel Precarity: : A Comparison of U.S. and Canadian Agricultural Guestworker Programs", *The International Journal of Sociology of Agriculture and Food*. Paris, France, 26(2). doi: 10.48416/ij saf.v26i2.57.

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Parallel Precarity: A Comparison of U.S. and Canadian Agricultural Guest Worker Programs

Paper first received Nov. 2019; Accepted: May 2020; Published in final form Dec. 2020

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Abstract.

As national borders tighten against undocumented migrants, agricultural employers throughout North America have pushed governments for easier access to a legalized temporary farm workforce. Some U.S. farmers and policymakers are seeking to expand the country's temporary agricultural guest worker program (H-2A visa), while Canada's longstanding Seasonal Agricultural Worker Program has been elevated as an international role model because it fulfills employer demands for a stable workforce, enables state control over migration flows and, at least on paper, safeguards workers' rights. However, researchers have documented systemic violations of workers' rights in both countries. In this paper we ask: How do the Canadian and U.S. agricultural guestworker programs measure up against international standards of best practices for the treatment of migrant workers? We draw on a food regime framework to historicize agricultural labour-migration policies in both countries within broader patterns of capital accumulation in the global agri-food system, and we argue that Canadian and U.S. agricultural guestworker programs offer evidence of the substantiation of a third food regime. Finally, we argue that despite differences in the policy environments and structures of these programs, their future expansion would further entrench systemic violations of international standards for the treatment of migrant workers by host country governments.

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The authors gratefully acknowledge feedback from members of Josée Johnston's EWWS writing group at the University of Toronto, along with Emily Reid-Musson's generous contributions as a session discussant at the 2019 Association of American Geographers Annual Meeting.

INTRODUCTION

The viability of both U.S. and Canadian agriculture has long depended on farmworkers from abroad with a precarious legal status in their host countries. U.S. growers are increasingly shifting away from the agricultural industry's reliance on undocumented workers toward a system more similar to that of Canada, where migrant farmworkers are primarily hired through government-authorized temporary visas. Canadian farm employers draw extensively on the national Temporary Foreign Worker Program (TFWP): in 2018, 54,734 individuals were hired through the TFWP, accounting for 20.4 percent of employees in the agricultural sector (Nova Scotia 2020). While the TFWP provides several different streams for hiring agricultural workers, nearly three-quarters are hired under the Seasonal Agricultural Worker Program (SAWP) (ESDC 2019). By contrast, U.S. growers have historically relied much more heavily on undocumented workers, comprised mainly of immigrants from Latin America. In fiscal years 2015-2016, an estimated 49 percent of agricultural workers in the United States were undocumented (Hernandez and Gabbard 2018:5). In 2017, U.S. government-authorized temporary guest farmworkers, known as H-2A workers, made up only 6.7 percent of the total farm workforce (Consular Affairs 2019; USDA 2019:339).¹ Although this proportion appears small, the H-2A program has recently experienced exponential growth. Between fiscal years 2008 and 2018, the number of H-2A visas issued jumped from 64,404 to 196,409, an increase of 205 percent (Consular Affairs 2009; 2019).

Several political-economic and demographic factors help explain the rising popularity of agricultural guest worker programs in Canada and the U.S. First, prevailing wages and working conditions in agriculture are often unattractive to job seekers who hold a secure immigration status, language fluency, freedom of mobility, access to social safety nets, and educational opportunities. Accordingly, the Canadian and U.S. agricultural sectors have reported labour shortages for decades. Many Canadian farmers assert that their operations would be unviable without migrant workers who may risk repatriation if they quit or change jobs (Weiler et al. 2017). Second, in the U.S., employers have recently begun to seek out information on the H-2A program on a broad scale, learning in the process how to work with private labour contractors who ease the worker recruitment process (Devadoss and Luckstead 2019). Their interest in the H-2A program is commonly attributed to rising deportation rates of undocumented immigrants, including settled farmworkers, in the late 2010s. The presence of undocumented farmworkers in Canada is considerably smaller than in the United States (c.f. Perry 2020). Another key factor that helps explain the rise in U.S. temporary agricultural guest workers is the ageing of crop workers who received legal amnesty in the late 1980s but are increasingly unable to perform physically arduous waged farm jobs. In this context, H-2A workers have been portrayed as “flexible fresh blood” (Martin 2018:55).

Governments worldwide have paralleled this pattern of expanding programs to hire temporary migrant farmworkers. For instance, in 2019 the United Kingdom began a pilot program enabling farm employers to hire seasonal migrant workers from outside of the European Union

¹ Some researchers estimate the number of H-2A workers based on the number of H-2A jobs that have been certified for employment (e.g. Devadoss and Luckstead 2019). Here, we use the more conservative estimate based on the number of H-2A visas issued, thus eliminating from our count those workers who were certified but never issued a visa.

and has extended the pilot into 2021 (Consterdine and Samuk 2018; DEFRA2021). In 2009, the Australian national government introduced a migrant farmworker program premised on filling local labour shortages and supporting development in Pacific island countries through worker remittances (Petrou and Connell 2018). When developing its Seasonal Worker Program, Australia had followed the example of New Zealand's Recognised Seasonal Employer scheme. In turn, New Zealand had designed its program using Canada's SAWP as a blueprint (ibid). Spain and Italy implemented circulatory migration programs for their agricultural sectors, although their importance appears to be waning amid the significant influx of undocumented workers in those countries (Molinero-Gerbeau and Avallone 2018). Several less affluent countries have also developed migrant farmworker schemes, as with Malaysia's temporary migrant worker visas for employment in agriculture and other sectors (Kaur 2010), and Mexico's Border Worker Visitor Card for labour migrants from Belize and Guatemala (Zahniser et al. 2018). Therefore, by scrutinizing how effectively the Canadian SAWP and U.S. H-2A programs uphold human and labour rights, this paper offers internationally relevant insights.

This paper seeks to analyze the role of expanding agricultural guestworker programs in the context of evolving food regime history. Theoretical work on food regimes provides a historicization of periods of capitalist accumulation since 1870 on the basis of international relations of food consumption and production. This literature is at a crossroads over whether the contemporary moment in the global economy represents a transition period away from the second (industrial) towards a third, yet to be defined food regime, or whether a 'neoliberal' or 'corporate' food regime has already been reached. Food regime scholars have argued that the expansion of precarious migrant farm labour regimes is central to the reorganization of the agri-food system in favour of corporate retail and finance (Corrado 2018). Migrant farmworker programs exhibit features of what some scholars refer to as a neoliberal or corporate food regime by promoting the concentration of agri-food capital through a global competition for the most productive, compliant, and lowest cost workers. On the other hand, guest worker programs can also bolster smaller agri-food firms that supply regional and domestic markets, which reflects patterns of national government intervention more typical of the industrial food regime. In this paper, we enter this discussion by reflecting on the theoretical implications of expanding managed agricultural labour migration programs for the contemporary moment in food regime history, based on our review of the secondary evidence on the H-2A and SAWP programs. Our literature and policy review, founded on a framework for international best practices for the treatment of migrant workers compiled by Hennebry and Preibisch (2012), finds that despite differences in the policy environments and structures of the H-2A and SAWP programs, they lead to parallel forms of precarity for participating workers. From a food regime perspective, we argue that these guestworker programs simultaneously help consolidate power among large agri-food sector players while, paradoxically, representing a government intervention that helps keep smaller, more peripheral farms in business.

ANALYTICAL FRAMEWORK AND APPROACH

This paper builds on theoretical understandings from food regime analysis that migrant labour policies are a key feature of contemporary capital accumulation across the global agri-food

system. According to (Sanderson 2012: 58), comparative analyses of agricultural labour migration help reveal enduring patterns of social relations across different times and places, thus informing, “the development of appropriate responses to the exploitation of migrants in the world food system.” To that end, this paper reviews published scholarly works to: (1) compare Canadian and U.S. agricultural guestworker program policies and (2) discern how they have shaped outcomes for migrant workers. In the process of our review, we found that substantially less secondary evidence is available on worker experiences with the H-2A program compared to the SAWP. Thus, we provide a detailed comparison of policies for both programs, accompanied by a more detailed review of data on worker experiences from the Canadian case. By comparing these programs’ legal frameworks and informal practices, we demonstrate how states manage consolidation pressures in the agri-food system by constructing migrant worker precarity at the nexus of agricultural, labour, and immigration policy.

Our main sources for the policy comparison include U.S. and Canadian government websites and employment contracts for guest worker programs. For our analysis of how policies shape worker experiences, we conducted a purposive review of the available literature on contemporary outcomes of both programs in five select areas: (1) wages, deductions, and benefits, (2) access to healthcare and worker’s compensation, (3) enforcement of employment and housing standards (4) security of immigration status, and (5) gender-specific concerns. These five indicators are drawn from frameworks established by scholars and intergovernmental organizations such as the United Nations on international best practices to promote migrant rights in temporary labour migration, as compiled by Hennebry and Preibisch (2012). The framework offered by Hennebry and Preibisch (2012) is intended to provide broad-level examples of policy elements that promote migrant rights for further refinement at the country level (Abella 2006:53). Accordingly, after a preliminary assessment of the structure and available evidence on both programs, we adapted the general framework to the policy context under study and proceeded with a detailed review of the available policy information and evidence.

A FOOD REGIME HISTORY OF AGRICULTURAL GUESTWORKER PROGRAMS IN CANADA AND THE U.S.

Agricultural guestworker programs from a food regime perspective

A food regime analysis is instructive for understanding the legacy and contemporary formation of migrant farmworker programs. As initially established by Friedmann and further developed with McMichael (Friedmann and McMichael 1989), food regime analysis provides a political economy approach for categorizing periods of capitalist accumulation since 1870 on the basis of international relations of food consumption and production. Each food regime is defined by specific dynamics between states and capitalists to facilitate capital accumulation in agriculture within a given time and place (McMichael 2013). The first food regime (1870–1914) involved Europe outsourcing the monoculture production of staple goods onto settler colonies and importing cheap food, thereby enabling British dominance as the ‘workshop of the world.’ The United States emerged as the global hegemonic power in the second food regime (1945–1970s), which was characterized by the industrialization of agriculture, national regulation, and creating import dependency in the Global South on surplus foods produced in the Global North. Researchers

disagree on whether the current historical period constitutes an extant ‘third’ food regime (e.g. a corporate-environmental food regime or a neoliberal food regime) or a transition time between regimes (Friedmann 2005; Pechlaner and Otero 2010). Setting aside this debate, critical food scholars broadly agree that key features of the contemporary food period include the dominance of private retail and transnational capital, global sourcing, financialization, along with simultaneous forms of market deregulation and selective neo-regulation such as exemptions to safeguard domestic agricultural commodity sectors (Corrado 2018:321). Importantly, Corrado (2018:325) argues that analyses of value creation and capital accumulation in the contemporary food regime have paid insufficient attention to transnational labour mobility along with structural processes that create precarious working conditions for migrants.

Current food regime dynamics of globalization, neoliberalism, and the consolidation of ownership across the contemporary agri-food system have had a profound effect on the expansion of migrant farmworker programs (Bonanno and Cavalcanti 2014; Rogaly 2008). Oligopolies at multiple points in the global food chain, including farm input suppliers and retailers, have generated pressure for growers to remain globally competitive by transferring costs onto workers, scaling up, and hiring off-farm labour with intense productivity demands (Corrado et al.2016; Gertel and Sippel 2014). The primary beneficiaries of migrant farm labour programs tend to be the wealthiest capitalist agri-food entities; 64.6 percent of migrant farmworkers in Canada in 2018 were hired by businesses with an excess of \$2 million in farm revenue (Nova Scotia 2020). Corrado (2018) asserts that such labour strategies have also enabled more peripheral farm businesses to subsist.

States have drawn on farm labour migration as a way to restructure and liberalize the global agri-food system while simultaneously protecting domestic farm sectors. This apparently contradictory policy approach reflects what some have termed ‘embedded neoliberalism’ in the third food regime (Corrado 2018:321). Preibisch (2012b) argues that the Canadian state has actively constructed regimes of accumulation through the administration of temporary agricultural guest worker programs, which allow the state to negotiate the politics of production with multiple other actors. For instance, Vosko (2018) shows how bureaucrats and employers participate in cultivating workers’ deportability in the Canadian SAWP. In short, the confluence of state and capitalist power in the global food system has manifested in creating just-in-time agricultural workforces that are denied formal and practical access to the rights of citizens and can be repatriated at will.

Temporary agricultural guest worker programs that limit workers’ freedom of mobility across and within borders have been a vital policy tool for states to stabilize agri-food capital accumulation within the contemporary food regime (Preibisch 2012b). Receiving country governments rely on managed migration schemes to maintain the perception that they hold exclusive control over inflows of international labour, even as global capitalist powerholders increasingly dictate these movements and undermine the state’s control over migratory labour (Kubal 2013). In a historical period marked by the elevated transnational mobility of people and goods, the differential inclusion of migrants based on race, gender and legal status has been crucial for receiving states to promote agri-food industry competitiveness. Meanwhile, sending-country governments benefit from worker remittances and a ‘pressure valve’ on domestic poverty and unemployment. In turn, these pressures can be attributed to complex factors in historical and contemporary food regimes including slavery, colonialism, trade liberalization, and structural adjustment programs, which often dispossessed migrant communities of their own farming livelihoods (McLaughlin 2009).

Below we describe with examples how the Canadian and U.S. governments have facilitated agri-food capital accumulation throughout food regime history by creating conditions of precarity for different groups of agricultural workers over time. In Canada and the U.S., immigrant groups have been hired in waves of ethnic succession to provide low-wage labour for growing industrial capitalist agricultural sectors. Legacies from the first food regime, including white colonial settlement and attendant processes of displacement, dispossession, and racialization, serve as a foundation for the SAWP and H-2A programs. With the second food regime, commercial North American farms increasingly replaced family labour with hired workers, agrochemical inputs and mechanization. In the third food regime (or transition between regimes), governments have continued to expand employer access to a labour pool that is increasingly global in scale to accommodate rapid shifts in agri-food markets, creating a just-in-time labour system that parallels the hyper-mobility of global food commodity circuits (Gertel and Sippel 2014).

Agricultural guest worker programs in Canada

Contemporary migrant agricultural visa programs in Canada are built on a long legacy of government intervention in the labour market to ease employer access to workers and amplify their marginalization. At the turn of the century, impoverished British orphans who apprenticed on Canadian farms were offered citizenship once they became adults (Bagnell 2001). During the Second World War, the Canadian government invoked the War Measures Act to displace Japanese Canadians from their homes in coastal British Columbia, forcing some into prisoner-of-war camps and others to ‘voluntarily’ work on farms further east (Ikebuchi Ketchell 2009). More broadly, the violent displacement of Indigenous peoples from the land through ongoing settler colonialism has paved the way for proletarianization in agriculture. Between the mid-1950s and early 1980s, the government coerced Métis and First Nations reserve communities in northern Alberta into migrating south for sugar beet harvesting jobs by severing their social assistance benefits (Laliberte and Satzewich 1999). Before the creation of the SAWP, the Department of Labour tried to fill farm labour shortages with people who were unemployed, in psychiatric hospitals, and in minimum-security prisons (Satzewich 2007).

During the second, Fordist food regime, the SAWP was initiated in 1966 as a bilateral agreement between the Canadian and Jamaican governments. Fruit and vegetable farmers, alongside their industry representatives and Caribbean governments, pressured the Canadian government for access to Caribbean migrant farmworkers (Satzewich 2007). Simultaneously, powerful agricultural industry groups successfully lobbied for labour law exemptions for farmworkers, such as denying farmworkers the right to unionize in Ontario (Vosko 2018). Today, the SAWP encompasses bilateral agreements with eleven Caribbean countries and Mexico.² Mexico is now the leading participant country.

While in this paper we focus on the SAWP, Canada’s largest program for migrant agricultural workers, there are three other agricultural streams within the overarching Temporary Foreign Worker Program. Namely, these are the Agricultural Stream, Stream for High-Wage Positions, and Stream for Low-Wage Positions. These newer programs were initiated as pilots in the early 2000s to improve employers’ access to a more flexible labour supply beyond the constraints of the SAWP’s mutual bilateral agreements between governments, and to include

² Participating SAWP Caribbean countries include Anguilla, Antigua and Barbuda, Barbados, Dominica, Grenada, Jamaica, Montserrat, St. Kitts-Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago.

employers in non-agricultural sectors, such as the petroleum industry (Preibisch 2012a). Under these newer programs, employers may hire workers from anywhere in the world, and farmworkers may stay in Canada for up to 24 months. These streams are particularly popular in year-round farm industries such as mushrooms. With the inclusion of these newer streams alongside the SAWP, between 2011 to 2018 the total number of temporary migrant farmworkers in Canada grew from roughly 37,945 to 69,775, an increase of nearly 84 percent³ (ESDC 2019).

The SAWP can be understood as a relic of post-World War II guest worker program because it requires significant government resources to operate, which reflects an emphasis on national regulation that characterized the second food regime. By contrast, newer, non-SAWP agricultural streams of the Temporary Foreign Worker Program have shifted toward deregulation and the privatization of processes such as worker recruitment (Valarezo 2015). Migrant farmworkers hired through non-SAWP temporary worker visa streams may come from countries with smaller populations in rural Canada, such as Guatemala and Indonesia, and they do not have a dedicated sending-country liaison to uphold their rights. These newer streams typify post-Cold War guest worker programs and are more representative of what is sometimes termed the neoliberal food regime and (Preibisch 2012b). Regardless, both SAWP and non-SAWP migrant farmworkers are employed under a broader context of neoliberal policies such as defunding state agencies responsible for enforcing workers' rights (e.g. Fairey et al. 2008). The revival of the H-2A program from the ashes of the Bracero program in the United States can be similarly understood in the context of a neoliberal food regime or transition, alongside selective government interventions to prioritize domestic agri-food interests.

Agricultural guest worker programs in the U.S.

Agricultural work in the United States has long been performed by a racialized labour force. During and after colonization in the 'colonial-diasporic' food regime (Friedmann 2005), white farmers depended heavily on the forced and wage labour of Native Americans, who were eventually replaced by enslaved African and African American workers (Knack and Littlefield 1996). Immigrants became a larger portion of the agrarian workforce after post-Emancipation Black Americans moved to urban centres. On the East Coast, immigrant workers came from countries such as Jamaica and Mexico (Hahamovitch 1997). On the West Coast, and particularly in California, immigrant workers have long been the core of the workforce. This has included workers from China, Japan, and India in the 19th and early 20th centuries, and later from Mexico and Central America (Mitchell 1996; Walker 2004). In more recent decades, immigrant workers, many of whom are undocumented, have moved to agriculture and food processing jobs in so-called "new immigration destinations" of the Midwest, rural South, and rural Northeast (Ribas 2015).

The first and best-known agricultural guest worker program in the United States was the Bracero Program, meaning 'a person who works with their arms' in Spanish. Initiated during the Second World War, this temporary agreement between the United States and Mexico was promoted as a way to address the war-induced agricultural labour shortage. Yet, the Bracero Program continued well after the war and into the second food regime. Farmers successfully lobbied to maintain the program, which functioned until 1964 as a form of insurance for West Coast farmers in case of labour shortages (Mitchell 2012).

Overlapping with the Bracero Program and initiated in 1953, the H-2 program for temporary labour remains in existence today. In 1986, the Immigration Reform and Control Act

³ This is based on positive LMIA's, which are a rough proxy for the actual number of migrant farmworkers hired.

divided the program into the H-2A for seasonal agricultural workers and H-2B for all other temporary workers deemed ‘low-skill’ (Hahamovitch 1997; Smith-Nonini 2009). Both the Bracero Program and the H-2 programs were created in response to strong political organizing by farmers, who claimed they could not find willing domestic workers to fill positions. With the exception of absolute labour shortages during wartime, labour scholars and organizers have argued the issue is not that employers could not fill these positions; rather, employers could not fill these positions given the low wages they were willing to pay (Hahamovitch 1997; Mitchell 2012). Researchers have similarly argued that the Canadian government authorized SAWP is partly responsible for generating labour shortages because this program has allowed wages to remain low while raising expectations of worker productivity, which deters domestic applicants (Binford 2019).

Amid the rapid expansion of the H-2A program in the late 2010s, labour organizers have pushed for stronger regulatory protections for workers. In response to intense organizing and lobbying by farmworker advocates, in 2019 farmworkers won a victory toward better regulation in Washington State; new legislation requires all employers who use the H-2A program to pay into a fund that will establish an office that regulates labour, housing, and health and safety requirements for farms using the programs, since such a department does not exist at the federal level (Bacon 2019; Madrigal 2017; Sbicca et al. 2020). Labour advocates have continued to express concern over the dramatic growth of a program that expands employer access to precarious workers while further entrenching their unfree status. Still, such actions, which are paralleled by migrant justice organizing in Canada (e.g. Ramsaroop 2016), signal the importance of counter-movements to the dominant logics of the third food regime or transition.

One of the threads connecting Canadian and U.S. guest worker programs through various food regimes is the active role played by states in managing agri-food capital accumulation; specifically, states craft policy interventions focused on hiring workers rendered vulnerable by their racial identities and immigration status. A distinctive feature of contemporary guest worker programs in both countries is the state’s apparently contradictory approach to promoting an internationally competitive agri-food industry based on deregulating labour standards and enforcement, while simultaneously intervening in the labour market through projects such as targeted immigration streams to protect national agricultural interests. The ‘winners’ of this food regime may be the transnational corporate agri-food capitalists. However, state-facilitated access to a precarious global labour force has also appeased smaller domestic farm employers by allowing them to stay in business; they often continue feeding market demand for regionally produced food (see Corrado 2018: 321).

A COMPARISON OF SAWP AND H-2A PROGRAM POLICIES AND OUTCOMES

This section describes and compares H-2A and SAWP policies and their outcomes according to the five-part analytical framework described above. Our findings are summarized in Table 1. Our review of the literature points to significant gaps in the literature on H-2A workers, perhaps due to the small size of this population relative to numbers of undocumented workers in the U.S. Consequently, we focus in particular on outcomes from the Canadian program with the intention of offering lessons for temporary migration schemes in the U.S and elsewhere.

Worker recruitment

In both Canada and the U.S., the private sector plays an increasing role in the basic functioning of guestworker programs. In Canada, to hire a migrant farmworker, agricultural

employers must receive a positive Labour Market Impact Assessment (LMIA) from the government. A LMIA is a document that prospective employers fill out to provide proof of an unsuccessful attempt to recruit Canadians (e.g. published job advertisements, or an explanation of why any Canadian applicants were unqualified). Employers in some provinces (including Ontario, where most are hired) enlist an industry organization to process requests for SAWP workers, while migrant sending-countries screen and select workers (Binford 2013). In the U.S., most farmers using the H-2A program pay third party recruiters to identify potential workers. The Department of Homeland Security decides which countries are eligible for the program at any given time. In both countries, workers come primarily from Mexico, followed by Jamaica. Neither country places an annual cap on the number of agricultural guestworkers that can be admitted.

Table 1: Comparison of SAWP and H-2A programs⁴

	SAWP (Canada)	H-2A (United States)
1.0 Worker recruitment		
Nationality of principal workforce	Mexican, followed by Jamaican	Mexican, followed by Jamaican
Other nationalities	Limited to 10 other countries that sign memorandum of understanding with Canadian federal government	Currently over 80 eligible countries. The Department of Homeland Security publishes a list of eligible countries
Crops and industries covered	Seasonal agriculture, greenhouses, packing houses	Any seasonal agricultural task
Quotas on workers	No	No
1.1 Wages, deductions, and benefits		
Workers make mandatory payments into (un)employment insurance	Yes	No
Workers may access (un)employment insurance they have paid into	Typically do not meet eligibility requirements for regular benefits; ineligible for special benefits	n/a
1.2 Access to healthcare and worker's compensation		
Workers have public or private healthcare	Yes (eligible for public healthcare after 3 months in some provinces, right away in Ontario, but barriers to receiving public health card)	Private insurance not mandatory. Workers qualify for Medicaid.

⁴ See also Griffith (2002) for a direct comparison of policies and administration of the SAWP and H-2A programs. Our table provides an update and greater focus on human rights.

Workers' have rights to make worker's compensation claims	Yes, but barriers to access	Yes
Employers pay housing	Yes, except B.C. employers can deduct a daily percentage of housing costs	Yes
1.3 Enforcement of employment and housing standards		
Employers pay for two-way transportation between sending and receiving countries	B.C. employers pay full cost; Employers elsewhere can deduct up to 50% of air travel cost (up to a max. amount)	Yes, but worker must pay up front and is reimbursed half-way through the season
Responsibility for monitoring and enforcement of housing standards	Designated provincial/territorial/municipal body, private certified inspectors, federal ministry, and/or local public health authority	Federal Department of Labour
1.4 Security of immigration status		
Workers may bring spouses and dependent children to host country	Not prohibited by immigration law, but extremely uncommon	Yes (very uncommon)
Employers may request workers by name	Yes	Yes
Right to apply for permanent residency	Not directly (employer may apply for worker's permanent residency through Provincial Nominee Program)	Very limited (employers can apply to sponsor workers for Green Card but in practice these are limited)
Workers may freely change employers	No (in 2019, the federal government announced workers with proven cases of abuse could apply for an open work permit)	Not under initial contract, but workers can extend stay in U.S. up to three years if they can obtain a new work contract with a new employer (very uncommon)
1.5 Gender-specific concerns		
Approximate share of women in the workforce	Less than 5%	Approximately 6%
Employers may select workers based on gender and nationality	Gender and nationality	Nationality

Wages, deductions, and benefits

Canadian and U.S. policy differs on minimum wage rates for agricultural guestworkers. SAWP workers must be paid at least the provincial minimum wage. Unlike Canadian SAWP employers, U.S. H-2A employers are required to pay their workers a rate above the U.S. minimum wage, called the ‘adverse effect wage rate’. The intention of this policy is to protect local workers’ wages from being driven down by the H-2A program.

There are some differences in deductions and access to benefits between the two programs. In Canada, depending on the province, employers may either cover or deduct costs such as housing, utilities, meals, and transportation between Canada and the sending countries. In the U.S., employers of H-2A workers are obliged to pay for worker housing, as well as inbound and outbound transportation from workers’ home countries to the farm workplace. With respect to deductions for benefits, SAWP workers’ paychecks are automatically deducted for income tax, Employment Insurance (EI) and the Canada Pension Plan (or Quebec Pension Plan for those who work in Quebec).⁵ Meanwhile, H-2A workers are exempt from paying into Social Security, Medicare, unemployment insurance, and in most cases from federal income tax withholding.

Despite paying into these social programs, migrant farmworkers in Canada face a suite of barriers to accessing the social entitlements for which their wages are automatically deducted. First, pension benefits are either very small because temporary workers accumulate few working hours in Canada, or entirely unclaimed because workers have difficulty accessing Canadian pension benefits from their home countries once they have retired (McLaughlin 2009:399). Second, being obligated to leave Canada after their contracts are over means SAWP workers typically do not meet eligibility requirements for regular EI benefits, and they are excluded from special EI entitlements such as parental benefits (Ramsaroop 2016).

Wage theft affects farmworkers in both countries. Beyond the numerous permissible deductions to workers’ wages, migrant farmworkers sometimes arrive in Canada with enormous debts to job recruiters. Recruiters have been a particular concern in non-SAWP streams of the TFWP. The Canadian government’s decision to expand non-SAWP agricultural streams has been associated with an upsurge in unscrupulous practices by third party recruiters such as charging illegal fees, selling fake visas, and misrepresenting jobs (Gabriel and Macdonald 2018). While wage theft is common among US farmworkers, H-2A workers are less likely than undocumented workers to experience wage theft or a wage violation. According to one study in North Carolina, 18.3 percent of all farmworkers and 3.6 percent of farmworkers with H-2A visas experienced some kind of wage violation (Robinson et al 2011).

Access to healthcare and worker’s compensation

Access to healthcare and worker’s compensation is constrained in both countries. SAWP workers encounter myriad barriers to healthcare, including both formal barriers to eligibility and informal barriers that restrict access. Formal entitlement to Canada’s public healthcare system is

⁵ Farmworkers who work only in Quebec pay into the Quebec Pension Plan (QPP) instead of the Canada Pension Plan (CPP). If workers work in Quebec as well as other provinces, there is a sharing agreement between the QPP and the CPP. The QPP and CPP offer similar benefits at retirement, and workers get paid benefits based on how much they pay into the two plans put together.

not guaranteed for all SAWP workers. In Ontario, where the largest number of SAWP workers are employed, migrant farmworkers are immediately eligible for public health coverage. In British Columbia, however, SAWP workers must wait three months after arrival before becoming eligible for public health care. During this three-month waiting period, employers are required to ensure workers are covered by private insurance and may deduct the cost of private insurance from workers' paychecks. In addition, hospitals and clinics sometimes require prepayments with reimbursement procedures that can be unclear to users of the plan (Preibisch and Otero 2014).

Access to healthcare in practice is constrained by numerous informal factors, such as a fear of reporting illness, injury or pregnancy due to the risk of job loss and repatriation. One survey of migrant farmworkers in Ontario found that 44.5 percent of respondents reported their co-workers continued working while sick due to fear of telling their boss (Hennebry et al. 2016:530). Researchers also note barriers such as workers' dependence on employers for transportation, long working hours, language barriers, and confusion on the part of clinics and hospitals regarding workers' insurance (Cohen and Caxaj 2018; Binford 2013; Narushima et al. 2015).

In the U.S. H-2A program, worker access to healthcare is even less secure than in the SAWP. According to the Affordable Care Act (ACA), guest workers are required to have health insurance while they are in the United States, or they can be fined. Yet, employers are not required to provide comprehensive health insurance unless they are categorized as a large employer with an average of 100 or more employees. If the employer is not 'large' or does not voluntarily provide health insurance, workers must buy coverage on the private insurance market. In North Carolina, for example, most H-2A workers are not enrolled in insurance (Lambar and Thomas 2019). While they can apply for subsidies based on their income, H-2A workers do not qualify for federally subsidized healthcare or Medicaid. Moreover, holding H-2A status may present a barrier to accessing some charitable healthcare programs because it is assumed that H-2A holders have obtained insurance through the ACA (ibid.). On the other hand, holding an H-2A visa may create some advantages for farmworkers in terms of accessing healthcare, as compared to undocumented farmworkers. Employers of H-2A workers are required to provide transportation for health services when needed (Feldman et al. 2009).

With regard to occupational illness and injuries, SAWP workers legally have the same rights as other workers to provincial no-fault workplace health and safety insurance. However, they experience numerous barriers to access (McLaughlin 2009), and public insurance coverage is optional for farmworkers in Saskatchewan and Alberta (large farms in Alberta must enrol waged workers in either private or public workplace insurance). Workers who experience on-the-job injury or illness may be repatriated prior to a full recovery in Canada. In the U.S., H-2A workers are among a limited group of farmworkers who are covered by workers' compensation (Lambar and Thomas 2019), but they may face similar access barriers as guestworkers in Canada.

Enforcement of employment and housing standards

Agricultural guestworker housing is more rigorously documented in the literature in both the Canadian and U.S. contexts. Both countries exhibit inconsistencies in the enforcement of housing standards leading to common reports of housing deficiencies. In Canada, provincial governments typically use a complaint-driven model rather than proactive enforcement or random

spot-checks; this inhibits workers from raising complaints because they may fear employer reprisals and deportation (Faraday 2016). Researchers have documented a lack of enforcement of housing standards, thus employer-provided housing might not meet contractual standards throughout the entire season (Preibisch and Otero 2014). Consequently, workers describe housing quality as unpredictable, ranging from spacious and well-equipped to unsafe, overcrowded and rodent-infested (Tomic et al. 2010).

In the United States, compliance with employment and housing standards is monitored and enforced by the Department of Labour for compliance with Occupational Safety and Health Administration standards. Farms employing H-2A workers must provide housing at no cost to workers, and housing must comply with standards for temporary labour camps (Farmworker Justice 2011). Researchers have documented that farmworker housing in the U.S. is often indecent, uncomfortable, and unsafe. However, the presence of H-2A workers in housing camps is associated with better housing conditions than those experienced by workers in camps without H-2A residents (Arcury et al. 2012a; 2012b; Quandt et al. 2013; Vallejos et al. 2011). For example, a study of migrant housing camps with both H-2A and non-H-2A workers in eastern North Carolina found consistent structural deficiencies in buildings, uncomfortable levels of heat, lack of hygiene and cleanliness, and unsafe conditions such as unlocked windows and doors (Arcury et al. 2012b). Within that study, the presence of farmworkers with H-2A visas was associated with better housing conditions. Similarly, migrant labour camps with H-2A visa holders resident have fewer kitchen-related violations for flooring, fire extinguishers, and cockroaches (Quandt et al. 2013). These better housing conditions are nevertheless insufficient, and labour advocates have described H-2A housing as, “often appallingly substandard” (Farmworker Justice 2011: 16).

Security of immigration status

A central shared feature of the SAWP and H-2A programs is the requirement that workers remain employed by the person who hired them to maintain their temporary legal immigration status. Changing employers is possible but practically quite difficult in both countries. In Canada, workers may be employed on a Canadian farm for up to eight months in a calendar year. There are no limits on the number of consecutive years SAWP workers can be hired, although to return to the same farm they depend on receiving a recommendatory evaluation at the end of the season and being requested by name by a Canadian employer. In the event of a crop failure, insufficient hours or an abusive environment, transferring to another farm is possible, but often bureaucratically difficult or unfeasible (McLaughlin et al. 2014). Similarly, H-2A workers are committed to the farm that hires them. Each H-2A worker is limited to working for any individual employer for ten months per calendar year, but they may stay in the United States with legal work authorization for up to three years at a time if they can secure contracts with more than one employer. At the end of three years, they must return to their home country for at least three months (USCIS 2019). As in Canada, dependence on continued employment to prevent deportation creates a built-in mechanism for worker suppression (Bauer and Stewart 2013; Farmworker Justice 2011).

Another common feature of the programs is the minimal opportunity provided to apply for employment-based permanent residence. Although one study reported that more than half of surveyed SAWP workers aspired to permanently immigrate to Canada, the program offers no direct pathway to permanent residency (Hennebry et al. 2010). In exceptional cases, a migrant

farmworker could obtain permanent residency if their employer successfully nominated them for a small number of competitive placements through the Provincial Nominee Program, if they married a Canadian citizen, or if they successfully applied on humanitarian and compassionate grounds. Between 1990 and 2014, only 2 percent of workers obtained permanent residency after accumulating a decade in the SAWP (Prokopenko and Hou 2018). In the U.S., H-2A employers can apply to sponsor workers for Green Cards (permanent residency), yet this promise is difficult to fulfill because the immigration system is restrictive towards employment-based green card applications for so-called low-skilled jobs like farm work.

Gender-specific concerns

While gender-based discrimination in hiring is illegal throughout North America, women have been systematically excluded from both the SAWP and H-2A programs (Brooks 2018). In Canada, in direct contravention of employment discrimination laws, employers have been able to select SAWP workers on the basis of their gender and country of origin (Preibisch and Encalada Grez 2010).⁶ Several studies have estimated that less than 5 percent of SAWP workers are women (Preibisch and Encalada Grez 2010; Cohen and Caxaj 2018). In recent years in the United States, women have accounted for an estimated six percent of H-2A workers while making up 20 percent of the broader farmworker population (CDM 2020:16). Low rates of women's participation in these programs make it more difficult to provide services that support their reproductive health and rights (Cohen and Caxaj 2018).

A highly imbalanced power relationship with employers can amplify women's vulnerability, including in instances of sexual violence (Robillard et al. 2018; Weiler and Cohen 2018). On-farm housing may be accompanied by employer surveillance of off-work activities, including intense control over workers' visitors and sexual behaviour (Cohen and Caxaj 2018; Narushima and Sanchez 2014; Robillard et al. 2018). Researchers in Canada have documented how some employers draw on racialized, gendered stereotypes to separate workers into different living quarters by national groups and create competition between workers from distinct countries (Preibisch 2007). This inter-country competition instills among women SAWP workers the desire to be seen as cleanly, orderly, and "unproblematic," essentially offloading the costs of housing maintenance, sanitation and hygiene to workers themselves (Preibisch and Encalada Grez 2010).

Alongside gender stereotypes, the SAWP and H-2A reinforce heteronormative family relations. Workers are typically separated from their families under both programs. The SAWP attempts to guarantee migrants will return to their home countries by favouring single mothers among women, and men with dependents. Mexican migrants widely believe one must be a married father or single mother to participate in the SAWP, although there is no such formal criterion (Paciulan and Preibisch 2014). On paper, SAWP workers' spouses and children could visit them in Canada. However, this is exceedingly rare and family members may be refused entry if a border

⁶ The United Food and Commercial Workers union used legal complaints against gender discrimination to compel the Mexican government to end discriminatory hiring practices by 2021. Yet the employer practice of requesting workers by name each year reproduces gender inequities because the vast majority of SAWP workers are men (Gabriel and McDonald 2019).

official disbelieves their stated plan to return to their country of origin (largely determined by a visitor's financial status). In the United States, H-2A workers may apply to bring spouses and unmarried children (under 21 years of age) with them while working in the United States, but those family members are not legally permitted to work in the country and must obtain their own H-4 visa (USCIS 2019). In practice, it is extremely uncommon for H-2A workers to bring family members with them, presumably due to the dormitory or barrack style housing conditions that would be unsuitable for children and spouses.

Family separation creates severe emotional hardship for both women and men migrant workers. SAWP mothers face intense social rebuke and self-blame for being unable to provide for their children's emotional needs when they are away fulfilling their families' financial needs (Paciulan and Preibisch 2014). Transnational fathers are also deeply affected by extended separation from their children. This includes the pain of being away from children when they fall ill, and when children do not recognize their fathers upon their return (McLaughlin et al. 2017; Schmalzbauer 2015). Because of cultural gender expectations, migrant fathers may not experience the same opportunity as migrant women to express vulnerability or seek support when enduring the emotional difficulty of family separation.

DISCUSSION AND CONCLUSION

In this paper, we have highlighted how Canada and the U.S. are managing the pressures of neoliberal globalization in the food system through government-authorized guest worker programs. To a significant degree, these programs reflect the two countries' broader policy approach to food and agriculture, which favours highly capitalized, export-oriented agribusiness. Developing an analytical framework that builds on Hennebry and Preibisch's (2012) compilation of international best practices to promote human rights in migrant worker programs, we focused on five indicators of worker well-being in the SAWP and H-2A programs: 1) wages, deductions and benefits; 2) access to healthcare and worker's compensation; 3) enforcement of employment and housing standards; 4) security of immigration status; and 5) gender-specific concerns. Our paper synthesizes differences in key features of the policies guiding the SAWP and H-2A programs as well as the available literature on the outcomes of these policies and practices for workers. We find that, despite some structural differences, in both cases program design leads to similar precarious outcomes for temporary agricultural workers.

Our paper provides evidence of several overarching themes in how the H-2A and SAWP function by legally constructing groups of racialized workers as unfree, precarious and deportable. First, it is very difficult for both SAWP and H-2A workers to change employers while in the host country. Second, access to legal permanent residence is so scarce that it is not a feasible option for most workers but may incentivize compliance with arduous work conditions. Third, these programs institutionalize family separation by preferentially recruiting workers with families and single mothers unlikely to permanently abandon their children. These findings support extensive empirical research demonstrates how the programs undermine multiple dimensions of workers' access to rights and well-being (Garcia 2014; Guernsey 2007; Guerra 2004; McLaughlin et al. 2014).

Another contribution of our paper has been to trace how agricultural guest worker programs have evolved through food regime history, underscoring some of the contradictions such programs

present with respect to the third food regime or transition period. Governments past and present have actively facilitated employer access to racialized workers from the Global South under conditions that suppress workers' bargaining power and freedom of mobility (e.g. Reid-Musson 2018). On the one hand, the cultivation of this 'just-in-time' labour supply aligns with practices of deregulation, privatization, and transnational commodity circuits that are emblematic of the contemporary food regime. On the other hand, such programs also echo the second food regime's emphasis on government intervention to stabilize domestic agri-food capital. This latter process of appeasing domestic farm interests through guest worker programs not only benefits large corporate enterprises, but also more economically peripheral farm business operators. Therefore, we conclude that the contemporary moment in agricultural guestworker program history cannot resolve the debate over whether the current conjuncture represents a transition toward, or existence of a third food regime. Nonetheless, we have offered evidence of intensification of longstanding forms of precarity that increasingly undergird the substantiation of the third regime. Proposals for future evolutions of the programs in both countries aim to dramatically expand and further privatize the programs, which signals a further entrenchment of key features of the third food regime.

Recent policy developments in the H-2A and SAWP point toward the likely future trajectory of more employer-friendly migrant farmworker programs under the third food regime. In July 2019, the U.S. Department of Labour under the Trump administration proposed a new rule to dramatically alter the H-2A program, arguably making it more streamlined and easier for employers to use, with an express intention of expanding the program among U.S. agricultural employers (DOLETA 2019). By late 2019, the so-called Farm Workforce Modernization Act passed through the U.S. House of Representatives with bipartisan approval. If this bill becomes law, it will cap wage increases in the H-2A program and make the program available to year-round employers, thus widely expanding the number of growers who can use the program. Meanwhile, Canada has continued to expand non-SAWP streams of the Temporary Foreign Worker Program that allow employers to hire farmworkers for longer periods, from any country in the world, and without a bilateral governmental agreement. Potentially supportive initiatives introduced in 2019 remain inaccessible to many workers, such as a pilot pathway to permanent residency for year-round migrant agricultural workers, along with the option for workers experiencing abuse to apply for an open work permit. They also fail to address the structural conditions of migrant agricultural worker programs that enable both everyday indignities and extreme forms of abuse (Weiler & McLaughlin 2019).

Based on our review of policies and outcomes, we concur with other scholars who have argued against the widespread international adoption of Canada's SAWP as a model (Hennebry and Preibisch 2012). Extensive data on outcomes for workers participating in the SAWP paint a picture of a program that may appear exemplary on paper, but that significantly falls short of an international model of best practices in human rights to be emulated in the United States or elsewhere. Calls to improve migrant working conditions simply by increasing government oversight of guest worker programs neglect the long history of state involvement in creating the conditions for worker vulnerability in the first place. It is the state that constructs people who move across borders as undocumented or documented, and free or unfree (see Smith 2015). In the case of both undocumented and unfree farmworkers, their bargaining power is undermined in favour of

stabilizing agri-food capital accumulation. A food system that foregrounds self-determination and dignity for farmworkers and their families must look for inspiration beyond unfree labour migration.

Our analysis is relevant to the numerous other countries that, faced with similar contradictions of the capitalist agri-food system, have begun to hire racialized workers from the Global South. Further research on the outcomes of these programs is crucial to support modes of employment and mobility that prioritize migrants' rights, dignity and self-determination. Indeed, a secondary finding from our research is that relatively little is known about the conditions facing H-2A workers, which is troubling from a policy perspective given the common assumption that the U.S. guest worker program offers an overall improvement as compared to undocumented workers (e.g. Griffith, 2002). For the H-2A program in particular, future researchers should comprehensively assess the economic benefits and trade-offs of participating in the H-2A, with attention to workers,' family members' and sending communities' own criteria for international development and quality of life. A research gap also exists in understanding gendered dimensions of the H-2A program, along with the effect of prolonged familial situation on family relationships and child development. A major area for future research in both the SAWP and H-2A programs is to identify how labour and social movements are adapting struggles for migrant justice and decent work amid proliferating migrant sending countries and varied types of precarious immigration status.

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