

Multi-level Governance:

Would a Local Governance Role Improve Temporary Immigrant Worker Programs?

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Executive Summary

Critics of temporary worker visa programs in the US call current policy to task for creating a situation of isolation and powerlessness for workers which often allows abuse by some employers to proceed unchecked. Other critics point to the lengthy application process for employers or the lack of protection for native workers who might otherwise fill the jobs. Most suggestions for reform focus on increased federal inspections of conditions and vetting of employers, detaching visa petitions from one specific employer and increasing opportunities for workers to sue in court. A common thread running through these proposed reforms is their incrementalism as they seek to resolve problems through greater federal government involvement.

In keeping with Farmer's (1995) call to use "thinking as play" to uncover creative and more just public administration solutions that respond to "the individual-in-herself in-her-difference," this paper provides a conceptual explanation of how local community participation could play a positive role in the administration of temporary worker programs. In exploring these possibilities the paper contributes to a public administration discourse on overcoming the challenge of working across levels of government.

Introduction

Current debates over immigration reform often include suggestions for reforming temporary worker programs. Critics of the current system argue that a worker's visa being tied to a single employer creates a situation of isolation and powerlessness which is ripe for employer abuse (SPLC, 2013; Farmworker Justice, 2013, NOW 2006). Other critics point to the lengthy application process for employers (Greenwood, 2008) or the lack of protection for native workers who might otherwise fill the jobs (Seminara, 2010). While most agree that reform is necessary, most specific proposals focus on increased federal inspections of conditions and vetting of employers, detaching visa petitions from one specific employer and increasing opportunities for workers to sue in court. These proposed reforms represent an incrementalist approach (see Lindblom, 1959) as they seek to resolve problems through the federal level of government where most immigration policy has been set over the past century.

Public administration philosopher David Farmer (1995, 2010) suggests the use of “thinking as play” and epistemic pluralism to uncover creative and potentially more responsive public administration solutions oriented towards “the individual-in-herself in-her-difference” (Farmer, 1995, pg. 182). In light of recent scholarship emphasizing multi-level governance (e.g. Hooghe, Marks, & Schakel, 2010) this paper begins a conceptual exploration of whether a role for local communities in administration of temporary worker programs would mitigate abuses of guest workers, better calibrate the balance between business and native labor and support greater integration of guest workers during their time in the US. In exploring these possibilities the paper draws on insights of the fields of conflict transformation, economics and politics as well as public administration. There are both pros and cons to the idea and no definitive conclusion can be reached from a simple conceptual inquiry. However, the merits, on balance, suggest further exploration is warranted. By exploring a heretofore under-examined area of potential creative federalism the paper contributes to a public administration discourse on overcoming the challenge of working across levels of government.

Critiques of Temporary Worker Programs

In their 2013 report *Close to Slavery*, the Southern Poverty Law Center highlights numerous examples of abuse of temporary workers who come to the U.S. via H-2A and H-2B visas to earn money. (Most workers seek employment because they are faced with substantial poverty and unemployment in their home country.) SPLC and others highlight the role of the program's structure in creating a "modern-day system of indentured servitude" (SPLC, 2013, pg. 2) by:

- Tying guest workers to one employer so that a worker can only choose between going home or suffering exploitative practices in silence.
- Conducting few if any detailed background checks on employers or inspections of the housing facilities which employers are required to provide to guest workers, resulting in inhumane living conditions and exploitative practices.
- Restricting the ability of guest workers to participate in class action lawsuits and creating other barriers for workers seeking legal redress of grievances (SPLC, 2013; Seminara 2010, Greenwood, 2008).

Other critics of the current policy system point to the ways it creates frustration for employers because of long application wait times that hamper effective planning, leading some employers to turn to undocumented workers, a violation of U.S. law. Likewise, the lax background checks carried out by the Department of Labor incentivizes employers to only make pro-forma searches for native workers to fill the same jobs (Seminara, 2010). This raises questions of whether temporary foreign workers serve to undercut local wages for similarly skilled workers (SPLC, 2013; Seminara, 2010). Research has shown that a rapid influx of immigrant workers also can result in stigmatization of the recent immigrants by native born community members and has added costs in terms of social cohesion (Fennelly, 2008). Because expansion of temporary worker programs are under consideration as part of Congressional immigration reform efforts (Migration Policy Institute, 2013), finding creative solutions takes on increased importance.

Theoretical insights from conflict transformation, economics, public administration

Scholars in economics and public administration have recently become more interested in how multi-level governance can decentralize states while potentially increasing responsiveness and effectiveness (Agranoff, 2013; Clarke, 2007; Betsill & Bulkeley, 2006; Hooghe & Marks, 2003; Bardhan, 2002). Bardhan (2002) notes that the projected gains in efficiency are based on economic-based models that envision a market where multiple localities offer different bundles of services and taxation with individuals able to choose in which locality they want to live. While Bardhan notes that these assumptions may not always hold in reality, the concept that gains in efficiency and empowerment can be expected from pushing decision-making responsibility to the lowest possible organizational level has also gained credence within organizational management literature (Abdollahzadeh, 2013). Additionally, conflict transformation theory also counsels that conflicts are often more effectively resolved between directly impacted parties and that systems that incentivize “triangulating” conflicts up to a higher authority through adversarial court cases often serves to entrench and polarize the parties (Lederach, 1992). Social psychologists have likewise argued that differences are best mediated through ongoing relationships centered on more than one issue (Haidt, 2012).

Bardhan and Mookherjee (2000) caution, however, that theoretical economic models show that efficiency gains resulting from devolution of power to local governments depend on the context of certain variables. Local governments, they note, may be more prone to capture by narrow interest groups and the resulting rent-seeking would mitigate or outweigh any efficiency gains. Other authors point out how giving greater power to state and local governments historically resulted in significant discrimination for non-white groups in the US (Feagin, 2009; Jacobsen, 1998; Marx, 1998).

Despite the lack of consensus on whether devolving decision-making to local levels is always positive, enough theoretical arguments exist to make it worth exploring how a greater local role might benefit temporary worker policies.

Conceptualizing a role for local governance

As is noted above, temporary worker programs are contentious because they bring different sectors of US society (employers, native workers, government oversight) into tension with one another. With limited resources spread across significant territory, federal oversight often fails to mitigate abuses within the current program and greatly expanded federal oversight is unlikely with current cutbacks in federal funding. While immigration policy has been a federal domain for most countries (Hooghe, Marks, & Schakel, 2010), including in the US for the past century, it is also worth remembering that prior to 1883, states and cities filled the lead role of welcoming and facilitating the integration of new immigrants (Bernard, 1998). Would a local governance component help from either an efficiency or justice perspective? Conceptually, there seem good reasons to think a local body could improve outcomes for multiple stakeholders (see table 1.)

Table 1: Conceptualizing stakeholders in temporary work programs

Business owners	Interest in steady labor supply at lowest possible wages
Immigrant workers	Interest in promised wage, dignity, humane treatment, sense of inclusion.
Local labor	Interest in preserving ability to prevent undercutting of wages when people willing to do the jobs are available.
Faith/Non-profit Community	Interest in a just community, opportunity to live out ethic of welcome, even with temporary members of the community.
Local government	Interest in vibrant economy (strong tax base, low unemployment), minimal public tension/strife between groups.
Federal government	Interest in efficient labor market, upholding of equal protection/justice issues, low cost administration, maintaining consistent national policy.

One of the key challenges of the current system is balancing a societal interest in employment for workers already in the US against employer interests in a readily available (and affordable) labor force. Labor markets vary from region to region and it seems logical that a local governance group would be able to more accurately assess when a temporary influx of labor is necessary and would be more responsive to local employers. Moreover, a local entity that also places business, labor and immigrant advocates in repeated dialogue also (according to conflict transformation theory) stands a better chance of finding workable solutions for all stakeholders which may also minimize the likelihood

of polarized conflict of the type seen in communities like Hazleton, PA (for a discussion of Hazleton efforts to deal locally with undocumented immigrants see Parlow, 2006; McKanders, 2007).

Additionally, requiring employers to make their case for contracting temporary workers to fellow local citizens may decrease the likelihood that employers will abuse their guest workers. Currently, local authorities and communities may be unaware of the presence of guest workers until a crisis or conflict arises. Having a group of local citizens who are aware of the arrival, stay and departure of temporary workers may constrain employer abuses via a desire to meet social norms more than the federal government could via legal penalties that are difficult to investigate, prove and enforce. The same awareness could also allow public service providers (police, fire, ambulance) to respond to medical and safety emergencies with more preparation (i.e. basic language and cultural training) and non-profit organizations to provide support that integrates guest workers into local faith and social communities.

In light of the preceding outline of stakeholders and potential value of a local governance role, the parameters of that role would likely include:

- Balanced representation of business community, recent immigrant community, non-profits serving the immigrant community, and labor groups.
- Accrediting oversight by Department of Labor/Department of Homeland Security to maintain equal protection guarantees.
- Operations funded primarily or exclusively via employer application fees
- Responsibility to determine if local labor was insufficient to fill the need; to carry out some site inspections; to serve as a connection point for workers to services and community connections (faith communities, recreation)

In light of the envisioned make-up of a local commission, if one were to implement this concept, pre-existing structures like regional workforce investment boards which already bring a number of the stakeholders to the table would be likely candidates for such a new mandate (see, for example, the metro Richmond Resource Workforce Investment Board, 2013), though they might need to include greater representation from some stakeholders like the non-profit and low-skilled labor community.

Failure to achieve such a balance would increase the likelihood of one stakeholder being able to capture the local governance entity. This possibility certainly suggests that further study of potential benefits and costs should be undertaken before concluding that a local governance role is definitively preferable to a continued reliance on completely federally-driven administration. Important questions to be considered in such further study include:

- 1) Would such a local governance system be susceptible to interest group capture, either by employers, local (native) labor groups or other unforeseen interests.
- 2) What institutional candidates exist to take on such a role? How much would the institution need to change in order carry out an added function and what costs would that impose on the institutions effectiveness in its original mission?
- 3) What potential unintended consequences are not considered here?

Conclusion and Possibilities for Further Inquiry

This paper conceptually explores a potential role for local governance in temporary worker immigration policy, borrowing from theoretical perspectives not always consulted in public administration, or more specifically in relation to immigration policy. This essay can neither encompass all of the theoretical or practical avenues of inquiry for the idea nor can it envision all the questions which would need addressing in further research to put the cost/benefit analysis of the idea on more sound empirical footing. However, it seems safe to conclude that at a conceptual level the idea of a local role in managing temporary worker visa programs has some potential merit. While inconclusive the exploration is hopefully sufficient to justify further inquiry and to spark discussion.

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