



Migration, immigration controls and the fashioning of precarious workers

■ **Bridget Anderson**

Centre on Migration, Policy and Society, Oxford

ABSTRACT

Immigration controls are often presented by government as a means of ensuring 'British jobs for British workers' and protecting migrants from exploitation. However, in practice they can undermine labour protections. As well as a tap regulating the flow of labour, immigration controls function as a mould, helping to form types of labour with particular relations to employers and the labour market. In particular, the construction of institutionalised uncertainty, together with less formalised migratory processes, help produce 'precarious workers' over whom employers and labour users have particular mechanisms of control.

KEY WORDS

illegal immigration / immigration policy / migrant labour / precarious labour / segmentation

Introduction

Migrants are often portrayed as working in sectors such as hospitality, construction, sex, agriculture and private households at the sharp end of de-regulated labour markets in jobs characterised by low wages, insecurity and obfuscated employment relations (May et al., 2006; Shelley, 2007; TUC Commission on Vulnerable Employment, 2008). These kinds of workers provide hyperflexible labour, working under many types of arrangements (not always 'employment'), available when required, undemanding when not. Responses to this depiction range from concern at abuse and exploitation to fears of wage undercutting and displacement, and very often, a combination of the two. Reasons given for migrant concentration in this kind of work vary, and

include discrimination, poor language knowledge, illegality, and lack of recognition of qualifications. Such explanations are given against a backdrop of migrants' different frames of reference. Global inequalities mean that some migrants may be prepared to take on jobs at wages and conditions that many UK nationals will not consider.

At a time of rising unemployment, the presentation of immigration as win-win for migrants, employers and the national economy is harder to sustain than at times of boom. Migrants' organisations and some trades unions express concern about migrant vulnerability in recession, but the call, 'British jobs for British workers', has some resonance. Immigration controls are increasingly presented as a means of prioritising the national labour force in employment at the same time as protecting migrants from exploitation. This article will argue that the UK immigration regime in practice does neither. Immigration controls function both as a tap regulating the flow of labour, but also, it will be argued, as a mould shaping certain forms of labour. Through the creation of categories of entrant, the imposition of employment relations and the construction of institutionalised uncertainty, immigration controls work to form types of labour with particular relations to employers and to labour markets. They combine with less formalised migratory processes to help produce 'precarious workers' that cluster in particular jobs and segments of the labour market. The article will begin with a brief overview of recent developments in UK immigration policy. It will then discuss the migrant as 'precarious worker', and consider first migratory processes, and then immigration controls and how these work together to shape the conditions of migrants in labour markets.

Recent developments in immigration rhetoric and policy

In this article 'migrant' is used to refer to people regardless of length of stay rather than distinguishing between (settled) 'immigrants' and (temporary) 'migrants'. Not only is this distinction, as this article will argue, difficult to maintain in practice, but also the term 'immigrant', and the associated 'illegal immigrant' has come to have increasingly pejorative undertones. 'Immigration controls' (rather than 'migration controls') is official terminology, and 'immigration' is used to refer to the policies and institutions of immigration to the UK. 'Migration' in contrast refers to movement in *and out of* the UK.

There has recently been considerable attention paid to migrants in low waged, often abusive employment (Rogaly, 2008; TUC Commission on Vulnerable Employment, 2008). This concern has been raised outside the 'usual suspects' of migration scholars and activists – many of whom would contend that there is nothing new about the abuse and misuse of migrant labour – and includes the UK Home Office:

Failure to take on the people traffickers ... leaves vulnerable and often desperate people at the mercy of organised criminals. But equally importantly, the fact that many immigrants, at the end of their journey, end up in shadowy jobs in the grey

economy undermines the terms and working conditions of British workers. That's not fair. It chips away at the social contract and fabric of our country. Resentment of it breeds discontent and racism. This is especially keenly felt among those who believe they are not getting the economic or social opportunities they should because others, who have flouted the rules and often the law, seem to be getting on ahead of them. That's not fair either ... That is why the time is now right to tackle the exploitation underpinning illegal immigration. We have to tackle not only the illegal trafficked journeys but also the illegal jobs at the end of them. (John Reid, MP, in Home Office, 2007: 2)

Thus the poor working conditions of migrant labour are attributed to aberrations in the labour market ('grey economy') and in the immigration system ('illegality'). A rare coincidence of interest is indicated between government and those concerned with migrant exploitation and abuse, both determined to stamp out 'trafficking'.

Immigration controls and enforcement in this and other documents are presented both as a means of protecting migrant labour and as protecting British workers and business from illegitimate competition. They are an integral part of 'the biggest shake up of the immigration system in 45 years' (Home Office Press Release 29 February 2008). This restructuring aims to facilitate legitimate travel and trade, ensure security from crime, terrorism and 'attacks on the tax base' and protect the border as well as 'providing reassurance for the general public and business' (Cabinet Office, 2007: 9).

Under the new system, those who wish to enter explicitly to work must come in under one of three tiers: Tier 1 (highly skilled), Tier 2 (skilled) or Tier 3 (low skilled), while students enter under Tier 4, and youth mobility schemes and temporary workers (e.g. au pairs) are covered by Tier 5. Attention has focused on the introduction of the new Australian-style 'points based system', but a key development on which the implementation of the system relies was initiated four years earlier in May 2004 when 10 new countries joined the European Union. These included the 'Accession 8' or A8 states: the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia – plus Cyprus and Malta. Many EU states had introduced so called 'transitional restrictions' temporarily¹ limiting the access of A8 nationals to labour markets; these were not adopted in the UK. A8 nationals could take up employment in the UK without restriction as long as they registered with the Worker Registration Scheme (WRS). The numbers of A8 nationals who came to the UK to work significantly exceeded government expectations, and the initial implementation of the new system was based on the assumption that these workers would make migration from outside the EU for 'low skilled' jobs unnecessary. Therefore Tier 3 began as an 'empty category' and Tier 2 represented the only means of general labour recruitment to the UK from outside the EU.

In May 2004 the government also introduced new legislation on employing 'illegal' migrants. On 29 February 2008 a new civil penalty scheme for employers came into force. Under this scheme an employer faces fines of up to £10,000 per illegal worker. The new criminal offence of *knowingly* employing

an illegal worker, carrying a maximum sentence of two years, was also introduced. The names of employers so convicted or subject to civil penalties are published on a monthly basis.

There is a real divergence between the policy tools offered by this immigration legislation and the terms of public debate as a result of ambiguity around the term 'migrant'. The UK Government tends to use 'migrant' to refer to 'foreign born' thereby including as migrants many UK nationals, both those born abroad and naturalised citizens. This usage is crucial because migrant labour is imagined as being a means of coping with residual demand, yet many 'foreign born' have legally the same rights of access to the labour market as the 'non-foreign born'. 'British jobs for British workers' would more properly be expressed as: British jobs for EU nationals, naturalised UK citizens, UK citizens born abroad, those with indefinite leave to remain and British workers.

Migration and 'precarity'

Migration for work in low waged labour markets as an economic phenomenon and as a social process (and of course the relation between the two) has long been recognised as related to wider global changes (Balibar, 2004; Cohen, 1987; Hardt and Negri, 2000; Sassen, 1988). Low waged migrants such as those participating in guestworker type schemes are increasingly inserted into more general debates about 'precarious workers', particularly in Italy, Spain and France (Fantone, 2007; Papadopoulos et al., 2008).

'The concept of precariousness involves instability, lack of protection, insecurity and social or economic vulnerability ... It is some combination of these factors which identifies precarious jobs, and the boundaries around the concept are inevitably to some extent arbitrary' (Rodgers and Rodgers, 1989: 5).

There have been definitional refinements to counter concerns about the fuzziness and the difficulty of instrumentalising this concept, as well as the variance of forms by sector and by country (Dorre et al., 2006; Vosko et al., 2003; Waite, 2007). There is a danger that the term can become a catchall, meaning everything and nothing at the same time, but unlike 'flexibility' it does capture notions of the flux and uncertainty for certain groups of workers (not only or even principally migrants) that are held by many to be an aspect of the 'new economy' (Herzenberg et al., 2000).

The term 'vulnerability' and 'vulnerable worker' are more often used in the UK (Department of Trade and Industry, 2007; Pollert and Charlwood, 2009) but these terms risk naturalising these conditions and confining those workers so affected to victimhood. Moreover, unlike 'vulnerability' the notion of 'precarity' captures both atypical and insecure employment and has implications beyond employment pointing to an associated weakening of social relations. An interest in precarity has tended to go hand in hand with anxieties about the 'new age of insecurity' as depicted by theorists such as Sennet (1998) and Beck (1992). Chaotic and unpredictable working times can undermine other social

identities. The effect of precarious work is, as it were, the flipside of the celebration of the 'work-life balance', when a person's economic productivity becomes the overwhelming priority. In this sense precarious work results in *précarité*, a more general concern with precariousness of life which prevents people from anticipating the future (Barbier et al., 2002). Thus precarity brings to the fore the temporal as well as spatial aspects of work and migration (Cwerner, 2001). The 'illegal' migrant who, as Ahmad strikingly puts it, is 'living off borrowed time' (2008: 309) has become emblematic of the 'precarious worker'. These temporal aspects are manifest in migratory processes (migration is undertaken by people at specific life stages), and in immigration controls (the time dimensions of immigration programmes are crucial to their workings), as well as the nature and type of employment that migrants find themselves in.

Certain stages of migration, when it is viewed as a dynamic, temporal process, can be seen to mesh with the temporal requirements of certain types of labour markets. Take agency working for example. The UK has the largest penetration of agency workers in the European Union (4.2%) and in January 2008 58 percent of Jobcentre Plus vacancies were for 'other business activities', largely comprised of employment agency vacancies (TUC Commission on Vulnerable Employment, 2008). This finding puts the demand 'British jobs for British workers' in somewhat of a new light, and goes some way to explaining the claim that 52 percent of jobs go to 'new migrants'. Some 25 percent of agency workers in the UK are migrants (Vosko, 2008), often working in specific sectors – one study found that 90 percent of agency workers employed in second stage food processing were migrants (Geddes, 2008).

There are many qualitative studies detailing migrants' situations in what might be termed precarious employment (Ahmad, 2008; May et al., 2006; Pai, 2008), but large scale data are weak (House of Lords, 2008). There has been an acknowledged problem with integrating different scales of analysis, exacerbated by the difficulties of tracing migrant workers in national datasets and the neglect of the social and cultural aspects of the regulation of migration (Samers, 2004). However, Labour Force Survey (LFS) data suggest that recent migrants (defined in October 2008 as those who arrived between October 1997 and October 2007) are more than twice as likely as UK nationals to be in temporary work, and there are good reasons for believing that these data represent a significant underestimation (Jayaweera and Anderson, 2008). Whatever the scepticism about the extent of insecure work (Fevre, 2007), migrants are disproportionately concentrated in it.

Precarity and migratory processes

Piore (1979) argues that the imagined temporariness of new migrants' stay means that at the earlier stages of a migrant's immigration 'career', perhaps when they have lower subjective expectations, less language and more limited understanding of the labour market, they are more likely to view work purely instrumentally.

This perception of temporariness may be because stay is envisaged as being for a limited period, but it may also be because they plan to move to better things, perhaps when their language has improved, and/or when they have better contacts or accommodation possibilities. Work which offers no opportunities for career progression may be perceived more opportunistically when the worker, whether or not they are migrant, considers such work as a temporary position rather than a 'job for life' (Curtis and Lucas, 2001). Jobs may be viewed optimistically, not as the only work that is available, but as an opportunity to get a foot on the ladder, while for migrants there may be non-pecuniary returns from work – most importantly the possibility of learning English. Of course, there may also be more constraining reasons for taking up particular jobs: target earners may for example be concerned to repay debt incurred as a result of the migratory process. In this respect precarious work may be work to which the temporary migrant as 'true economic man' (Piore, 1979: 54) is particularly suited.

The current position of A8 nationals in the UK labour market for example is recognisably 'Piorean'. WRS data indicate that recent A8 arrivals are predominantly employed in low waged work. Of those who had registered between October 2006 and September 2007, 8.8 percent were earning below the adult minimum wage of £5.35 an hour (though these figures do not allow for the accommodation offset, so the figures can serve as a benchmark only), and 64.7 percent were earning between £5.35 and £5.99 an hour (Jayaweera and Anderson, 2008). According to WRS data the 10 occupations that were the largest employers of A8 migrants between July 2004 to March 2009 were all 'low skilled', the largest group being 'process operatives (other factory worker)', which accounted for 28 percent of all registrations (UK Border Agency, 2009: 15). Ninety-six percent were working 'full time', defined as 16 hours or more a week, and including multiple job holding. Over 40 percent of those registered were working in administration, business and management, and the compilers note in a footnote that the 'majority of workers in the administration, business and management sector work for recruitment agencies' (UK Border Agency, 2009: 12).

With insecurity often comes long or short and/or anti-social hours. The expectation of a temporary stay can result in a lack of social attachment and a preparedness to forego social pleasures. Households may be simply temporary accommodation arrangements rather than social units, resulting in a geographic mobility which can in turn mean greater availability for certain types of work. Moreover, as Nicole-Drancourt (1992) argues, those who are young are more likely to tolerate flexibility and unpredictability. In this respect some newly arrived migrants, whatever their age, may share similarities with younger workers. Indeed, young people have a greater propensity to migrate and recently arrived migrants have a much younger age profile compared to the established population. According to the LFS, among those arriving in the UK between 1997 and 2007, around four fifths were between the ages of 16 and 40, compared to two fifths in the entire sample (Jayaweera and Anderson, 2008). Among A8 nationals registered with the Workers Registration Scheme, 43 percent are aged 18–24 years old (UK Border Agency, 2009: 10).

The concentration of migrants (including legal residents who do not yet have permanent stay) in precarious work is in part an aspect of migratory processes, which are of course themselves functions of other kinds of processes including employers' targeted recruitment. However, as people 'develop a more permanent attachment, their time horizon expands and in particular instability of employment is no longer a matter of indifference' (Piore, 1979: 64). Employers can express this development in pseudo-cultural terms, claiming that as migrants stay longer in the UK they become more 'British', more demanding and intractable (MacKenzie and Forde, 2009). Employers who extol the virtues of migrants are thus often specifically thinking of recent arrivals, a nuance that is lost through the use of the definition 'foreign born'. Piore argues this development is related to the construction of and participation in community. However it is also crucially related to legal status. European Union citizens are a Piorean case study, but importantly their temporariness is not state enforceable and their time horizon may indeed expand. In contrast the citizens of many non-EU member states are likely to find the development of 'permanent attachment' obstructed or downright prevented by immigration controls and citizenship legislation.

Denaturalising immigration controls

Immigration controls reinforce some temporal aspects of migratory processes (the initial assumption of temporariness of some groups of migrants and may undermine others including a disposition to settlement). In most liberal democracies length of stay has implications for rights based claims (Carens, 2007; Cole, 2000) and certain groups can progress from temporary to settled status and thence to citizenship. Thus, much of the international debate in recent times has focused on the possibility of reformulations of guestworker schemes as states attempt to enforce temporariness and limit the length of stay of migrants in order to ensure that they do not develop the opportunity for such claims (Ruhs and Martin, 2008). In this way Piore's (1979) explanation of migrants' positions in secondary labour markets can be refined by relating differential labour market positions to the workings of immigration controls.

Immigration controls work with and against migratory processes to produce workers with particular types of relations to employers and to labour markets. The impact of illegality and its relation to 'exploitation' has received considerable attention (see Wright and McKay, 2007 for a review). However, illegality has tended to be theorised as *absence* of status and therefore of access to state protection, rather than as immigration controls 'producing' illegality (De Genova, 2002; Sciortino, 2004). Such insights need to be developed into an examination of how immigration controls produce status more generally, in order to analyse the types of *legality* so produced and the impact of these on migrants' positions in labour markets (Anderson and Ruhs, forthcoming);

Bauder, 2006; Sharma, 2006). Miles (1987) famously argued that the limitations on migrants' entitlement to commodify their labour power that result from state imposed restrictions, as in work permit systems, generate a form of unfree labour. Yet this crucial insight has been overlooked in the plethora of studies on migrant labour and 'new slavery' which have very much focused on illegality (O'Connell Davidson, 2010).

The ways in which immigration controls produce status can roughly be divided into three: the creation of categories of entrant, the influencing of employment relations and the institutionalisation of uncertainty. It is important to note from the outset that state enforcement of these regulations (i.e. not only deportation but also bureaucratic controls over immigration status and access to employment) is relatively well resourced. Compare the projected costs for the enforcement of the National Minimum Wage (NMW) in 2009/10 at £8.8m, with the budget for the UK border force (not including Customs detection activity funding) for the same period at £248.6m (UK Border Agency Business Plan April 2009-March 2012). The budget for in-country immigration control (work permits, points based system, removals, asylum processes) was £884.3m. The NMW had 93 compliance officers in 2009 and the Gangmasters Licensing Authority had 25 inspectors (personal communication GLA policy officer July 2009). The proposed number of UK Border Agency Staff for Local Immigration teams, the bodies tasked with bringing immigration controls to a local level, is 7500.

The creation of categories of entrant

Immigration controls are typically presented as a filter, allowing in the skilled, students, those with family ties, tourists and other legitimate groups like au pairs, while filtering out undesirables including criminals and those without the skills to benefit the economy. In this rather narrow sense the role of immigration controls in constructing a labour force is broadly recognised. It is a given that immigration laws and rules can require particular categories of entrant to have certain skills and experience. This potential is actively harnessed as part of 'Making Migration Work for Britain', and the government argues that the points based system offers greater flexibility for accommodating to new economic circumstances. Thus in February 2009 the then Home Secretary Jacqui Smith 'raised the bar' for Tier 1, increasing the minimum qualification required from a BA to a master's degree, and the minimum salary from £17,000 to £20,000 a year. She stated on BBC television, 'Just as in a growth period we needed migrants to support growth, it is right in a downturn to be more selective about the skill levels of those migrants, and to do more to put British workers first' (cited in Rogers, 2009).

However, one does not have to be a Tier 1 or 2 applicant, or indeed to enter under the PBS at all, in order to participate legally in the labour market. Students studying for degrees for instance may work 20 hours in term time and

40 hours a week in the holidays and working holidaymakers may work for up to 12 months of their allotted two year stay. In 2005, 91,500 work permits were granted, 284,000 students were given leave to enter and there were 56,600 working holidaymakers, but only the first of these 'count' as workers.²

It is not only skills, earnings and experience that shape categories of entrant however, but age, country of origin and in some instances marital status. For example, from November 2008 those who wish to be working holidaymakers and who hold no variety of British nationality must be from Japan, Australia, Canada and New Zealand, aged between 18 and 31 with no dependent children. An inherent bias against younger workers in a system that awards points on the basis of earnings and level of qualifications, both of which are likely to increase with age, is recognised for Tier 1 workers and those aged under 28 are given 20 additional points.

Thus, immigration controls are being used to shape and reinforce those aspects of migratory processes that mean that migrants are likely to have a younger age profile. They may also reinforce what Piore (1979) calls the 'plasticity' of the work force. Just because a visa category effectively permits the applicant to be married or have children does not mean that the spouse or children are eligible to enter the UK, or to have recourse to public funds, including housing, so for many migrants subject to immigration control, household commitments are more limited than for other low waged workers, which can mean some are more likely to work longer days and through weekends (Preibisch and Binford, 2007). They can be imagined as 'free floating labour', as fungible workers. The settlement process whereby migrants become embedded in social and other networks outside of work may further be artificially halted by immigration and citizenship requirements. Under the UK system, only Tiers 1 and 2 can lead to permanent settlement.

The moulding of employment relations

Immigration controls are not a neutral framework facilitating the sorting of individuals by intentions and identities into particular categories, rather they *produce status* and the type of visa obtained often has important and long term effects on where migrants work in the labour market. Take for example the role of A8 nationals in the construction industry. The importance of this group of migrants in this sector needs to be seen within the context of the prevalence of 'false self-employment' in construction. This status has resulted in widespread loss of employment rights and social rights and has serious implications for health and safety in one of the country's most dangerous industries (Harvey, 2001). It has also contributed to serious problems in the provision of training places by employers (Chan et al., forthcoming). However, it is not simply that migrants end up in construction because UK nationals avoid dangerous physical work. In the 1990s so-called Association Agreements allowed nationals from states that were going to join the EU to enter the UK as effectively 'own account self-employed' without the large capital sum required of other

nationalities. Those who entered under such arrangements were not necessarily budding entrepreneurs, rather self-employment was, for certain nationals, particularly men, one of the easiest ways to enter the UK and work legally. It is scarcely surprising that many of those holding self-employment visas gravitated to the construction sector, where this form of self-employment proliferated. Migration scholars such as Massey (1990) have demonstrated that networks of employment and immigration have their own dynamic over time and once networks have become entrenched in particular sectors they may continue to function even if the legislative framework shifts.

Immigration controls are not simply about conditions of entry across the border, but about conditions of stay. Once non-citizens have entered the UK legally they are subject to particular conditions depending on their visa status. Most non-citizens who are admitted to work have their access to the labour market limited in some way. The new system continues the previous principle, that those categorised as economic migrants can only work for a recognised work permit holding employer, now designated a 'sponsor'. Employers or educational institutions, in the case of students, must apply for sponsorship if they want to hire anyone under Tiers 2 or below of the new system. Migrants must have a 'certificate of sponsorship' from their employer. An employer may withdraw the certificate of sponsorship at any time and the migrant will have to leave the UK within 60 days if they have not found another authorised sponsor. The certificate may be withdrawn immediately if the Home Office believes it was issued improperly.

Thus, many workers subject to immigration control are effectively on fixed term contracts that may be terminated at the employer's discretion, and the termination of these contracts has implications beyond the workplace. It produces a temporariness that, unlike the temporariness of A8 nationals for instance, can be enforced by the state through removal from UK territory. To this extent, migrants on work related visas are dependent on the goodwill of their employer for their right to remain in the UK. In this respect legal migrants subject to immigration control are also 'precarious workers'. The new system has not yet been tested, but under the old system permits could be given for up to five years after which a non-citizen may apply for settlement, but they were usually given for less and immigration instructions favoured shorter periods. In 2005, out of 91,500 work permits, 40,300 were given for fewer than 12 months.³ Renewals must be supported by the employer, and in the same year there were 68,980 applications for work permit extensions (Home Office, 2005). It is worth observing that if the worker's salary had 'significantly' increased since the initial application, i.e. above annual increments, the extension was not automatically granted as it was argued that UK/EU nationals may be more interested in applying for the job. The combination of temporariness and labour market immobility, both requirements under the work permit system and which are being carried over into sponsorship arrangements, reinforce migrants' dependence on employers. The citizenship legislation passed by Parliament in 2009 extended this period of dependence to between six and 10 years, by requiring

that migrants demonstrate continuous employment for their entire period of post-work permit 'probationary citizenship'.

For migrants on work permits then, not only is their employment mobility limited by the state, but employers are handed additional means of control. Should they have any reason to be displeased with the worker's performance, or indeed even have a personal grudge against them, not only the worker's job, but their residency, can be put in jeopardy. Thus, compliant workers can feel unable to challenge employers and in some instances employers have taken advantage of immigration status as a means of exercising control over work permit holders, including forbidding union membership. No claims can be made for the extent of such practices, but those on work permits may be conscious enough of this possibility to police themselves. In this way, workers who are subject to immigration controls may be more desirable to employers than those migrants and citizens who are not (Rosenhek, 2003).

The work permit/sponsorship system means that employers have powers of labour retention without jeopardising their ability to fire, though hiring may indeed be more cumbersome. When asked why they employ migrants, employers have been found to refer frequently to *retention* as an advantage of migrant labour (Dench et al., 2006; Waldinger and Lichter, 2003). Other perceived advantages, often racialised by employers, such as reliability, honesty and work ethic must also be understood partly in terms of the level of dependence work permit holders have on their employers (Gordon and Lenhardt, 2008). Moreover, while labour mobility tends to be thought of as a particular problem for the employers who require 'skilled' work, government restrictions on 'low skilled' workers have received particular criticism because of their impact on retention. The National Farmers Union, for example, has been vocal in its opposition to the shrinking of the Seasonal Agricultural Workers Scheme (SAWS). Under this arrangement visa holders can change employer, but only to another registered farm. Agricultural employers themselves acknowledge that there are practical difficulties with finding new employers in rural areas and often described SAWS workers as 'tied' by their permit.

Migrant workers are an attractive source of labour to UK employers because of their work ethos, efficiency and dependency and because, particularly in the case of the SAWS, they provide a source of labour that is guaranteed to remain on farm during the crucial harvest period. (House of Lords, 2008: 100)

Migrants who are not SAWS visa holders and citizens in contrast can 'easily move between jobs' or 'simply move on to other work' (Anderson et al., 2006).

However, while the work permit system may have advantages to employers in terms of retention, it is not particularly flexible. It requires employers to submit documentation within tight deadlines, to anticipate demand, and to take on employment responsibilities, in some instances even accommodation, for workers. They risk tying themselves into obligations that are not necessarily profitable. For highly flexible workers employers must avoid being tied into sponsorship and other obligations, and turn to labour already in the UK. These

workers may or may not be UK nationals, but if they are not, they are rarely work permit holders and are not necessarily entrants on schemes. It is here that the imagined distinction between ‘migrant worker’ and migration for other purposes (King, 2002) starts to break down, held together only by the administrative rules and practices that claim to describe rather than form them. There are groups that may work and indeed are not restricted to named employers or to sectors, but are not principally constructed as workers, including working holidaymakers and students. In these instances while immigration status does not ostensibly restrict them to particular sectors, the restrictions on time are nevertheless important. For example, they want to work legally they may only work part time or temporarily.

The production of institutionalised uncertainty

Immigration law and practice are key to the creation of legality and its obverse. Borders are commonly perceived as keeping ‘illegal immigrants’ out, but a migrant is not ‘illegal’ until they have crossed the border or have attempted to do so, and very often not until well after that. Illegality is ‘produced’ by state laws and policies, for with selection and rules come exceptions, rule breakers and grey areas (Black, 2003; Samers, 2004). The construction of a category of people who are residing illegally is in part an inevitable function of any form of immigration control and nation state organised citizenship. The contradiction is therefore that in a bureaucratic and inevitably complex system of control, the state may perversely lose control over migration by creating greater numbers of overstayers, people working in breach of conditions, and illegal entrants.

Those workers who are ‘illegal’ are generally recognised to be highly vulnerable to exploitation and abuse as employers can use their lack of legal status to threaten and control them, and in practice they may be grossly over-dependent on their employer. The contradiction between state condemnation of such ‘abuse of vulnerability’ threats of reporting to the authorities which in some cases may amount to the heinous crime of ‘trafficking’, and state enforcement of employers’ threat, has not been challenged. Indeed, the figure of the abusive employer throws a shadow over the role of the state in constructing vulnerability. For example, while an abusive employer may deny basic employment rights to migrants who are working illegally, this denial of rights is legitimated through the doctrine of illegality which holds that a person should not profit from their wrongdoing (Ryan, 2005). Thus, even if they have an employment contract, it cannot be enforced, and neither can any statutory rights, nor indeed statutory protection against discrimination. Precarious work for those working illegally is not simply at the whim of individual employers, but structurally produced by the interaction of employment and immigration legislation.

As the government makes the lives of those working illegally ‘ever more uncomfortable and constrained’ so the predisposition to precarity increases. Rather than the pantomime ‘evil employer’, it is the institutionalised uncertainty,

what De Genova (2002) describes as ‘deportability’, again enforced by the state, that is the more mundane reality for many of those working illegally. That is, the problem for them is not simply the risk of employer abuse, but enforced temporariness and the manner in which fear of deportation can lead to a pressure to maximise the ‘now’, whatever the current opportunities might be (Ahmad, 2008). The extent to which deportability constrains is in part to do with individual psychology and circumstances, but state policy is deeply implicated. The average cost of deportation is estimated by the National Audit Office at £11,000 per person, making the cost of deporting the estimated number of overstayers £5.5 billion. Deportations must be targeted, and over the years different figures have been promoted as suitable subjects for targeting: bogus marriages, foreign prisoners, failed asylum seekers etc. Overstayers who are young, with high levels of education and from countries with a high GDP are imagined as unlikely to cause the kind of ‘harm’ that those from poorer countries who might go on to ‘make an unfounded asylum claim’ (Home Office, 2007) might. The targeting of enforcement more generally is evident in available data on employers who have been served with civil penalties for employing people who are subject to immigration control and who do not have the right to that employment. Caution must be exercised in making assumptions, but it is notable that to take a month selected at random, of the 126 employers listed in October 2008, the names of 112 of these suggest they might be first or second generation non-EU migrants.

Conclusions

The interaction between labour markets and immigration has been considerably researched and theorised, but research has tended to focus on ‘illegality’ on the one hand, and migratory processes on the other. There has tended to be a ‘now you see it, now you don’t’ approach to immigration controls. Controls come to the fore in discussions around ‘trafficking’ and illegality as a key explanatory variable for understanding migrants’ vulnerability to poor employment. However this approach means the problem then becomes bad employers, and the role of the state in illegalising workers is passed over. This article has argued for the importance of paying close attention to the relation between labour markets and immigration controls which not only legalise some groups, but legalise others in very particular ways. In practice, as well as a tap regulating the flow of workers to a state, immigration controls might be more usefully conceived as a mould *constructing* certain types of workers through selection of legal entrants, the requiring and enforcing of certain types of employment relations, and the creation of institutionalised uncertainty.

Immigration controls effectively subject workers to a high degree of regulation, giving employers mechanisms of control that they do not have over citizens. This means that for certain often very specific occupations, immigration controls may not function as a means of protecting jobs for citizens but effectively

create a group of workers that are *more desirable* as employees through enforcing atypical employment relations such as fixed term contracts or self-employment and direct dependence on employers for legal status. It is in this context that employers praise migrants' 'reliability' and call for an increase in numbers even at times of high unemployment. Thus, while 'illegality' is acknowledged as producing vulnerability to exploitation, this article argues that this is not, as commonly imagined, because of *absence* of status, but is an instance of one of the many ways in which immigration controls and migratory processes produce certain types of labour. In the current conjuncture they serve to produce, among other groups, precarious workers. It is not only the smuggled 'illegal' workers who find that 'the meaning of their existence ... inheres exclusively in other times and places' (Ahmad, 2008: 315), but often 'legal' workers too.

Of course, not all migrants are subject to immigration control. Migratory processes help provide a source of labour (often over-qualified) that is prepared to tolerate low waged and insecure work, at least for a short time. Again, for certain jobs, this temporary but potentially intense commitment may be precisely what is required. Thus A8 nationals often demonstrate the expectation of 'non-enforced' temporariness: workers who, for a variety of reasons, are imagined as likely to be temporary, but without the possibility of this temporariness being enforced through immigration controls. This raises the question of what happens when the immediate apparent coincidence of interests between employer and worker dissolves (MacKenzie and Forde, 2009). Appreciation of the impact of migratory processes should not result in an underestimation of the importance of discrimination, lack of recognition of qualifications and education, and other 'demand' side factors that can lead to many people being unable to move out of low waged, low status and insecure jobs many years after they have obtained British citizenship (May et al., 2006).

Some protections for precarious or vulnerable workers are unavailable in law to migrants. This is most obviously the case for those who are working in breach of immigration controls, but there are also instances when those who are working legally are nevertheless unprotected. For example, the current equalities legislation specifically exempts those who are subject to immigration controls from local authorities' requirement to have due regard to socio-economic inequalities. If available, protections are typically difficult to access in practice because of the dependence on employers which is actively enhanced by immigration controls. Immigration controls are not a means of protecting migrants' employment rights, but rather produce uncertainty and dependence on the employer, not just for work, but often for legal or at least continuing residence in the UK. The extension of employment protection irrespective of immigration enforcement matters would be an important step in protecting the rights of migrant workers and avoiding potential undermining of employment standards and rights. At the same time the situation of low waged precarious migrant workers must be analysed within the context, not simply of abusive employers, but of the labour markets within which they work. Concerns about

the impact of immigration on ‘British workers’ may ultimately be a conjuring trick, a masterpiece of public misdirection, when what merits attention are issues of job quality, job security, and low pay. Immigration restriction and enforcement are not only insufficient to reduce migrant precarity, but actively produce and reinforce it.

Acknowledgements

I would like to thank Robin Cohen, Karin Heissler, Julia O’Connell Davidson, Ali Rogers, Martin Ruhs, and three anonymous WES reviewers for their helpful comments on earlier versions of this paper.

Notes

- 1 These must be lifted by 30 April 2011.
- 2 Their spouses, who are unrestricted in the labour market as long as they continue to be a spouse, are defined as ‘dependants’.
- 3 Of these, approximately 15,000 would have been Sector Based Scheme (SBS) permits and therefore not eligible for extension.

References

- Ahmad, A. (2008) ‘Dead Men Working: Time and Space in London’s (Illegal) Migrant Economy’, *Work, Employment and Society* 22(2): 301–18.
- Anderson, B. and Ruhs, M. (forthcoming) ‘Migrant Workers: Who Needs Them? A Framework for the Analysis of Staff Shortages, Immigration and Public Policy’ in M. Ruhs and B. Anderson (eds) *Who Needs Migrant Workers? Labour Shortages, Immigration and Public Policy*. Oxford: Oxford University Press.
- Anderson, B., Ruhs, M., Rogaly, B. and Spencer, S. (2006) *Fair Enough? Central and East European Migrants in Low-Wage Employment in the UK*. COMPAS Report, URL (consulted 18 December 2009): <http://www.compas.ox.ac.uk/publications/reports/changing-status/>
- Balibar, E. (2004) *We, the People of Europe? Reflections on Transnational Citizenship*. Princeton, NJ: Princeton University Press.
- Barbier, J.-C., Brygoo, A. and Viguier, F. (2002) *Defining and Assessing Precarious Employment in Europe: A Review of Main Studies and Surveys, a Tentative Approach to Precarious Employment in France*. Paris: Centre d’Etude de l’Emploi.
- Bauder, H. (2006) *Labor Movement: How Migration Regulates Labor Markets*. Oxford: Oxford University Press.
- Beck, U. (1992) *Risk Society: Towards a New Modernity*. London: Sage.
- Black, R. (2003) ‘Breaking the Convention: Researching the “Illegal” Migration of Refugees to Europe’, *Antipode* 35(1): 35–54.

- Cabinet Office (2007) *Security in a Global Hub: Establishing the UK's New Border Arrangements*. London: HMSO.
- Carens, J. (2007) 'Live-In Domestic, Seasonal Workers, Foreign Students and Others Hard to Locate on the Map of Democracy', paper presented at the conference on *Borders, Migrant Agency and the State: Surveying the Ethics of Borders from Disciplinary Borderland*, 18 June 2007, at the Centre on Migration, Policy and Society, University of Oxford.
- Chan, P., Clarke, L. and Dainty, A. (forthcoming) 'The Dynamics of Migrant Employment in Construction: Can Supply of Skilled Labour ever Match Demand?' in M. Ruhs and B. Anderson (eds) *Who Needs Migrant Workers? Labour shortages, Immigration and Public Policy*. Oxford: Oxford University Press.
- Cohen, R. (1987) *The New Helots*. Farnham: Ashgate.
- Cole, P. (2000) *Philosophies of Exclusion: Liberal Political Theory and Immigration*. Edinburgh: Edinburgh University Press.
- Curtis, S. and Lucas, R. (2001) 'A Coincidence of Needs? Employers and Full-Time Students', *Employee Relations* 23(1): 38–54.
- Cwerner, S. (2001) 'The Times of Migration', *Journal of Ethnic and Migration Studies* 27(1): 7–36.
- De Genova, N. (2002) 'Migrant "Illegality" and Deportability in Everyday Life', *Annual Review of Anthropology* 31: 419–47.
- Dench, S., Hurstfield, J., Hill, D. and Akroyd, K. (2006) *Employers' use of Migrant Labour*. Home Office Online Report 04/06, URL (consulted 13 November 2009): <http://www.homeoffice.gov.uk/rds/pdfs06/rdsolr0406.pdf>
- Department of Trade and Industry (2007) *Success at Work: Consultation on Measures to Protect Vulnerable Agency Workers*. London: DTI.
- Dorre, K., Kraemer, K. and Speidel, F. (2006) 'The Increasing Precariousness of the Employment Society: Driving Force for a New Right-Wing Populism?', paper presented at the 15th Conference of Europeanists, Chicago.
- Fantone, L. (2007) 'Precarious Changes: Gender and Generational Politics in Contemporary Italy', *Feminist Review* 87(1): 5–20.
- Fevre, R. (2007) 'Employment Insecurity and Social Theory: The Power of Nightmares', *Work, Employment and Society* 21(3): 517–35.
- Geddes, A. (2008) *Staff Shortages and Immigration in Food Processing: A Report Prepared for the Migration Advisory Committee*. London: Migration Advisory Committee.
- Gordon, J. and Lenhardt, R.A. (2008) 'Rethinking Work and Citizenship', *UCLA Law Review* 55(5): 1161–238.
- Hardt, M. and Negri, A. (2000) *Empire*. Cambridge, MA: Harvard University Press.
- Harvey, M. (2001) *Undermining Construction: The Corrosive Effects of False Self-Employment*. London: The Institute of Employment Rights.
- Herzenberg, S.A., Alic, J.A. and Wial, H. (2000) *New Rules for a New Economy: Employment and Opportunity in Postindustrial America*. Ithaca, NY and London: Cornell University Press.
- Home Office (2005) *Control of Immigration Statistics 2005, Command Paper CM 6904*. London: COI.
- Home Office (2007) *Enforcing the Rules: A Strategy to Ensure and Enforce Compliance with our Immigration Laws*. London: COI.
- House of Lords (2008) *The Economic Impact of Immigration*. London: HMSO.

- Jayaweera, H. and Anderson, B. (2008) *Migrant Workers and Vulnerable Employment: A Review of Existing Data*. London: Trades Union Congress.
- King, R. (2002) 'Towards a New Map of European Migration', *International Journal of Population Geography* 8(2): 89–106.
- Mackenzie, R. and Forde, C. (2009) 'The Rhetoric of the "Good Worker" versus the Realities of Employers' Use and the Experiences of Migrant Workers', *Work, Employment and Society* 23(1): 142–59.
- Massey, D.S. (1990) 'Social Structure, Household Strategies, and the Cumulative Causation of Migration', *Population Index* 56(1): 3–26.
- May, J., Wills, J., Kavita, D., Yara, E., Herbert, J. and McIlwaine, C. (2006) *The British State and London's Migrant Division of Labour*. London: Queen Mary, University of London.
- Miles, R. (1987) *Capitalism and Unfree Labour: Anomaly or Necessity?* London: Tavistock.
- Nicole-Drancourt, C. (1992) 'L'idée de précarité revisitée', *Travail et Emploi* 52(2): 57–70.
- O'Connell Davidson, J. (2010) 'New Slavery, Old Binaries: Human Trafficking and the Borders of "Freedom"', *Global Networks* 10(2): 244–261.
- Pai, H.-H. (2008) *Chinese Whispers: The True Story behind Britain's Hidden Army of Labour*. London: Penguin.
- Papadopoulos, D., Stephenson, N. and Tsianos, V. (2008) *Escape Routes: Control and Subversion in the 21st Century*. London: Pluto.
- Piore, M.J. (1979) *Birds of Passage: Migrant Labour and Industrial Societies*. Cambridge: Cambridge University Press.
- Pollert, A. and Charlwood, A. (2009) 'The Vulnerable Worker in Britain and Problems at Work', *Work, Employment and Society* 23(2): 343–62.
- Preibisch, K. and Binford, L. (2007) 'Interrogating Racialized Global Labour Supply: An Exploration of the Racial/National Replacement of Foreign Agricultural Workers', *The Canadian Review of Sociology and Anthropology/La Revue Canadienne de Sociologie et d'Anthropologie* 44(1): 5–36.
- Rodgers, G. and Rodgers, J. (1989) *Precarious Jobs in Labour Market Regulation: The Growth of Atypical Employment in Western Europe*. Brussels: International Labour Organisation.
- Rogaly, B. (2008) 'Migrant Workers in the ILO's "Global Alliance against Forced Labour" Report: A Critique', *Third World Quarterly* 29(7): 1431–47.
- Rogers, A. (2009) *Recession, Vulnerable Workers and Immigration: A Background Report*. Oxford: Centre on Migration, Policy and Society, University of Oxford.
- Rosenhek, Z. (2003) 'The Political Dynamics of a Segmented Labour Market: Palestinian Citizens, Palestinians from the Occupied Territories and Migrant Workers in Israel', *Acta Sociologica* 46(3): 231–49.
- Ruhs, M. and Martin, P. (2008) 'Numbers vs. Rights: Trade-offs and Guest Worker Programs', *International Migration Review* 42(1): 249–65.
- Ryan, B. (2005) 'The Evolving Legal Regime on Unauthorized Work by Migrants in Britain', *Comparative Labor Law and Policy Journal* 27(1): 27–58.
- Samers, M.E. (2004) 'The "Underground Economy", Immigration and Economic Development in the European Union: An Agnostic-Sceptic Perspective', *International Journal of Economic Development* 6(2): 199–272.
- Sassen, S. (1988) *The Mobility of Labour and Capital: A Study in International Investment and Labour Flows*. Cambridge: Cambridge University Press.

- Sciortino, G. (2004) 'Between Phantoms and Necessary Evils: Some Critical Points in the Study of Irregular Migration to Western Europe', *IMIS-Beitrag* 24: 17–24.
- Sennet, R. (1998) *The Corrosion of Character*. New York, NY: Norton.
- Sharma, N. (2006) *Home Economics: Nationalism and the Making of 'Migrant Workers' in Canada*. Toronto: University of Toronto Press.
- Shelley, T. (2007) *Exploited: Migrant Labour in the New Global Economy*. London: Zed.
- TUC Commission on Vulnerable Employment (2008) *Hard Work, Hidden Lives: The Full Report of the Commission on Vulnerable Employment*. London: Trades Union Congress.
- UK Border Agency (2009) 'Accession Monitoring Report, May 2004-December 2008', URL (consulted 24 June 2009): http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/accession_monitoring_report
- Vosko, L.F. (2008) 'Less than "Adequate": Regulating Temporary Agency Work in the EU in the Face of a Free Market in Services', paper presented at the conference on Transforming Work, September 2008, St John's College, Oxford.
- Vosko, L.F., Zukewich, N. and Cranford, C. (2003) 'Precarious Jobs: A New Typology of Employment', *Perspectives on Labour and Income* 15(4): 16–21.
- Waite, L. (2007) 'Migrant Labourers: The New "Precariat"', paper presented at the Annual Meeting of the Association of American Geographers, San Francisco, CA.
- Waldinger, R.D. and Lichter, M. (2003) *How the Other Half Works: Immigration and the Social Organization of Labor*. Berkeley, CA: University of California Press.
- Wright, T. and McKay, S. (2007) *United Kingdom Country Report*. London: Working Lives Research Institute.

Bridget Anderson

Bridget Anderson is a senior researcher at the Centre on Migration, Policy and Society (COMPAS). Her research interests include migration and labour markets in the UK, 'trafficking', and deportation.

Address: COMPAS, 58 Banbury Road, Oxford OX4 1HA, UK

Email: Bridget.anderson@compas.ox.ac.uk

Date submitted December 2007

Date accepted December 2009