

# **Mapping and explaining precarious work: Temporary migrant workers in cafes and restaurants**

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International Working Party on Labour Market Segmentation,  
Barcelona, 6-8 July 2016

# Current debates

- Debate in many countries about poor treatment of migrant workers at workplaces. = precarious work or indeed 'hyper-precarious work' (Lewis et al., 2015).
- Recent public controversies in Australia refer to convenience stores (7-11) and food processing/ farms.
- The description is often rich, but the explanation is rudimentary. We need to take up the challenge of explanation, especially if we hope to produce robust policy responses.
- Causal accounts are generally framed in terms of the special *vulnerability* of migrant workers. Vulnerability is seen as exposing migrant workers to a risk of poor treatment (at the hands of a small minority of rogue employers).
- From both a theoretical and an empirical point of view, this line of explanation appears weak and partial:
  - The supply side of the labour market is over-emphasised, at the expense of the demand side (employer practices, product market conditions, labour regulation and labour market conditions).
  - The supply side is itself defined in a narrow way, with not enough attention to whether poor wages and conditions are shared with local workers and not enough attention to worker agency.

# A case study in food services

- The presentation today draws from an ongoing case-study of *temporary migrant workers* in ‘*food services*’, i.e. cafes, restaurants and takeaway food services (ANZSIC 451), in Melbourne (AUSTRALIA).
- Food services is an under-researched but important industry. It is a pivotal site for a case-study, both because it is often cited in reports of poor wages and conditions and because it is a leading sector for employment of the three main groups of temporary migrant workers.
- (So far) the case study entails: research on secondary literature, background statistics, legal documents, official reports, interviews with six key informants and five employers +
- semi-structured interviews that examine the work experiences of 46 workers:
  1. Working Holiday Makers (19),
  2. international students (21),
  3. temporary skilled workers (4), and
  4. local students (2...).
- The presentation today:
  - a) presents preliminary findings concerning the extent and pattern of poor wages and working conditions (*precarious work*) in the sector; and
  - b) explores causes.

# Australia: Temporary Migrant Workers

- In Australia concern centres on the large and growing group of temporary migrant workers (TMWs) = “persons who live in a host country without a right of long-term residence and who undertake paid work during their stay”.
- Most are documented workers, differentiated into three main groups:
  - **Working Holiday Makers** (*de facto*): 462 and 417 visas, one year, with possible extension to two years (if 88 days work completed in regional area). Few limits on work rights, except 6 month maximum with single employer. NB: new tax rules.
  - **International Students** (*de facto*): most are enrolled in higher education, Vocational Education and Training (VET), and English-language (ELICOS) courses. Visa length varies. Work rights for most are 40 hours/fortnight during term times; otherwise unlimited.
  - **Temporary skilled** (*dedicated*): 457 visa, up to four years, but can be renewed. The worker is more-or-less tied to the sponsoring employer, who must be approved and must agree to meet certain conditions (minimum salary, equivalent treatment to local workers). The work is full-time in a job that is regarded as skilled.
- Do these groups have ‘precarious migrant status’ (Fudge 2012)? Visa duration limits, restricted access to social benefits, some restrictions on work, temporary skilled workers are more-or-less tied to the employer (though with some opportunity to change jobs). But there are open pathways to permanent residency (PR).

# **I. EXTENT AND PATTERN OF POOR WAGES AND WORKING CONDITIONS (PRECARIOUS WORK)**

# Precarious work

- Background data indicate that most waged work in the sector is low-skilled and low paid. Part-time schedules are dominant. About half of the total workforce are casual. Turnover of workers is high...
- The worker interviews provide detail on 48 recent or current jobs in food services:
  - *Type of job*: mainly less-skilled jobs as kitchenhand, waiting staff, barista, cook + some chefs, managers (temporary skilled workers)...
  - *Type of employment*: almost all are casual jobs, i.e. jobs with an entitlement to an hourly wage but not much more. Many are **undeclared** casual jobs, i.e. without a pay slip and without tax deductions (except temporary skilled workers, who are generally on formal fixed-term contracts).
  - *Hours*: mainly short part-time hours, on regular or irregular schedules (except for temporary skilled workers, who work long hours full-time, on regular schedules).
  - *Employment security*: low security, high turnover (except for temporary skilled workers).
  - *Wage rate and wages*: low rate, low aggregate wages, with extensive underpayments, as a result of flat underaward pay rates, and occasional non-payments - free trials and training periods, refusal to pay wages owed, etc. (except temporary skilled workers, who have higher aggregate wages, but with unpaid overtime and other underpayments).
  - *Other issues*: bullying, health and safety risks, discrimination...
- Precarious work is clearly widespread, including extensive employer non-compliance with labour regulation in the form of underpayments. There is, however, variation in the extent of precariousness, which suggests certain patterns...

# Patterns (1)

- *Comparison according to visa status:*
- Temporary skilled workers appear distinct from other groups. Abuse seems less widespread and in a different form (though a minority do experience severe abuse). This suggests that *protective regulation for temporary skilled workers* + perhaps occupation/skill has an influence on poor treatment.
- On the other hand, the work experiences of WHMs, international students and local students are broadly comparable. Minor differences amongst these three groups can be linked to a differing distribution across five or so *industry segments*:
  - WHMs and international students tend to be excluded from the high-end restaurants and specialty cafes, and they have only a minor presence in fast food; instead they are concentrated in mainstream cafes and restaurants and in 'ethnic' cafes and restaurants.
  - Local students can be found in all segments, though much less often in 'ethnic' cafes and restaurants. Local students under 21 are dominant in fast food franchises.

## Patterns (2)

- *Comparison according to sex/ gender:* There is a distinct gender division of labour in the industry (front or back-of-house), but the quality of wages and working conditions does not vary much.
- *Comparison according to nationality/ ethnicity:* Ethnicity can be significant in recruitment and workplace relations. The worst wages and conditions are in the 'ethnic' cafes and restaurants, where the workforce tends to be mainly made up of students or WHMs from the same ethnic background as the owner.
- *Historical comparison: ...*
- *Comparison according to industry:* There are distinct industry patterns, differentiated in terms of the extent of reliance on temporary migrant labour, and the extent and specific forms of exploitation of this labour. Food services is a 'hazardous' industry for temporary migrant workers.

# Summary

- In sum: poor wages and conditions in food services are widespread amongst workers.
- Temporary skilled workers appear to be a distinct case.
- International students and WHMs share similar experiences in the sector with local students (and local workers). However, international students and WHMs are likely in aggregate to suffer worse treatment than local students (and local workers), largely in association with their different distribution across industry segments.

## **II. EXPLAINING THE EXTENT AND PATTERNS OF PRECARIOUSNESS**

# Employer practices

- There are good reasons for starting with demand-side factors, in particular employer practices:
  - a) empirical reasons. The existence of distinct industry patterns point to the importance of demand-side factors. Similarly, employer practices are freely identified as the decisive factor by the worker interviewees.
  - b) theoretical reasons. Segmented labour market theory.
- \*
- It is not a case of a few 'rogue' employers. Instead poor treatment is a majority practice, which spills over beyond temporary migrant workers to embrace local workers and appears firmly embedded in the sector.
- This suggests that the agency of employers needs to be located within a structural context.

# Contextual influences (1)

- *Competitive constraints* are high. This varies somewhat according to industry segment, but generally product markets in food services are highly competitive, especially in urban areas.
- In spite of competitive constraints, employers still have room for manoeuvre in their employment practices.
- *Employer capacities* are varied. There are some large firms in fast food, and several franchised operations in cafes as well as fast food, but most food service firms are small. Turnover of firms is high. Barriers to entry are low, and survival rates are also low.
- *Traditional business strategies* are oriented to cost-minimisation. This can include tax avoidance in the case of small firms. It also includes attention to labour costs, which are a major component of total costs for all firms.
- *Employer norms* can be influential. One issue is the extent to which employment regulation (decent work) is seen as burdensome and illegitimate. There is a tradition of ignoring award regulation amongst small firms. The main employer association (R&CA) voices vigorous opposition to labour regulation.

## Contextual influences (2)

- A permissive regulatory environment is important. Two aspects of employment regulation are crucial:
  - a) Casual status* allows poor treatment in several respects, e.g. with employment and working-time insecurity. In addition, it can operate as a cloak for additional illegal practices (underpayments and non-payments). Casual work can be seen as a 'regulatory gap', which provides employers with an 'exit option' from standard rights and entitlements (Gough 2013).
  - b) Ineffective enforcement* of existing labour law (mainly award regulation) leaves room for employer non-compliance. Trade unions have little presence in the sector. The official Fair Work Ombudsman (FWO) is not confined to individual complaints and runs targeted industry campaigns to discourage employer non-compliance. However, campaigns in food services seem to have had little impact.

## Contextual influences (3)

- A readily available supply of (suitable) labour is also important.
- This is largely a question of the number of (suitable) workers, which in turn leads back to labour market conditions.
- But qualitative characteristics of the labour supply are also relevant. For example, working-time preferences of potential employees such as students (both local and international) for part-time schedules, will shape labour market processes in the sector.
- Qualitative characteristics also include *vulnerability*. In the case of TMWs vulnerability is usually discussed in terms of:
  - a) personal attributes; and
  - b) precarious migrant status (impact of immigration rules).

# Vulnerability (personal attributes)

- Personal attributes that produce vulnerability are indeed present and can influence employer practices.
- Personal attributes include youth, lack of workplace experience, and lack of knowledge of labour regulation and worker rights\*. These attributes are shared by TMWs and local students. In addition, TMWs tend to lack support networks that might help in claiming rights, and some lack confidence in English.
- Financial pressure is varied (depending on debt, this could be high for many temporary skilled workers and perhaps for some international students).
- Ethnicity appears to be the personal attribute that is implicated most strongly in poor treatment (via the case of 'ethnic' cafes and restaurants).

# Vulnerability (precarious migrant status)

- Precarious migrant status is strongest for **temporary skilled workers**, who are highly dependent on their employer. This dependence may be amplified in cases of high debt or when the worker is seeking sponsorship for PR. But the impact of dependence on wages and working conditions is generally moderated by the effect of other protective regulations and by the implications of skill (in the case of labour markets with genuine skill shortages).
- The six month maximum for **WHMs** has a slight impact in disadvantaging workers. The 88-day rule has a much larger impact, but primarily in fostering vulnerability within employment in rural and regional areas. (The new tax rules are likely to encourage acquiescence to poor treatment).
- The fortnightly work limit (40 hours) for **international students** may have an impact in cases where the student is enrolled in a bogus course or is under severe financial pressure. Employers can allow or encourage the student to breach the limit and threaten to report them to the authorities. But the limit has little impact on the majority of international students.

# From vulnerability to agency (1)

- In short, vulnerability does apply in some respects. But vulnerability is of limited use in explaining employer practices in food services. Vulnerability is risk. Under what circumstances is the risk realised?
- *Agency* offers a better angle for situating workers within an explanatory framework oriented to employer practices. How do TMWs exercise agency (or non-agency) in the shaping of wages and working conditions?
- This is sometimes discussed in terms of *complicity* in underpayment, e.g. as a result of financial pressure and competition with other workers.
- But worker interviewees pointed out that they were price takers, generally involved in laborious job search processes, before securing a job offer. They usually accepted without negotiation, and sometimes even without any enquiry, the wage level imposed by employers who offered them a job.
- Though complicity is hard to find, *acquiescence* to poor wages and conditions is more common. This is partly to do with coping (Datta et al., 2007) but also partly to do with other factors...

## From vulnerability to agency (2)

- Acquiescence can be described as *a reluctance to make efforts to change wages and conditions* or perhaps as *a reluctance to complain*. Few worker interviewees complained to their employer, and only one took an official complaint to the FWO. No-one mentioned a union.
- Acquiescence can be connected to a priority of exit (or silence?) over voice.
- Interviewees presented their reluctance to complain mainly in terms of:
  - a) a fear of consequences (loss of casual shifts, loss of the job)
  - b) a feeling that complaints were futile.
- But also:
  - c) the view that poor treatment in some respects, e.g. wages, was counterbalanced by good treatment in other respects, such as good social relations with the boss.
  - d) the double frame of reference of migrants (Piore 1979), which compares wages and conditions in the host country with wages and conditions in the home country.
  - e) the judgment that the job was just incidental and temporary – not all that important in the broader perspective (a view shared with local students). For WHMs and international students in particular, the job was not essential for career development and it was useful but not necessarily crucial for living costs.
- Agency extends beyond the workplace...

# Conclusion

- The case study applies to firms in (one part of) one industry sector.
- Nevertheless, it facilitates reflection on causes of poor treatment of TMWs.
- It indicates that the dominant explanation, couched in terms of migrant worker vulnerability, is partial and weak. The key zone to explore is that of employer practices. Personal attributes of workers have relevance. But immigration regulation is of limited negative significance in this sector. Labour regulation is more important as a causal factor.

# References

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