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In the shadows of legality: analyzing the interplay of precarious legality, policy frameworks, and migration management

Precarious legality shares properties of legality and illegality but has been enforced by immigration regimes that benefit from more migrants being in conditional and uncertain states. Mediators or brokers facilitate and barricade legal regularization and undocumented entries, eventually systematically co-creating precarity. Migrants are entering an unfair bargain because of the asymmetry in information. This paper will explore how immigration regimes, employers, brokers, and countries try to expand and enforce precarity through policymaking and controlling migration and finally how working conditions and the lives of migrants can be improved.

Scholars define precarious and semi-legality as a state with limitations to migrants' social and economic mobility as they cannot freely change jobs and employers as it tends to be tied to their legal status. The change in Mexico's immigration law in 2011 is a good example of precarity. Prior to 2011, immigration laws were less strict. Migrants could use other documents instead of passports, which many immigrants did not have. Cristina, an interviewee, says that she could simply give immigration authorities her identity card and they would easily give her an FM2 but after 2011, passports became a requirement and many migrants like her could not gain access (Basok & Wiesner, 2018). Since not requiring a passport was not by law but by authority's grace, such convenience could be overturned at any time, especially when political shifts were to occur. Just as liminal legality, precarious legality also provides a false sense of security and protection for many immigrants and therefore the security can be lost without their

discretion. Research and studies on regularization and amnesty programs put migrants in an imbalanced power struggle where only the state can identify them and have authority over them. They also require a thorough understanding of the regime, networks, loopholes, and sometimes the use of illegal and semi-legal actions.

Furthermore, migrants had no institutions to educate themselves about immigration policies. Without information, they either blindly trusted the protection provided by immigration regimes or distrusted it as a whole so instead reached out for semi-legal or borderline illegal practices. Such practices involved brokers as mediators. Mediators could be both formal or informal and legal or illegal. Not all informal brokers are illegal, but all brokers are connected to one another, forming a network of brokers. In that network, they not only share information with each other, but are deeply intertwined with a network of employers and recruitment systems, who wish to divert responsibility of providing benefits, legal protection, and sponsorship they may need to provide to hire documented migrant workers (Deshingkar, 2018). This connection to a higher power and broader institutions gives them insider information about current and future policies that they may use to their advantage as they have no incentives to provide long-lasting services to their customers—it even benefits them if migrants have to make shorter and more frequent returns for their services, making their business model more profitable. If migrants could access other services or legal regularization methods which were significantly more costly and difficult, brokerage services could never work, but as they have already worked with semi-legal brokers, this leaves them associated with illegality, which they have to somehow fix. Fixing this costs more money, and thus makes legal methods more unapproachable.

It is not just brokers that create a hostile system. Precarity also forms a hierarchy of spheres (Kubal, 2013). People in any type of society belong to multiple spheres whether it be

home, family, social, church, or country, but immigration laws have the authority to reorder the existing hierarchy and take the most dominant position. This takes them away from their existing spheres or communities, therefore isolating them from their original groups and taking the social support away and solidifying the precarity. However, this brings up a question about the goals of receiving countries. People may feel repulsion towards migrants, but countries do not feel emotions and should strictly lean towards profit and international approval. The goals for migrants are clear. They want higher income and improved living conditions. However, it is worth thinking about what the receiving countries' goals are. First, the more prominent one is obtaining cheaper and more flexible labor. It is the migrants that are punished for working at an illegal status, not the employers. Therefore, employers can go for undocumented migrant workers instead of local or documented workers to avoid complex benefits and labor requirements. But on the country's level, they want controlled migration. With the pressure of international communities and human rights institutions, receiving countries cannot completely avoid migration, not that countries benefit from doing so either. The public may feel that their jobs and opportunities are taken away, but as a country, the benefits weigh out the costs as the protection they provide for migrants cost less than what the migrants provide to the economy. To maintain the balance of the benefits outweighing the costs, they need controlled migration.

Controlling migration is not easy. Inequalities, capitalism, and labor demand fuel migration and change in their patterns every year (Kubal, 2013). Thus, immigration regimes are increasingly using regularization as a method to control migration, especially in the global south. They seem more inclusive compared to wealthy countries in the global north as it is relatively more attainable. However, we will see otherwise with the example of Thailand and Taiwan. Thailand has somewhat permeable international borders, making undocumented crossings easier.

In 2014, there was a military coup with a junta that made the legislation fairly anti-immigrant, so they wanted to control or reduce unauthorized migration (Bylander, 2022). They set quotas and made laws stricter and came up with MOU—memorandums of understanding, which was very costly, unpredictable, and provided low mobility as it forced documented workers to work with the same employer for the two years their visa lasted—but none of this worked in reducing migration, both legal and illegal. So then they came up with pink cards. Pink cards were successful in reducing illegal migrant workers because the government made the employers take responsibility for hiring unauthorized workers, this cut down the demand for cheap unauthorized labor as it was no longer cheap, eventually forcing migrants to either get authorized or be unemployed.

Similarly, according to Franck and Vigneswaran (2021, as cited in Bylander, 2022) in Taiwan, illegality oddly provides more freedom and opportunity for migrants, allowing them to browse for the most adequate job, and therefore providing better living and working conditions with less outside intervention. Many other Southeast Asian countries are like this too. Sometimes, obtaining legal status limits the migrant's social and economic mobility as they become documented, but only provides minimal benefits. So legality sometimes becomes more of a commodity that can go through a classic cost-benefit analysis by the migrant workers. It is only rationale that migrants choose to remain undocumented when illegality is not punished as severely, the benefits of legal regularization are relatively small, and the transition from illegal to legal is nonlinear and unnatural (Basok & Weisner, 2018). Migrant workers and employers are both able to compare the good and bad of obtaining legal statuses. On the employer's side, they can avoid taxes and pay lower wages and social insurance. On the worker's side, undocumented,

they may still get informal protection, but they do not need to pay income tax (Straubhaar, 1999 as cited in Schenk, 2013).

Another method countries commonly used to control migration is the quota system. Russia aimed to manually control migration through its quotas. Quotas are typically set so that labor market demand is filled without excess or deficit. Also, there is room for political and administrative decisions or intervention if the immigration authorities do not have bureaucratic insulation (Schenk, 2013). Usually, low immigration quotas are politically popular, and this was the same in Russia. In 2019, the immigration quota for Russia was 4 million. After an immediate public backlash that the quota was too high, Putin on the radio spoke that he agreed that the quota was too high, and later cut the quota by half (Schenk, 2013). This procedure was not hindered by bureaucracy at all. The conversation between the public and Putin was immediate. Discussing if his actions were good or bad is off the point. What matters more is that this was a display of power. It was either to assert power over the Federal Migration Service or to appear politically heroic by responding to public opinion. This gets even more political thinking about who benefits from this decision. It is not necessarily the masses as migrant workers tend to take different kinds of jobs than native workers, but rather the political and economic elites. It is better for them because they can get more informal or undocumented migrant workers into the workforce. The statistics show that the quota was 6 million in 2007, half of that in 2008, and then another half by 2011. The corresponding proportion of illegal migrants out of total migrants is 71%, 60%, and then 83% slightly dropping and surging over its original levels (Schenk, 2013). This indicates that the number of illegal migrant workers is a lagging indicator and that Russia's quota system did not work at all in the long run. So informal labor increases with smaller quotas.

When the quota does not meet the market labor need, informal labor naturally goes up as a response.

Next is about how we can improve the situation of migrant workers. Higher standards of living and labor conditions are costly, which is not in the best interest of the receiving countries, but rather the sending countries and this complicates the situation because receiving and sending countries tend to be labor market competitors (Hamada, 2012). Not only do the businesses in receiving countries find improving migrant workers' rights inefficient, but the sending countries fear losing competitiveness that comes from cheaper wages. Furthermore, as both skilled and unskilled workers leave the sending country for better economic opportunities, the sending country suffers from a brain drain, worsening their economic future and therefore the gap between sending and receiving country widens, which is then followed by more conflicts and misalignments in global governing policies (Hamada, 2012). However, it is important to note that sending countries receive remittances from migrant workers. In fact, the economic situations of most sending countries have improved greatly as immigration increased, and even have some dependence on immigration. According to the International Monetary Fund, remittances to low-income countries exceeded \$351 billion, which makes up nearly 6 percent of their GDP (Ratha). With how much the migrant workers are providing to the sending countries, they should be responsible for providing more protection and support for migrant workers in the receiving countries. The Pakistani government is already doing this. They have founded a company called Overseas Pakistani Foundation, which provides welfare, housing, education, pension funds, and property and employment consultation to their nationals residing in other countries (Overseas Pakistani Foundation, 2011, as cited in Hamada, 2012). Other countries such as Cambodia, Bangladesh, and Singapore are also providing some form of assistance and governance to

migrant workers of their nationality which only makes sense. After all, global governance and human rights institutions can only do so much and cannot monitor labor conditions all over the world. Nonprofits do not have the funding, and global governance falls to second place; governments only jump in to help after helping their own country's situation.

To sum up, in a positive light, sending countries are improving their global governance and protection towards migrants. This is a good direction for them but lacks a comprehensive and cohesive power (Hamada, 2012). After all, the support they provide is sourced from collecting fees from the immigrants themselves. But still, it has improved so much, and to degrees that individuals cannot achieve. In a sense, it is a form of risk management or insurance as it spreads risks over the whole migrant population. Therefore, despite its limitations and shortcomings, this will be the most effective way to improve the works and lives of migrants and still has a lot of potentials to improve with increasing remittances and migrant workers engaging in education and skills development as well.

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