

STATE STRATEGY FOR MIGRATION MANAGEMENT:
CANADA'S TWO TEMPORARY FOREIGN WORKER PROGRAMS,
THE SEASONAL AGRICULTURAL WORKERS PROGRAM
&
THE LIVE-IN CAREGIVER PROGRAM

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ABSTRACT

This study applies an IPE approach to examine the economic conditions, motivations and interests which have driven the Canadian government and two sending countries, Mexico and the Philippines, to accept the terms and conditions of a regulatory framework encouraging short-term labour migration between them. The features of program development which underpin the Seasonal Agricultural Workers Program (SAWP) and the Live-in Caregiver Program (LCP) have not been compared side by side. Nor have the two programs been compared for the relationship that has developed over the years between the Canadian government and the two sending governments of Mexico and the Philippines. The study's core research question asks how the process of regulating cross-border labour migration works and how it is coordinated between two or more governments that form part of a migration system.

An important research finding that emerges from the comparison is the categorization of different types of migration systems. I argue that the SAWP and LCP differ in how they are administered because relations between the various actors differ. Furthermore, what defines these relationships is the set of geopolitical and economic interests that each government carries when it negotiates the regulation of cross-border labour migration. Findings suggest that the geopolitical and economic imperative which has driven the SAWP's development is not the same for the LCP.

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CHAPTER ONE

LABOUR MIGRATION, MIGRATION SYSTEMS AND TEMPORARY FOREIGN WORKER PROGRAMS

Defining the Research Problem

When I first proposed my research project in December 2003 as a comparative study examining the regulatory framework of two Canadian foreign worker programs, the topic of international migration had very few references in any of the major International Political Economy (IPE) journals. As a student of International Political Economy, I realized quickly in the first few months of the research project's development that my proposal to study the regulation of international labour migration would have to convince my readers that this topic is as salient to the discipline as those more traditional topics typically studied by IPE scholars. To respond to these naysayers, I take a methodological approach that places the action of labour migration within the context of power and authority as exercised and negotiated by governments during the process of regulating their borders.

I write with the bold assertion that it is an oversight for the discipline to ignore the subject of international labour migration. Migration carries with it very real consequences for the practice of political authority as exercised by the nation-state. The mass migration of large numbers of people across national-state boundaries means that both receiving and sending countries have to be prepared to regulate and control this cross-border movement if the traditionally-recognized borders of the nation-state are to be preserved around territory and citizenship. Ironically, as one might argue, the lack of research published by political scientists in International Political Economy can be explained as a consequence of the discipline's own boundaries – epistemological, ontological, and methodological. These boundaries have left the topic of international migration outside the scope of inquiry because it seemingly does not relate to the politics of economic and market relations. As a result, the topic of cross-border migration has been generally excluded from consideration within the IPE subfield. To continue to exclude this subject is a mistake, I would argue, for two simple reasons.

First, international labour mobility has been shown to follow a distinct set of patterns based on the origin and destination of the worker, the type of worker permitted to move, and the number of rights afforded to the worker. Patterns of movement are so much more than just the result of individual choice made by the lone migrant worker. From an IPE perspective, the long history of concentrated state action in the area of migration policy is revealing of how deeply exposed

both receiving and sending governments are to geopolitical and economic interests that would have them encouraging and supporting the development of an uninterrupted, continuous flow of workers back and forth across their borders. The works of political scientist James Mittelman¹ and sociologist Saskia Sassen² argue that governments are acting strategically when they create a regulatory regime that conditions how migrant workers are able to move across national-state borders. Cultural anthropologist Aihwa Ong³ has shown that state strategy to create special zones where migrants live and work is the consequence of calculated political decisions to harness new economic opportunities from these emerging global markets and production systems. More importantly, this strategy can be driven by an economic imperative to streamline the migration process in order to maximize economic gains, like remitted worker earnings, associated with this particular type of labour migration circuit.

Second, the economic imperative to regulate migration flows throws into sharp relief a set of relationships not yet fully appreciated for their impact on how governments exercise their authority. The study of international labour migration is revealing of a transformation in political authority that has traditionally been exercised unilaterally by the nation-state. The distinct advantage of using an IPE approach is its focus on the shifting terrain of governance in an increasingly interdependent global economic system notable for the complex relationships between state and market actors. The idea that the state exercises unilateral political authority when it comes to regulating its borders is flawed for its oversimplification of the myriad relations between public and private actors in both sending and receiving countries. Elements of program management are being undertaken by non-state actors like employment recruitment agencies. Their visible role in program management suggests that political authority is being fractured and divided in the process of outsourcing traditional public responsibilities held by governments to private third-party or arms-length organizations.

My interest in the topic of international labour migration was shaped by my observations about the state of the research as it has been carried out by the discipline to date. There are four such observations, two of which have to do with methodological considerations and two which have to do with trends in Canadian immigration data. These observations shape both the research questions and methodology of my work.

First, international organizations like the International Labour Organization (ILO) and the International Organization for Migration (IOM) have devoted an increasing amount of attention to the concept of migration management as a policy prescription tool. Their work suggests that governments

¹ James Mittelman, *The Globalization Syndrome: Transformation and Resistance* (Princeton: Princeton University Press, 1997).

² Saskia Sassen, *Guests and Aliens* (Princeton: Princeton University Press, 1999).

³ Aihwa Ong, *Neoliberalism as Exception: Mutations in Citizenship and Sovereignty* (Durham, NC: Duke University Press, 2006).

are increasingly attracted to policy prescriptions that regulate the cross-border flows of migrant workers and their remitted earnings in an orderly and efficient manner. Immigration policies and programs may be retooled by receiving governments to specify the number of workers permitted to enter the country, the types of skills needed to fill labour market conditions, and the allocation of citizenship and residence rights to the worker during the stay. Similarly, emigration policies may be retooled by sending countries to specify the responsibilities and rights carried by the national while he or she resides outside the country. Migration management, or managed migration as it is also known, raises the bar for cooperation between governments if they are to develop a regulatory framework that creates a securitized circuit for these flows of people and monies to move.

Second, the analytical framework developed by the sociologist James Fawcett⁴ describes different types of institutionalized linkages which develop over time between sending and receiving countries. These linkages create the dynamics for a migration system to develop between countries. Culture, family, employment agencies, and migration policies are all important contributing factors that create and maintain the foundation for these institutionalized linkages to develop in the form of a migration system. When applied in conjunction with the concept of managed migration, the impact that policy has in achieving its objective of regulated flows is shaped by this legacy of relationships created between sending and receiving governments.

Third, the total number of temporary workers entering Canada outpaced the total number of economic immigrants at several critical points over a 25-year period between 1980 and 2005. Between 1982 and 1990, and again more recently since 2003, the Canadian government has regulated cross-border labour migration flows to accept more temporary workers than economic immigrants who enter the country by virtue of being skilled workers or business entrepreneurs and who receive permanent residence upon landing. Canada uses a work permit system authorizing short-term stays for people who have pre-arranged, fixed employment contracts. Since 1980, the total number of economic immigrants has tripled: from 49,891 in 1980 to 156,310 in 2005. By comparison, the total number of temporary workers has quadrupled: from 39,234 in 1980 to 159,769 in 2005. Figure 1.1 depicts this comparison⁵, showing the number of economic immigrants and temporary workers admitted to Canada between 1980 and 2005.

Fourth, Canada has drawn significant numbers of temporary workers from a select number of countries for more than four decades. The Philippines has long provided Canadian families the services of their live-in caregivers. This

⁴ James Fawcett, "Networks, Linkages, and Migration Systems," *International Migration Review* 23, no. 3 (1989): 671-80.

⁵ The following figure was created using data from: Citizenship and Immigration Canada, *Facts and Figures: Immigration Overview Permanent and Temporary Workers 2007* (Ottawa: Citizenship and Immigration Canada, 2008), <http://www.cic.gc.ca/english/resources/statistics/facts2007/index.asp> (accessed January 31, 2008)

relationship has been in place for more than 30 years. Similarly, Canada has attracted a steady flow of seasonal agricultural workers from the Caribbean countries and from Mexico for at least 30 years; in fact, Jamaican farm workers have been working Canadian fields for more than 40 years. Both Mexico and the Philippines have been ranked in Citizenship and Immigration Canada's top 10 index of countries providing significant numbers of temporary workers to Canada's labour markets.⁶ The total number of seasonal agricultural workers and live-in caregivers from these two countries has surpassed the 100,000 mark for each group. Canada's foreign worker programs, the SAWP and the LCP, provide the regulatory framework to control the immigration component of this cross-border movement. Similarly, there is an emigration component that is implemented by sending governments to ensure the return migration of migrant workers to their home countries.

The features of program development which underpin the SAWP and the LCP have never been compared. Nor have the two programs been compared for the relationship that has developed over the years between the Canadian government and the two sending governments of Mexico and the Philippines. The study's core research question asks how the process of regulating cross-border labour migration works and how it is coordinated between two or more governments that form part of a migration system. To answer this question, the conceptual framework of a migration system is defined using a model developed by James Fawcett. A migration system is defined as a set of institutionalized ties or networks that develop between communities in different countries, which have the effect of encouraging movement of people (and, in some instances, settlement) across national borders. This study looks specifically at more formal types of institutional linkages created between sending and receiving governments using regulatory tools, such as migration policy and temporary foreign worker programs, to structure cross-border labour migration flows.

There are four key themes highlighted in this study. First, relations between Canada and the two sending governments, Mexico and the Philippines, are examples of a migration system that uses the temporary foreign worker program to structure international labour mobility within a narrowly prescribed set of conditions defining employment, residence and citizenship status for the migrant worker. Second, the institutional practices which are the foundations of these two migration systems differ in how governments interact with each other and with private actors representing the two sides of the employment relationship. Third, variation in these institutional practices can be explained as an outcome of

⁶ Citizenship and Immigration Canada, "Canada: Initial Entry of Foreign Workers by Top Source Country," Citizenship and Immigration Canada, <http://www.cic.gc.ca/english/resources/statistics/facts2007/temporary/03.asp> (accessed June 1, 2008); and "Canada: December 1st Stock of Foreign Workers by Top Source Country," Citizenship and Immigration Canada, <http://www.cic.gc.ca/english/resources/statistics/facts2007/temporary/09.asp> (accessed June 1, 2008).

economic conditions, motivations and interests as they are perceived by both receiving and sending governments. Fourth, owing in part to this variation in regulatory regimes and institutional practices, the two groups of foreign workers live the migration experience differently depending on the space opened up to them through the process of negotiating a migration system between the countries.

As noted earlier, this study applies an IPE approach to examine the economic conditions, motivations and interests which have driven the Canadian government and two sending countries, Mexico and the Philippines, to accept the terms and conditions of a regulatory framework encouraging short-term labour migration. The SAWP and LCP are two well-known temporary foreign worker programs which have been explored extensively in the literature, although they have not been compared in any great depth. An important research finding that emerges from the comparison is the categorization of different types of migration systems. Canada's relationship with Mexico more closely approximates a bilateral relationship founded on coordination between governments, whereas Canada's relationship with the Philippines is more unilaterally-driven by each government and hinges less on cooperation and coordination between the two governments than what exists between the Canadian and Mexican governments. Each government shapes the movement of workers within the LCP fairly independent of the other.

This categorization which describes different state approaches and strategies for developing a migration system is important for the basis of my central argument. Essentially, I argue that the Seasonal Agricultural Workers Program and the Live-in Caregiver Program differ in how they are administered to admit foreign workers and allocate labour and residence rights because relations between the various actors differ. Furthermore, what in fact defines these relationships is the set of geopolitical and economic interests that each government carries when it negotiates the regulation of cross-border labour migration. In the case of the Canada – Mexico migration system designed for seasonal agricultural workers, this system is regionally bounded by a highly competitive agricultural industry that has Canada and Mexico increasingly vying for the same product markets. Arguably, the Canadian government has just as aggressively pursued a strategy of cooperation and coordination with Mexico as the Mexican government has with Canada, and an important reason for this is each government's perception of what economic stakes are up for grabs and which of these must be protected. As such, non-state actors representing employer and worker organizations, particularly those in Canada, have mobilized through organization in order to be better able to express their interests and concerns about using the SAWP to regulate the cross-border movement of seasonal agricultural workers.

Ironically, the migration system between Canada and the Philippines is notable for what is missing between the two governments, namely the lack of a formal agreement between them. They move thousands of live-in caregivers each year, and the industry itself has become increasingly global in its reach. As it

does so, the Canadian government's response has been to protect a nationally-bounded service industry that is intimately viewed as distinctly Canadian and is part of a broader national comment on the role of the Canadian welfare state to provide social services – like child care, health care and education – to its citizens. That said, Canada does not have a national childcare program in place, and private care has helped fill this void. I argue that the LCP owes its unique regulatory and administrative framework to the magnitude of conflicting interests that must filter through the political institutions responsible for designing and administering migration policy. These conflicts are witnessed in the relations between the Canadian and Philippine governments in how they approach regulating this particular sector. They are also apparent in the relationship between public and private actors representing government agencies and departments, employers, recruitment agencies, workers, and community organizations. As a result, rule-making has been inconsistently applied in this particular area of policy development to determine migration flows, employment standards and permanent residence over the course of a 30-year period.

Ultimately, both seasonal agricultural workers and live-in caregivers suffer the punishing effects of an exploitative employment relationship that segregates them based on residence status. It has been the position of the Canadian government that foreign workers who reside in Canada for short periods of time be afforded the same employment standards as their Canadian colleagues doing the same or similar work in a given occupation. The Ontario example is illustrative for showing that neither group of workers, regardless of the worker's residence status, has the kind of protection afforded to other groups. It remains, however, a point of concern that even those rights and standards covered by the employment standards act for agricultural and domestic workers are difficult to monitor and enforce. The literature is replete with evidence of the hardships that these workers face daily in their work lives. The principal focus of this thesis, however, is to explore reasons explaining how and why we have arrived at this particular juncture in time where governments, both sending and receiving alike, are willing to negotiate the conditions of residence and citizenship in order to keep the flow of workers moving uninterrupted. After comparing the two programs, it is not a simple evaluation to conclude that live-in caregivers fare better than seasonal agricultural workers because of the right of residence afforded to caregivers upon completing the LCP. In fact, based on how the two programs are set up, the working conditions of the SAWP agricultural workers are monitored on a regular basis owing to the bilateral relationship between the two governments. The geopolitical and economic imperative which has driven the SAWP's development is simply not the same for the LCP.

Defining the Research Scope and Questions

Broad strokes at analyzing international migration trends paint the picture that there are two kinds of relationships that emerge from the development of a migration regulatory regime, both of which are recognizable for their exploitative character. The first relationship is described by the model between receiving and sending governments. The second describes the relationship between migrants and the communities they leave and those they join. In the case of cross-border labour migration, research findings have highlighted that (1) receiving governments rather than sending governments shape the course of these migration flows through their immigration statutes and regulations, and (2) temporary workers are particularly vulnerable to abuse in their employment relationships and loss of citizenship rights. As a review of the extant literature reveals, case studies of a single jurisdiction or particular group of workers have been compiled to generalize across studies.

Although this line of inquiry is predominantly focused on the individual worker or the single state, which is then magnified through the lens of exploitation and power asymmetries, this thesis takes a slightly different tack. Methodologically speaking, it differs from these earlier approaches in two ways. First, it focuses on a relationship between states – that is, between the (home) government sending temporary workers and the (host) government receiving these workers. Following the work of Fawcett, Ong and Sassen, this thesis operates on the assumption that migration systems do not spontaneously develop; rather they are created and evolve from relationships nurtured over a long period of time. These relationships may be familial in nature, or they may be based on the employment relationship between, for example, a recruitment centre and the worker. Of interest to this thesis, however, is the relationship created between a sending and receiving government that takes the form of a program for *temporary* foreign workers. To examine what makes the migration system work between a sending and receiving government, the methodology takes a case study approach comparing two different migration systems. The two migration systems examined in this thesis share their relationship to a single receiving country, Canada. The Canadian government has used the same immigration legislative framework since the implementation of the SAWP and the LCP more than 30 years ago. The two migration systems differ by sending countries (Mexico and the Philippines) and by groups of temporary workers (Mexican seasonal farmworkers and Philippine live-in caregivers).

Second, it focuses on states' relationships to each other in designing a migration system, through regulatory tools like the temporary foreign worker program, as part of state strategy to maximize economic gains from short-term labour migration flows. The direction that labour migration takes, the number and type of workers who move for employment purposes, and the number and type of citizenship and labour rights afforded these workers can be read as signposts charting the development of a global economy over the past 50 years.

International, cross-border labour migration of the kind seen in Canada as a result of its temporary foreign worker programs is part of this story. Corporate actors factor in migration as a production cost saved and governments court workers as part of a broader economic development strategy to improve overall market competitiveness in a global economy. In recent years Alberta's oil boom, Ontario's construction bubble, and the country's agricultural industry have relied on government programs to import labour at critical times as part of a broader economic development strategy to keep labour costs down and ensure a readily available pool of workers. As Bauder notes, migration policy is used by governments to discipline national labour markets and with profound effect on wages, benefits, and working hours.⁷

As case studies, both the SAWP and LCP are interesting to compare, owing to their development over time which suggests that the programs have expanded in size to encompass increasing numbers of workers. Arguably, both groups are part of an emerging global labour force in competitive, transnational industries. This development has two important implications for how we understand the lives they live as migrant workers. The first is that these workers traverse within a distinct space that is their own, with the conditions of their movement and access to rights associated with residence dictated by both sending and receiving governments. Second, because of the nature of the type of work these workers perform, they especially are vulnerable to employment abuses that would have them earning lower wages while working longer hours than other groups of workers who have been traditionally protected by a much wider range of employment standards and labour rights.

Methodologically speaking, then, this thesis is as equally grounded in an international political economy approach as it is in a comparative public policy approach. The comparative public policy approach allows for systematic evaluation of the similarities and differences in program administration. It reveals how the administrative process works so that governments can create and maintain an uninterrupted circuit of flows. International political economy, however, brings attention to the different types of relationships between governments, an essential component of any regulatory framework that seeks to sustain a regularized, secure and uninterrupted circuit of workers' movement based on the temporary employment contract model. It also brings focus to the private, corporate actor's role in influencing how governments develop migration policy and administer foreign worker programs.

This thesis examines a series of related questions about the development of a regulatory framework used to sustain a migration system between sending and receiving government of foreign workers.

⁷ Harald Bauder, *Labor Movement: How Migration Regulates Labor Markets* (Oxford: Oxford University Press, 2005), 4.

Research Questions: Processes of Regulation

Which actors set the rules that determine the course of the movement of workers? What is the state's capacity to regulate the movement of migrant workers? Has state capacity to regulate these flows increased or decreased over time? Do regional and/or multilateral agreements structure these flows? What role do private agreements and corporations play in shaping the movement of migrant workers? To what extent is there coordination (horizontal and/or vertical) between these actors? How have the processes of regulating flows of migrant workers changed, if in fact they have at all? To what extent do these relationships between different groups of actors, which represent the influence of both public and private authority, help to explain program differences?

To answer these questions, data collection took place in three stages. The first stage involved a literature review for mapping purposes. Mapping entailed a systematic process of identifying secondary sources which describe the migration practices of workers which are directed by government policy and programming. I used this literature review to study labour migration patterns in general, and the cause for the directional pull and intensity of these flows in the latter part of the twentieth century. During this first stage, I identified key sources which would serve as the basis for modeling my own project. These key sources helped me pull together inquiries based in both international political economy and comparative public policy. Castles and Miller⁸, Fawcett, Mittelman, Ong and Sassen all share in common a particular focus on the transnational dimension of regulating labour migration. The works of Beck,⁹ Grande and Pauly,¹⁰ Coleman,¹¹ Ruh and Chang,¹² and Scholte¹³ helped to anchor the conceptual framework of this thesis by identifying and hypothesizing about the individual, constituent elements of transnationalization in relationship to state authority.

The second stage of data collection involved primary documents comprised of legislation, program administration, and working papers. Sources of these primary documents included the Canadian, Mexican and Philippine governments;

⁸ Stephen Castles and Mark J. Miller, *The Age of Migration: International Population Movements in the Modern World* (London: Palgrave, 2003).

⁹ Ulrich Beck, *What Is Globalization* (New York: Polity, 2000); Ulrich Beck, *Power in the Global Age* (New York: Polity, 2006).

¹⁰ Edgar Grande and Louis Pauly, eds., *Complex Sovereignty: Reconstituting Political Authority in the Twenty-first Century* (Toronto: University of Toronto Press, 2005).

¹¹ William Coleman, "Globality and Transnational Policy-Making in Agriculture: Complexity, Contradiction, and Conflict" in *Complex Sovereignty: Reconstituting Political Authority in the Twenty-first Century*, ed. Edgar Grande and Louis Pauly (Toronto: University of Toronto Press, 2005), 93-119.

¹² Martin Ruh and Ha-Joon Chang, "The Ethics of Labor Immigration Policy," *International Organization* 58 (2004): 69-102.

¹³ Jan Aart Scholte, *Globalization: A Critical Introduction* (London: Palgrave, 2000).

national organizations such as trade unions and community associations; and international organizations like the International Labour Organization (labour migration and labour standards), the International Monetary Fund and World Bank (remittances), and the International Organization on Migration (migration and remittance patterns). It also entailed a keyword search of print, media-related documents (e.g., newspapers, magazine articles) using meta-search engines like Lexis-Nexis, Google and Yahoo. These searches focused on reporting that contained information on legislation, policies and program management in each of the three countries. These documents were examined for information describing program operations as implemented at the national level in each of the three countries. They were also examined for references describing how migration systems develop and function between governments.

The final component of data collection was interviews¹⁴ conducted over a period of approximately six months. Representatives of the following agencies and organizations were interviewed: from Citizenship and Immigration Canada; Ontario Ministry of Agriculture, Food and Rural Affairs; Service Canada [Human Resources and Skills Development Canada]; the Mexican Consulate; the Philippine Consulate; Union of Food and Commercial Workers; Intercede; and the Canadian Coalition for In-Home Care. Requests for an interview were declined by the Foreign Agricultural Resource Management Service (F.A.R.M.S.), and went unanswered by the Simcoe Migrant Agricultural Workers Centre. Interviewees were selected for their knowledge, expertise and experience with migration systems, national regulatory frameworks, and program operations. I attach a sample set of questions asked in a typical interview as an appendix to this chapter.

Thesis Outline

This thesis undertakes as its principal purpose the task of applying an international political economy approach to examine the development of a managed migration system between Canada and the two sending countries of migrant workers, Mexico and the Philippines. The link which is necessary to begin comparing the two migration systems is the temporary foreign worker program. The temporary foreign worker program represents a type of strategic regulatory action taken by each of these three governments to maximize their control over labour and remittance flows. Their coordinated actions give both stability and permanence to these two migration systems. One system moves agricultural labourers back and forth between Mexico and Canada using the Seasonal Agricultural Workers Program. The other brings care workers to Canada from the Philippines through use of the Live-in Caregiver Program. However, despite both being part of a larger policy framework for regulating

¹⁴ All interviews were confidential so names have been withheld.

temporary labour migration, the Seasonal Agricultural Workers and Live-in Caregiver Programs differ in both design and implementation.

The administrative arrangement which delegates authority for programming operation between host and home governments characterizes a key difference in how the two migration systems have developed over time. The administrative differences have generally been overlooked in the literature on migrant worker programs. Researchers have tended to highlight the obvious difference, namely the right of residence following completion of the employment contract: LCP workers can apply for permanent residence, SAWP workers cannot. Arguably, however, the administrative differences between the SAWP and LCP are equally significant for they tell the story of relations between governments and their motivations for choosing to administer a temporary foreign worker program in the first place. It is when we dissect the institutional, administrative practices that are bound up within each program's regulatory framework that it becomes apparent just how much influence different types of relationships have on the development of a migration system between sending and receiving countries. These relationships are the lead story, so to speak, in revealing the interests, motivations and priorities that shape programs and, ultimately, migration systems.

Chapter 2 examines the extant literature for discussions about state strategies for attracting workers into a transnational circuit of labour migration flows. With its purpose as one of critique, the chapter's single aim is to demonstrate that these processes of regulation are shaped by interests held by both sending governments and receiving governments. For good reason, the tendency of research in this area has been to analyze the two positions separately by focusing on one country and leaving the other outside the argument's scope. The concept of a managed migration system, or migration management as it is also known, throws light on a new set of regulatory processes comprised of bilateral and multilateral administrative arrangements. Managed migration is a relatively underdeveloped theme in the extant literature; few focus on both governments and their interests in cooperating over the development of a migration system between them. There are indirect references to managed migration as state strategy in the influential works of sociologist Saskia Sassen and Aihwa Ong. They have developed concepts like *regulatory fractures* (Sassen) and *graduated sovereignty* (Ong) to describe an epochal transformation in state authority which has come about in response to transnational capital's penetration of national economies and traditional domains of national policy-making. Direct references to managed migration are found in the works of a group of scholars and practitioners, like Philip Martin and Tanya Basok, who form part of an international community's efforts to develop a series of working definitions for the concept. In chapter 2, cooperation between sending and receiving governments is discussed as a form of state intervention or strategy which is used to exert control over labour migration and remittance flows.

The overarching purpose of this thesis is to explore the reasons why the two migration systems differ. My research interest lies in explaining the source of

this variation. Each of the empirical chapters contributes to the overall purpose of comparing variation in the two migration systems between Canada and the sending countries of Mexico and the Philippines. Where other studies have focused on a single country or program, this study extends their findings to compare two foreign worker programs and two migration systems comprised of three countries. Because much of the research on Canada's SAWP and LCP has focused on the workers and the rights they are afforded under the programs, these studies speak to the similarities which the programs share due to the highly selective and discriminatory elements of Canadian immigration policy towards migrant workers. Unfortunately, however, by focusing exclusively on the Canadian perspective of governing as the receiving country of migrant workers, these studies miss important variations in policy design and programming implementation. As I have argued, it is important to understand that both programs are systems of managed migration between the Canadian government and the two sending governments. International political economy opens up a line of inquiry that could examine the concept and application of migration management as a practice of cooperation and coordination between governments. As this thesis argues, both sending and receiving governments have a vested interest in the creation and maintenance of a permanent circuit of temporary workers. Each carries its own set of motivations for seeing a migration system develop. Governments bring these motivations to the negotiating table, ultimately shaping the relationship which forms between the two governments and thus how the program plays out in terms of workers' rights as well as economic importance.

Chapter 3 begins the comparison with its description of the policy procedures and programming features of the Seasonal Agricultural Workers Program and the Live-in Caregiver Program. Ruh suggests examining foreign worker programs for their guidelines concerning (1) the number and type of workers permitted to enter the country and (2) the number and type of citizenship and labour rights afforded to migrant labour. No other study has disaggregated the data to compare the differences between the Seasonal Agricultural Workers and Live-in Caregiver Programs. This chapter provides a detailed comparison of the two programs over the 30-year period that they have existed as part of the Canadian immigration legislative framework.

In Chapters 4 and 5, my analysis focuses on the interests, motivations, and expectations that each government has for creating a migration system. In each chapter, I compare the interests, motivations, and expectations of the Canadian government to those held by the sending government of migrant workers. Chapter 5 examines the foundations of the relationship between the Canadian and Mexican governments, and Chapter 6 examines the relationship between the Canadian and Philippine governments. These chapters are based on an analysis identifying the intervening motives, interests, and expectations which compel both sending and receiving governments to work towards creating a permanent circuit of temporary workers. I draw primarily on the theoretical models developed by scholars and practitioners who have conceptualized the advantages

and disadvantages of migration management. My research applies these models to the two case studies in order to examine the motives and interests that both governments bring to the relationship. Together, these chapters show that the two migration systems differ in design and purpose because national interests have influenced how each government approaches the process of regulating labour migration.

After this discussion of the motivations that compel governments to want to create a permanent circuit of temporary foreign labour, Chapter 6 compares two different approaches which governments use to secure a managed migration system. These are referred to as unilateral and bilateral approaches to managed migration. The single most important difference between a unilateral approach and a bilateral approach to migration management has to do with the degree to which governments choose to pursue cooperation and coordinated regulatory action to control the cross-border movement of workers. The unilateral approach to migration management is characterized by high, regulatory action by one government, and low coordinated regulatory action between two or more governments. Accordingly, it relies less on cooperation between the sending and receiving governments of migrant workers than the bilateral approach does. By contrast, a bilateral approach is characterized by high coordinated regulatory action between two or more governments and low regulatory action by a single government alone.

Chapter 7 applies the International Agenda on Migration Management, a conceptual framework drafted as part of the Berne Initiative in 2005, to compare the differences between the two approaches used by Canadian, Mexican, and Philippine governments for purposes of administering temporary foreign worker programs. The unilateral approach characterizes the implementation of the Live-in Caregiver Program by the Canadian and Philippine governments. The relationship between the Canadian and Mexican governments is notable for the bilateral administrative approach that governs the Seasonal Agricultural Workers Program. I describe state intervention as strategic intervention in the workings of labour markets using migration systems to create a permanent circuit of temporary workers. Interestingly, the institutionalization of this type of cross-border movement is sought by both sending and receiving governments. This chapter includes a series of tables to map the relationship between national interests, types of state intervention, and the development of a migration system. These tables serve a dual purpose at the end of the dissertation. They summarize the empirical findings of the case studies comparing the Seasonal Agricultural Workers Program and the Live-in Caregiver Program, and they help to move the discussion forward to make generalizations about the development of managed migration systems using different types of state intervention approaches.

As the final chapter demonstrates, cooperation and coordinated regulatory action does not come without risks and externalities which may offset some of the benefits desired from creating a system of migration management between a sending and receiving government. Future studies should replicate the analytical

framework developed in this dissertation in order to compare the development of other labour migration systems. These studies may compare migration systems that target migrant workers for employment in the same industry or occupation, like agriculture or construction, looking for similarities and differences in approach, institutional design, and objective. Other studies should examine migration systems to see whether different approaches to migration management yield different experiences in the types of benefits accrued and risks carried by governments who are involved in coordinated regulatory action.

Appendix
Sample Questionnaire Template, Government Officials

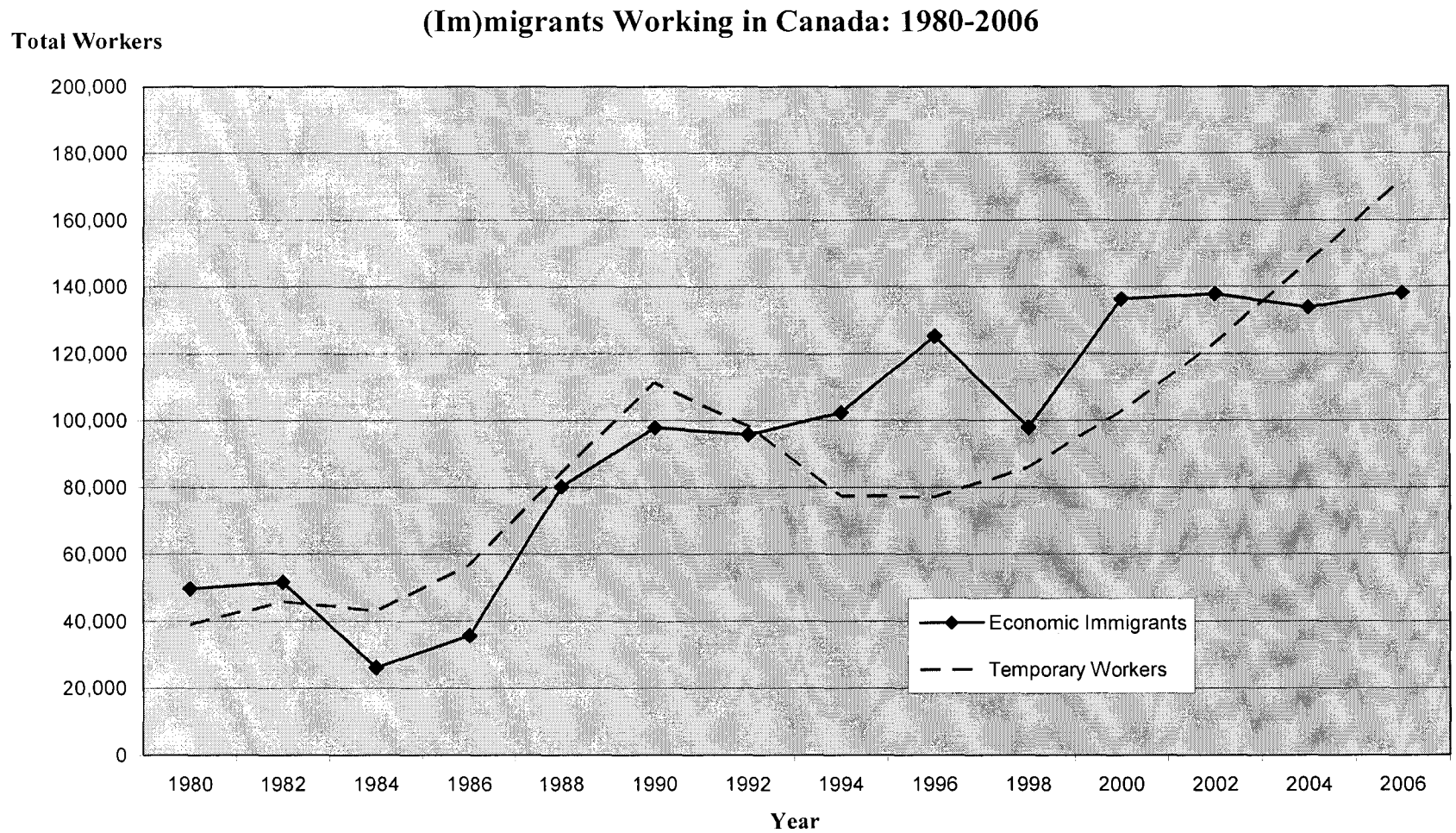
Script (Outline):

The McMaster Research Ethics Board (MREB) requires that I tell you about the interview process and the rules I am to follow as a researcher at McMaster University. First, I will consider this interview strictly confidential, if this is your preference. Second, should you find a question or set of questions that you are unwilling to answer or cannot answer, please inform me of this. I will stop the questioning immediately. Do you have any questions for me before we begin the interview?

1. As it relates to the day-to-day program operations of the <Name of Program>, what are your Office's primary responsibilities? What kinds of services does your office provide? In your experience, have there been any changes to this mandate, or to the kinds of services provided by your office?
2. What are two or three of the most important issues or concerns that you are working on today or that have been identified by the Government as a priority for discussion or action? In your experience with the Program, have there been any changes in prioritizing these issues or concerns, which are different from those identified today?
3. With which other government departments or agencies does your Office have contact most frequently in the management of the Program? Does any one department or agency have more input or influence than another in developing rules for the temporary foreign worker program? I am thinking here of rules that concern matters of working conditions, rights of mobility, and rights of citizenship.
4. Since the Program has been in place, have there been any changes in the nature or structure of the relationship between government departments and agencies? I am thinking here of a change in the type of input or degree of influence, or in the relative importance of one department or agency over another. Generally speaking, then, in the area of regulating short-term labour migration, how well do you think horizontal coordination between departments and agencies works? How well does program coordination work between your two governments?
5. In your estimate, what are the benefits of coordinated efforts to regulate these flows between your two countries? Are there any weaknesses or costs associated with this type of relationship which would make regulating short-term migration less effective than it might otherwise be?

6. Data show <these patterns>. In your experience, what explains these changes in the regulations and rules that set the number and type of migrant workers admitted into Canada? In your estimation, why have the two groups of workers been treated differently by these programs in the way that labour, residence and citizenship rights are allocated to each group?
7. In your experience, has the implementation of the <free trade agreements> affected program operations between your two governments? How so?
8. What impact, if any, does the development of other temporary foreign worker programs or bilateral labour agreements have on program development and administrative operations?
9. What input or influence, if any, do interest groups representing employers and workers have on the Program?
10. In the readings that I have come across on the topics of foreign worker programs and managed migration, there have been extensive debates on the issue of (dual) citizenship, permanent residence, and non-return of migrant workers. By some accounts, Canada's Seasonal Agricultural Program/Live-in Caregiver Program has been cited as a model of best practice because <cite reasons>. In your experience, what do you believe to be the strengths and weaknesses of the Program?

Figure 1.1: (Im)migrant Working In Canada: 1980-2006



CHAPTER TWO

THE FOUNDATIONS OF AN INTERNATIONAL POLITICAL ECONOMY STUDY ON TRANSNATIONAL LABOUR MIGRATION

The purpose of this literature review is twofold: first, it demonstrates why the study of transnational labour migration should matter to International Political Economy (IPE) scholars, and second, it provides the backdrop for the argument developed in this thesis. The chapter is divided into two sections. In the first section, I identify key themes found in the literature which provide support for adopting an International Political Economy approach in order to explain the direction and intensity of these cross-border flows. There are two areas of focus: (1) the historical trajectory of increased labour mobility across national borders; and (2) forms of governance used to manage cross-border migration flows. Very few IPE scholars have focused their attention on labour migration issues as they relate to the state's relationship to globalization; instead of labour flows, a great number of IPE scholars have examined other types of flows and the complex relationship between sovereignty, governance, and the global expansion of market relations. The literature on international labour migration, however, suggests an equally important corollary between the cross-border flows of workers, the regulation of these flows by states, and the development of substantial migration systems as an interlocking web of relations between governments and their communities made possible by the cross-border movement of workers.

The second section outlines a set of hypotheses. These hypotheses build on the theoretical and empirical questioning undertaken by a collection of scholars who have grappled with understanding how authority as practiced by the nation-state is being transformed. These scholars show evidence of new institutional forms of public policy-making emerging that support different levels of cooperation between public and private actors. I have drawn on the works of scholars like Saskia Sassen, Aihwa Ong, Edgar Grande and Louis Pauly, and Jan Aart Scholte to develop research hypotheses about the state's management of cross-border, transnational labour migration flows using regulatory tools like the temporary foreign worker program. By the end of this chapter, I will have shown how an international political economy approach can be beneficial for understanding why cross-border migration flows take the shape they do. The usefulness of an IPE approach, I argue here, is in capturing how and why governments choose to regulate these flows for strategic, economic reasons.

This thesis works from a set of definitions that recognizes cross-national labour migration as a global or transnational activity involving the movement of workers across national-state borders. Workers will leave their home countries

for an extended period of time in order to engage in work or employment opportunities in another country¹⁵. The act of crossing national-state boundaries for work may be legally recognized by political authorities, as in the case of documented or managed migration, or may be found to contravene immigration rules, as in the case of undocumented or illegal migration. Moreover, the time frame by which workers may be employed in the host country can involve temporary or permanent authorization granted by the host country. Temporary authorization will typically limit the duration of the worker's stay in the host country, thereby requiring the worker to return to his or her home country upon completing the work contract. Permanent authorization generally allows residency in the country and, in so doing, does not necessarily attach conditions on employment or access to labour markets, at least not in the same way as temporary authorization tends to do.

Waves of Labour Migration and Regulation

(I) The ebb and flow of transnational labour migration

In having directed a great deal of attention towards global capital flows and the globalization of markets, IPE has too often overlooked the relationship between these trends and the development of increased labour mobility across national borders. When the Obama administration in the United States adopted the Troubled Assets Relief Program (TARP), recipients of government bailouts agreed to limits on their ability to hire foreign workers in the United States. It is one of the most recent in the long history of this trifecta: global capital flows, transnational labour mobility, and national-state governance structures. Similar examples can be found in other jurisdictions and across time periods.

The literature describes patterns in cross-border labour migration flows. These patterns have been explained by different factors – including cultural, for example. My interest is in identifying factors identified within IPE to explain these patterns. A number of authors have described the relationship between crises of accumulation and forms of migration. Receiving countries of foreign workers may choose to pursue particular migration strategies – like the guest

¹⁵ I refer here to the point of departure for workers in the migration cycle as their “home country”, where they likely hold political citizenship entitling them to rights afforded recognized members of the political community. Other references to the same phenomenon include sending countries, countries of origin, and source countries of foreign workers. For consistency and to avoid confusion, I will use the terms “home country/government” and “sending country/government” throughout the dissertation. Similarly, I will refer to the point of arrival for workers in the migration cycle as their “host country”, where they may seek permission to live and work for an extended period of time, as in the case of regulated or documented migration. Other references to the same phenomenon include receiving countries and countries of destination. Again, for consistency and to avoid confusion, the terms “host country/government” and “receiving country/government” will be used throughout the work.

worker program or the temporary foreign worker program – to alleviate labour shortages, drive higher productivity levels and boost capital accumulation, and relieve inflationary pressures.¹⁶ Sending countries of these workers are choosing to adopt emigration strategies supporting this kind of migration pattern to alleviate high unemployment levels, relieve tensions towards civil and political strife, and maximize remittance flows from migrant workers' earnings. Samers observes that:

Since capital accumulation involves a diversity of industrial and service-oriented units, there can be no singular demand by “capital” for migrant labour. *Different sectors will be more heavily “reliant” on migrant labour than other sectors*, depending on products markets, the productivity and intensity of labour power, the organization of production and the ability to substitute native workers, the costs and levels of technical innovation, wage rates, social welfare costs and so forth.¹⁷ (author’s own emphasis)

Others such as Mittelman, Ong, Overbeek, and Sassen have described the relationship between the current era of economic globalization and recent patterns in labour migration flows. Governments acting as agents of national capital interests have supported a form of market-driven migration management and regulation. As market relations go global, integrated regional and global labour markets develop and labour is commodified, with migration as a form of trade in labour between countries that is sanctioned by state migration regulatory frameworks. Transnational labour migration is another strategic component of the evolving global division of labour and power (GDLP). On this point, Mittelman writes:

(C)hanges in migration patterns are not merely matters of individual choice, but rather reveal structural factors beyond the control of individuals ... Flows of humans are linked to a hierarchical system of production and power. Increasing specialization and spatial dispersion are part of a shift toward a globalizing economy, a consequence of which is the distribution of human capital. An area’s position in the GDLP and its forms of specialization establish terms for the exit and entry of migrant labor.¹⁸

In a similar vein, Robinson writes: “The corollary to an integrated global economy is the rise of a truly global – although highly segmented – labour

¹⁶ Michael Samers, “‘Globalization,’ the Geopolitical Economy of Migration and the ‘Spatial Vent,’” *Review of International Political Economy* 6, no. 2 (1999): 170-1.

¹⁷ Samers, 171.

¹⁸ James Mittelman, *Globalization Syndrome: Transformation and Resistance* (Princeton: Princeton University Press, 2000), 58.

market.”¹⁹ He continues: “Labour migration and geographic shifts in production are alternative (sic) forms for capitalists to achieve an optimal mix of their capital with labour.”²⁰ A transnational dimension to labour mobility signals another step toward creating a global labour supply that could be integrated into the global production system at various points along the production chain. The result of this transformation is that states are being pressured to create conditions that would allow employers to tap into this reserve supply. Governments define their regulations, policies and programs based on a calculation determining the number and types of workers permitted to work within their national labour markets. This calculation also includes a definition and recognition of rights granted to different groups of migrant workers. Ruh and Change refer to this as the “bundling of rights,” the implication of which is a stratification of legal status – that is, the right of residence – based on one position in the labour market and their potential economic contribution.²¹

The award-winning work of Daiva Stasiulis and Abigail Bakan²², as well as contributing author Patricia Daenzer in a co-edited manuscript by Stasiulis and Bakan, brings many of these challenging theoretical pieces together in their detailed analysis documenting the development of the Live-in Caregiver Program. Their research shows with near exact precision the racial/ethnic/gender hierarchy in Canadian immigration policy and impresses upon readers of this work the impact that structural conditions have in shaping the relationship between sending and receiving governments. The effects felt by communities associated with underdevelopment and poverty are strong motivators in pushing workers out of their home countries to look for work elsewhere, a condition which receiving governments are only too keen to exploit to their advantage. In a recently published manuscript, Harald Bauder explores the argument that migration policy is the outcome of strategic decision making by political actors as a tool for regulating labour markets. He writes: “At a macro level, restrictive policies toward the international mobility of workers can be interpreted as strategy to maintain the international division of labour. Enabling migration permits this exploitable labor force to enter the labor market.”²³ For my own research interests, these findings beg the question of critical junctures in the policy development cycle at which point both sending and receiving governments agree to coordinate their efforts to move groups of workers expeditiously.

¹⁹ William Robinson, “‘Aquí estamos y no nos vamos!’ Global Capital and Immigrant Rights,” *Race & Class* 48, no. 2: 81.

²⁰ *Ibid.*, 83.

²¹ Martin Ruhs and Ha-Joon Change, “The Ethics of Labor Immigration Policy,” *International Organization* 58 (2004): 74-5.

²² Daiva Stasiulis and Abigail Bakan, *Negotiating Citizenship: Migrant Women in Canada and the Global System* (New York: Palgrave, 2003); Patricia M. Daenzer, “An Affair between Nations: International Relations and the Movement of Household Service Workers,” in *Not One of the Family: Foreign Domestic Workers in Canada*, ed. Abigail B. Bakan and Daiva Stasiulis (Toronto: University of Toronto Press, 1997).

²³ Bauder, 6.

Arguably, short-term labour migration is the one type of migration that constitutes, or most closely approximates, a continuous flow of people back and forth across national-state borders. The flow of workers created under the supervision of a temporary foreign worker program means that the host country will receive a group of workers for a specified period of time, but eventually, the home country will also receive a group of workers back, only then to send a new group thereby completing the loop. It is due to the particularities unique to short-term labour migration that ongoing cooperation at nearly all stages of program operations is required between host and home governments and their respective bureaucratic institutions. Without some degree of coordination and cooperation, the circuit of workers is interrupted, with implications for border security as well as economic function. Such willingness to participate in the development and management of temporary foreign worker programs raises the possibility that both sending and receiving countries stand to gain certain benefits from short-term labour migration in particular. Understanding the motivations behind this commitment can be found in the answers to questions concerning why and when governments use the temporary foreign worker program as the policy tool of choice for regulating labour migration. From this literature, it is possible to identify reasons behind a government's commitment to temporary foreign worker programs as part of a broader strategy to regulate labour migration flows. The table below highlights key motivations driving governments to adopt temporary foreign worker programs.

Table 2.1. National motivations for short-term labour migration flows: Sending and receiving governments of migrant workers

<i>A. When are countries likely to use temporary foreign worker programs?</i>	
Sending Governments	Receiving Governments
<ul style="list-style-type: none"> ➤ Balance of payment problems and hence a need for foreign currencies ➤ Periods of high unemployment ➤ Periods of high political discontent and civil strife 	<ul style="list-style-type: none"> ➤ Particular economic sectors are struggling with labour costs in global competition ➤ Periods of labour shortages ➤ Periods of high in-bound migration and hence a need for consolidated rule-making and policies that solve multiple problems across policy domains
<i>B. Why do countries use temporary foreign worker programs?</i>	
Sending Governments	Receiving Governments
<ul style="list-style-type: none"> ➤ Generate foreign exchange ➤ Generate employment opportunities for unemployed and underemployed workers ➤ Skills transfers ➤ Manage out-bound migration flows through restrictive rules 	<ul style="list-style-type: none"> ➤ Enhance economic competitiveness in global markets and respond to pressures in distressed sectors by regulating labour markets to lower labour costs and weaken employment standards ➤ Fill labour shortages quickly drawing on a reserve supply of available labour ➤ Skills transfers ➤ Manage in-bound flows through restrictive rules

A historical view of the Canadian immigration framework shows how policies and programs have been driven by an economic imperative over a period of decades. The Seasonal Agricultural Workers Program and the Live-in Caregivers Program are not the only two examples of an economic-driven regulatory model used by the Canadian government to have access to additional numbers of workers while limiting the parameters of residency to generally exclude certain groups from gaining political membership attached to Canadian citizenship. In the 1920s, the precursor to the today's temporary foreign worker program was the Railroad Agreement and the Permit System, followed by the general contract labour schemes in the 1940s. By the 1950s, foreign workers entered the country having been recruited under a contract scheme. In the late 1960s, the Canadian government moved to formally institutionalize a process to distinguish between the skilled and unskilled foreign worker. The culmination of these efforts was the 1967 Points System.²⁴ The Non-Immigrant Employment Authorization Policy (NIEAP), which was implemented in the 1970s, segregated workers with short-term employment contracts from those entering the country as permanent residents with immediate access to certain rights and privileges. The significance of an economic-driven regulatory model has not been lost on scholars studying temporary foreign worker programs. These programs are selective, restrictive, and discriminatory, thereby leading to labour market segmentation that reinforces hierarchies among groups of workers. At the individual level, there are groups of workers who must function within the shadow of a regulatory fracture, a term coined by Saskia Sassen, which underscores just how important residency rights are for accessing a labour market that safeguards and improves working conditions, instead of one built on an invisible labour force vulnerable to constant downward pressures on employment standards. These points are further developed in the next section by introducing the concept of managed migration into the discussion.

(II) The development of migration systems using the state tool of managed migration²⁵

Our thinking on immigration matters has traditionally focused on the push-pull factors which influence the *individual's decision* to leave his or her home country and take up residence in another country. Many of these push-pull factors are the result of poverty, political instability, and social discontent experienced by migrants in their home countries. For these reasons, researchers

²⁴ Ninette Kelley and Michael Trebilcock, *The Making of the Mosaic: A History of Canadian Immigration Policy*, (Toronto: University of Toronto Press, 2002).

²⁵ Portions of this section are drawn from a paper written for a conference presentation and later published as an article: Austina Reed, "Canada's Experience with Managed Migration: The Strategic Use of Temporary Foreign Worker Programs," *International Journal* 63, no. 2 (2008): 465-80.

point to the emergence of a new wave in migration flows. This wave shares two important characteristics.²⁶

First, the characteristics of this new wave show migration flows to originate in many of the world's poorer developing countries and end in some of the wealthiest developed countries. Previous migration waves were at one time trans-Atlantic in nature (i.e., between Western Europe and North America), and at other times intra-regional in nature (e.g., within Western Europe). Today's flows are notable for the South-to-North direction that they take, as well as continuing the pattern of intra-regional movement.²⁷

Second, the characteristics of this new wave show migration flows are driven by an economic imperative having to do with a gradual reconstitution of labour markets to introduce greater flexibility into the system. Increased flexibility in employment practices comes at great costs to workers, in the form of reduced wage levels and lower labour standards, but is embraced by states pressured to address competing interests across multiple policy domains, including economic development and labour market regulation. On this point, Stasiulis and Bakan write:

The logic of national immigration policies is both tuned to maximizing the needs of the neo-liberal corporate sector, with business forming the major partner in immigration policy-making, and minimizing the security and integration costs to national states of autonomous migration.²⁸

They continue:

[T]he exclusionary and hierarchical tendencies of citizenship have deepened with the expansion of neo-liberal policies and corporate globalization, driven by the interests of powerful transnational actors. The international reorganization of productive and reproductive labour spurred by neo-liberal policies and globalization, has sharpened the "global citizenship divide" between citizens in the North, or First World, and poor migrants from the South, or Third World.²⁹

I will argue throughout this thesis that regulating short-term labour migration requires high levels of coordination and cooperation between host and home countries. To the extent that sending and receiving governments are willing to cooperate, the effect is to see foreign worker programs develop that facilitate the kind of coordination needed to guarantee uninterrupted flows.

²⁶ E.g., Thomas Faist, *The Volume and Dynamics of International Migration and Transnational Social Spaces* (Oxford: Clarendon Press, 2000).

²⁷ Saskia Sassen, *Guests and Aliens* (New York: The New Press, 1999), xiv.

²⁸ Stasiulis and Bakan, 13.

²⁹ *Ibid.*

As a policy prescription, the concept of managed migration turns our attention to the push-pull factors which influence the *decisions of governments* to support the creation of a migration system between the host and home countries of the foreign worker. By definition, managed migration is a form of documented movement that ensures both sending and receiving governments know how, when, and where an individual is working during the tenure of the overseas employment contract. Under the policy framework of managed migration, governments specify the number and types of workers permitted to move, as well as the number and types of citizenship rights afforded to the worker. The legal documentation that is created when a work permit is issued makes managed migration an attractive policy tool to both sending and receiving governments.

The practice of managed migration has two direct effects and one indirect effect. The first direct effect is that it regularizes cross-border linkages between countries. Managed migration provides the necessary legal documentation to give workers authorized status in the host country. The interested parties involved in making managed migration work (i.e., employers, workers, as well as sending and receiving countries) come to know what to expect from the arrangement between them. The second direct effect is that it provides a clear set of rules and guidelines for policy implementation and program operations.³⁰ These rules and guidelines may be specified in a temporary foreign worker program, or they may be defined by legislative mandate in a country's immigration or emigration policy framework. Typically, they specify the number and type of workers permitted to move, as well as the number and type of rights afforded to the worker. Because both receiving and sending countries agree to these policy arrangements, the overall effect is to give the migration system the needed stability to function effectively.

The indirect effect is that the practice of managed migration yields varying degrees of cooperation between sending and receiving governments. By definition, managed migration is only at its most effective when both sending and receiving governments agree to regulate these flows. Managed migration of this type breaks from traditional models of immigration policy because implementation often requires input from the sending countries of these workers. James Fawcett describes this relationship between countries as a migration system. He identifies six benefits for researchers using this migration systems framework to investigate the structure of migration flows. In his words, this framework:

1. directs attention to both ends of a migration flow, with a corresponding necessity to explain stability and mobility in each location
2. examines one flow in the context of other flows, or one destination in relation to alternative destinations

³⁰ Ruh and Chang, 74-5, 95.

3. highlights the diverse linkages between places, including flows of information, goods, services and ideas, as well as people
4. suggests comparisons between places, thus calling attention to the disparities and imbalances that are a source of energy in the system
5. brings into focus the interconnectedness of the system, in which one part is sensitive to changes in other parts
6. reinforces the view of migration as a dynamic process, a sequence of events over time.³¹

The theoretical framework of the migration system adds significant value to an IPE study of transnational labour migration flows. First, it recognizes that people's movements across borders follow a pattern. From an IPE perspective, a focus on patterns is important for seeing that these flows are bound within a system created by states for the strategic purpose of encouraging certain types of workers to move. These patterns are directed and maintained by linkages created between sending and receiving governments and the communities where these flows begin and end. Owing to IPE's interest in economic interdependence between countries and the globalization of market relations, the notion of networks or circuits of workers moving back and forth between host and home countries opens up analysis to considerations that the size and characteristics of migration flows are shaped by geopolitical and economic conditions being experienced in both countries.

Second, evidence of patterning in how workers move back and forth between countries suggests that an important characteristic of the migration system is its stability. Such indicators are promising of an opportunity for researchers to study how, when, and why people choose to move away from their home country permanently or back and forth between sending and receiving countries. These patterns in movement can be studied historically across time and comparatively among countries and between regions.

Applying an IPE Approach to the Study of Cross-Border Labour Migration

As soon as one begins questioning how a migration system actually works, the idea emerges that a state's political authority is potentially being changed by interactions (1) between sending and receiving governments; (2) between levels of government above and below the nation-state; and (3) between public and private actors. The work of Louis Pauly and Edgar Grande provides a significant piece which forms the backdrop for this study. They describe the transformation of the state's political authority in this way:

³¹ James Fawcett, "Networks, Linkages, and Migration Systems," *International Migration Review* 23, no. 3 (1989): 672-3.

1. [T]he nation-state has lost its monopoly on collectively binding decision-making and on the production of public goods ... Territoriality still matters, but the evident result of intensifying interaction has been a substantial spatial reconfiguration of public authority.
2. There is a continuous reassessment and redefinition of public functions. As a consequence of privatization, liberalization, de-regulation, and reregulation, the scope of the public sector has been changing and the measures and instruments used to perform public functions has been adapting ... This has resulted in a complex functional reconstitution of public authority.
3. Governance in industrially advanced societies has been confronted with new and unique problems of democratic legitimacy.³²

This transformation in decision-making and policy implementation does not necessarily amount to either a loss or a gain in the state's political authority to govern; only that it signals how complex and diverse the relationships and interests which are left to public authorities to manage.

The regulation of labour mobility when it is championed by different sectors representing national and global capital interests also tests the state's political authority. For example, Ong describes the phenomenon of graduated, or variegated, sovereignty in which territory is carved out within a state's traditional boundaries for another entity – e.g., transnational corporations – to govern. She writes: “as corporations and NGOs exert indirect power over various populations at different political scales, we have an emergent situation of overlapping sovereignties.”³³ Ong continues: “the option of [neoliberal] exception has allowed states to carve up their own territory so they can better engage and compete in global markets. Neoliberal calculations are applied to practices of human territoriality, or to the control of populations through the reinscription of geographical space.”³⁴ Globalization scholar Saskia Sassen identifies the concept of regulatory fractures as the “in-between spaces” where “globalization has contributed to a series of economic activities that take place in national contexts but that are sufficiently novel in some of their features (organization or locational) so that while they do not appear to violate existing regulatory frameworks, they cannot be said to comply with them either.”³⁵ Applied to the study of cross-border labour flows, the notion of a regulatory fracture is a very important construct for examining the practice of managed migration as a policy prescription that is shared by both sending and receiving countries. The analytical

³² Edgar Grande and Louis Pauly, eds., *Complex Sovereignty: Reconstituting Political Authority in the Twenty-first Century* (Toronto: University of Toronto Press, 2005), 15-6.

³³ Aihwa Ong, *Neoliberalism as Exception: Mutations in Citizenship and Sovereignty* (Durham, NC: Duke University Press, 2006), 7.

³⁴ *Ibid.*, 19.

³⁵ Saskia Sassen, “Spatialities and Temporalities of the Global: Elements for a Theorization,” *Political Culture* 12, no. 1 (2000): 220.

framework of the regulatory fracture can be used to determine where overlap – and gaps – may exist in governments' regulatory frameworks that affect how migrants experience work, residency, and citizenship.

The research undertaken in this thesis compares regulatory actions taken by one government, Canada, within the framework of a migration system shared with two sending governments, Mexico and the Philippines. I refer to these relationships as two different migration systems. The research problem investigates the motivations and interests, as well as tensions and contradictions, which shape the relationship between these governments. The regulation of short-term labour migration in particular is an important case study in the transformation of governance. In their efforts to harness global flows to maximize economic benefits from them (e.g., labour mobility and remitted worker earnings), governments are opening themselves up to new forms of governance. The governments examined in this case study have opted to manage and regulate the movement of workers between them using the temporary foreign worker program. The two migration systems function differently as a consequence of how these temporary foreign worker programs have been adopted.

The thesis should not be read as a defence in favour of the temporary foreign worker program. Instead, it attempts to understand why governments might choose to use the temporary foreign worker program as the policy tool of choice in the first place. Both receiving and sending governments engage in the practice of creating transnational labour migration flows; labour migration has become a prominent feature in the current era of economic globalization, one which governments expect to tap into for the economic benefits that come with making labour mobile on a global scale. If one assumes that a migration system may function as a series of relationships founded on cooperation between countries, then it is important to consider the institutional practices and represented interests that lead them to adopt a policy position supporting short-term labour migration and the implementation of temporary foreign worker programs. The next chapter turns to the matter of institutional practices embedded in the administration of the SAWP and LCP by examining and comparing key program features.

CHAPTER THREE

PROGRAM FEATURES: THE REGULATORY FRAMEWORK AND ADMINISTRATIVE OPERATIONS OF THE SEASONAL AGRICULTURAL WORKERS PROGRAM AND LIVE-IN CAREGIVER PROGRAM

This chapter describes the regulatory framework and administrative operations that govern the Seasonal Agricultural Workers Program and the Live-in Caregiver Program. Both programs are part of a larger temporary foreign worker program approach that the Canadian government has followed since its implementation of the Non-Immigrant Employment Authorization Program, or work permit system. Although important differences distinguish the two programs from each other, there are also important similarities between them in the way that program operations are administered. Both are temporary foreign workers programs, a term which has significant meaning for how the authorization of a worker's entry into the country is processed. Under the terms and conditions of the regulatory framework governing Canada's work permit system, certain steps must be taken by both the employers who seek to recruit foreign labour and the foreign workers who are to be hired by Canadian employers if authorization is to be granted. A labour market opinion is completed by local offices representing Human Resources and Social Development Canada. The labour market opinion ensures that the Canadians First policy is not being contravened as a result of hiring a foreign worker. A written employment contract must be signed between the employer and worker prior to the commencement of the work. The employment contract validates the legality of the employment relationship between the employer and the worker under the terms and conditions of provincial employment standards. A temporary work permit may be issued when the immigration officer is satisfied that the employment offer is valid and that the hiring of the foreign worker results in 'a neutral or positive effect' on the Canadian labour market (i.e., included within the application for a work permit is the employment contract and labour market confirmation). The work permit issued to the foreign worker identifies the employer and the employment tenure. When the contract ends, the work permit is no longer valid, and the worker is expected to return to her or his home country. A new employment offer, early termination, or change in employers requires that the worker go back through these steps to apply for a new employment authorization and work permit.

A foreign worker who applies for an employment authorization and work permit through the Seasonal Agricultural Workers Program and Live-in Caregiver Program will follow these same steps. One of the most important differences

distinguishing the two programs from each other is the administrative role taken on by the worker's home country. The Memorandum of Understanding which governs the Seasonal Agricultural Workers Program establishes a formal bilateral administrative arrangement between the Canadian government and the sending countries of these agricultural workers. No functional equivalent exists with the Live-in Caregiver Program. Instead, the Philippine government and Canadian government apply their respective emigration and immigration laws, regulations, and rules to the cross-border movement of live-in caregivers. Minus a bilateral administrative agreement between the Canadian and Philippine governments, the LCP more closely approximates the traditional approach to regulating labour migration flows. National migration policies structure these flows, with emigration and immigration regulatory frameworks acting separately to provide traditional gate-keeping functions. By comparison, I argue that the SAWP is the forerunner of an innovative approach to regulating international labour migration flows. This new approach adds another level or layer beyond national migration policies which facilitates cooperation and coordination between governments. I begin with a description of the regulatory and programming features which are unique to the Seasonal Agricultural Workers Program. I provide a separate discussion for the Live-in Caregiver Program.

The Seasonal Agricultural Workers Program

Program operations for the Seasonal Agricultural Workers Program (SAWP) began with the first Memorandum of Understanding signed between Canada and Jamaica in 1966.³⁶ The SAWP attracted its first group of foreign agricultural workers when 264 Jamaicans arrived in Southern Ontario to help with tobacco harvesting. The following year brought Barbados and Trinidad and Tobago into the program. Mexico joined the SAWP with its signature to a Memorandum of Understanding on 17 June 1974.³⁷ Mexico inaugurated its role in the program by sending 203 of its agricultural workers to Canada within the first year. The SAWP expanded yet one more time with the addition of the Organization of Eastern Caribbean States (OECS) in 1976. The OECS helped Canada draw agricultural workers from the islands of Antigua & Barbuda, Dominica, Grenada, the Grenadines, Montserrat, St. Kitts-Nevis, St. Lucia, and St. Vincent. In a short 10-year period between 1966 and 1976, Canada put in place a regulatory framework whose core features have gone virtually unchanged

³⁶ Service Canada, "Agriculture Programs and Services: Overview," Service Canada, <http://www.servicecanada.gc.ca/eng/on/epb/agri/overview.shtml> (accessed December 1, 2008).

³⁷ Hernán Aldrete Valencia, "Mexico-Canada Seasonal Agricultural Workers Program," (paper prepared for the UNITAR/UNFPA/IOM/ILO Workshop on Labour Migration, United Nations Headquarters, New York, March 15, 2006) <http://www.unitar.org/mm/File/Valencia%20Seasonal%20Agricultural%20Workers%20Programme.pdf> (accessed January 31, 2008), 1.

since the program's inception. These core features of the SAWP's regulatory framework are comprised of the program mandate, which gives the SAWP its legal basis, and program administration. Here, program administration refers to the institutional structure for the bilateral, or inter-governmental, arrangement between the Canadian and Mexican governments. These core features help to distinguish the workings of the Seasonal Agricultural Workers Program from that of the Live-in Caregiver Program.

One of the most important of these features is the SAWP's mandate as a temporary foreign worker program. The primary purpose of the Seasonal Agricultural Workers Program is to provide a supplementary source of agricultural workers to only those agricultural commodity sectors experiencing critical labour shortages during peak production periods. With this mandate, the SAWP is directed to (1) facilitate the recruitment and hiring of seasonal agricultural workers; and (2) expedite the entry of foreign agricultural workers into selected provinces through the temporary work permit system.³⁸ Individuals recruited and hired as SAWP participants are temporary workers in the truest sense of the word. The policy objectives of the SAWP stipulate that representative governments recruit workers for temporary full-time employment and arrange for their immediate return upon completing the employment term. The employment agreement specifies that workers are hired for a period of time no less than 240 hours in six weeks and no more than eight months, inclusive, in a single contract cycle.³⁹ These workers enter Canada with a work permit that identifies the employer of record and the expected completion date of employment.

The SAWP is different from other temporary foreign worker programs because it limits the work permit to a period of time less than one year. Live-in caregivers are authorized to hold a work permit for at least one year's time, so long as the employer of record remains the same. They may also remain in Canada while looking for new employment as a caregiver. Similar conditions pertain to the Low-Skilled Foreign Workers Program; a worker is authorized to hold a work permit for one year and may renew if the contract is extended for another year. By comparison, the SAWP is administered for a period of time less than 12 months, and its workers are employed for an average of 18 weeks. SAWP regulations prevent employers from extending the employment tenure beyond the eight-month work period in a single year.

The SAWP's mandate is significant for understanding how a bilateral relationship between the two governments has come to be. The Memorandum of Understanding (MOU) between the Canadian government and the sending

³⁸ Valencia, 1.

³⁹ Service Canada, "Caribbean and Mexican Seasonal Agricultural Workers Program: Policy," Service Canada, <http://www.servicecanada.gc.ca/eng/on/epb/agri/policy.shtml> (accessed December 1, 2008).

countries, including Mexico, establishes a practice of managed migration.⁴⁰ Managed migration creates the conditions for regulated, cross-border labour migration flows. In effect, managed migration gives order and structure to these labour migration flows of agricultural workers between Canada and their home countries. Canada has not experienced the same degree of unauthorized movement as the United States has. Estimates suggest that undocumented foreign workers in the U.S. make up anywhere between 50 and 70 per cent of the total hired agricultural labour force, or an averaged approximate of 1.2 million workers.⁴¹ As a practice of managed migration, the Seasonal Agricultural Workers Movement has prevented many of the kinds of abuses that result from unauthorized labour migration. The organized movement of documented workers from their home countries to Canada has been achieved through cooperation between the governments when they agree to the terms and conditions regulating workers' movement into and out of the country. The organized movement of documented workers is also achieved because the agricultural commodity sectors represented in the SAWP agree to cooperate with the terms and conditions set by these governments. The SAWP's bilateral administrative agreements cement these bonds of cooperation by setting out in unequivocal terms (1) why cross-border labour migration is created and supported; (2) the purpose of regulating the cross-border movement of foreign agricultural workers in this manner; and (3) the responsibilities which are assigned to all parties involved in organizing these labour migration flows.

The practice of managed migration gives these labour migration flows their own particular characteristics. These flows take the shape of a permanent circuit of workers back and forth between their home countries and Canada. The permanent order of these migration flows affords great stability to the migration system between Canada and the source countries. Stability is as much a condition of programming as it is a desirable policy outcome. For the Canadian government and its Fruits, Vegetables and Horticultural (FVH) growers, the permanence of these flows is desirable for achieving a reliable and readily-available group of workers who are authorized to work in the country when they are most needed. For the source countries and their workers, it ensures access to a labour market and employment opportunities that might otherwise be closed to these workers, and it guarantees a steady flow of remitted foreign exchange earnings. The 'named worker' process is an important feature of the SAWP which helps to maintain the permanent order of labour migration between the countries. Workers

⁴⁰ Veena Verma, *Component I: The Mexican and Caribbean Seasonal Agricultural Workers Program: Regulatory and Policy Framework, Farm Industry Level Employment Practices, and the Future of the Program under Unionization* (Ottawa: North-South Institute, 2003), 12-13, http://www.nsi-ins.ca/english/pdf/csawp_verma_final_report.pdf (accessed December 1, 2008).

⁴¹ Philip Martin, "Guest Workers: New Solution, New Problem?" (paper prepared for Pew Hispanic Center Study, Project of the Pew Charitable Trusts and USC Annenberg School for Communication, March 21, 2002), 7, <http://pewhispanic.org/files/reports/7.pdf> (accessed June 1, 2008).

who are asked to return the following year by their Canadian employers account for an average of 70 per cent of all Mexican workers participating in the SAWP.⁴² The naming process has the immediate effect of relieving both employers and workers of their concerns about the next available job vacancy. This permanent circuit of temporary workers is employer-driven by the commodity sectors representing fruit, vegetable, and horticultural production in Canada. Since the program's implementation in 1966, the SAWP has expanded not only by the number of participant countries but also by the number of participating commodity sectors. Mexico has supplied almost 150,000 agricultural workers to Canada between 1974 and 2006.⁴³ Approximately 60,000 of them became SAWP workers in only the last six years.

Mexican workers who participate in the SAWP must be at least 18 years of age and should have previous experience in agricultural production. Many of these workers come from the central and southern regions of Mexico where agriculture is predominantly found in the country.⁴⁴ The overwhelming majority of Mexico's SAWP participants are men. More women have joined the program since 1989, having been hired to help with strawberry picking and packing. More than 80 per cent of Mexico's SAWP workers are employed in the fruits and vegetables sectors, tobacco, and greenhouses. Between 1974 and 2002, these workers were stationed in one of four Canadian provinces. Ontario and Quebec received the majority of these workers, followed by Alberta and Manitoba. Since 2002, Mexico has supplied workers to British Columbia, Nova Scotia, New Brunswick, Prince Edward Island, and Saskatchewan.

The preamble of the MOU acknowledges the good will which is maintained between the two countries for the purpose of facilitating the cross-border movement of agricultural workers.⁴⁵ In this preamble, the foundations for the policy objectives and program rationale are laid out, including: (1) a program which serves to be of *mutual benefit* to both governments; (2) a program that functions to help move *seasonal* agricultural workers into Canada; and (3) a program whose operations are determined by Canada's *assessment of demand* based on Canadian agricultural labour market conditions.⁴⁶ The MOU's preamble is remarkable for its call for cooperation between the two countries. It is a distinguishing feature of the SAWP which makes it uniquely different from the LCP. The symbolic recognition of bilateral cooperation in the MOU is made real

⁴² Valencia, 4.

⁴³ *Ibid.*; Foreign Agricultural Resource Management Services, "Statistics," Foreign Agricultural Resource Management Services, <http://www.farmsontario.ca/> (accessed December 1, 2008).

⁴⁴ Valencia, 4. Interview with representative of Consulate General of Mexico in Toronto, 2007.

⁴⁵ Information about the agreement was also obtained from secondary sources such as: David Greenhill, "Managed Migration Best Practices and Public Policy: "The Canadian Experience," (paper prepared for the workshop on Best Practices Related to Migrant Workers, Santiago, Chile, June 19-20), <http://www.rcmvs.org/paises/SAWP.htm> (accessed December 1, 2008). The administrative, or procedural, framework of the SAWP has been discussed in great detail in Verma's work.

⁴⁶ Verma, 13-19.

with the implementation of the SAWP's operational guidelines. The SAWP follows an agreed uniform procedure for recruiting and hiring seasonal agricultural workers, one which is shared between the Canadian and Mexican governments.⁴⁷ This procedural framework, or administrative arrangement as it is referred to in the MOU, designates the responsibilities of all involved parties for their part in regulating the cross-border movement of these workers. As a series of individual bilateral agreements between each of the sending countries and the Canadian government, the Mexican-Caribbean Seasonal Agricultural Workers Program constitutes a multi-level governance framework of significant complexity. This institutional framework involves annual negotiations between federal-level representatives of the respective governments; regular interaction between federal, provincial, and local levels of the Canadian government; and close partnerships between the Canadian government and its agricultural industry representatives. This section provides an overview of the institutional design which is specific to the Mexico-Canada bilateral administrative arrangement. I begin with a brief discussion of the responsibilities tasked to each government.

Representatives of the Canadian and Mexican governments meet for an annual review of the SAWP's operational guidelines. These operational guidelines adhere to the principles, policy objectives, and rationale for programming as outlined in the MOU. They provide the operating language and procedural directives which are necessary for administering the program.⁴⁸ For the rules and regulations pertaining to the admission of temporary workers, Canada follows its immigration laws. It limits entry to individuals who are 18 years of age or older, who are Mexican nationals, who meet the requirements of Canadian immigration laws, and who have signed the Employment Agreement. The Canadian government liaises with the Mexican government on the number of workers needed for employment in Canada, and any cancellations on pending requests, within a reasonable timeframe. Mexico's Operational Guidelines specify that Canada give at least 20 working days notice for employment requests that are to be drawn from the unnamed worker pool. The Canadian Consular Office is responsible for reviewing applications, medical reports, and relevant worker documentation. It also provides the letter of introduction permitting the issuance of an employment authorization. The Mexican Operational Guidelines specify that these letters be issued within 10 days of receipt of a completed file. In Canada, local Human Resource Employment Centres process employment application for foreign agricultural workers. Employers are expected to show need for these workers, having first posted the position locally through employment advertisements for Canadian citizens and permanent residents. Canadian policy guidelines request that employers give their local employment centres at least eight weeks advance notice prior to the employment start date.

⁴⁷ Service Canada, "Agriculture Program and Services: Overview".

⁴⁸ Service Canada, "Caribbean and Mexican Seasonal Agricultural Workers Program: Policy," Service Canada, <http://www.servicecanada.gc.ca/eng/on/epb/agri/policy.shtml> (accessed December 1, 2008); Valencia, 2; Verma, 19-22.

Local employment centres should typically respond within four weeks of this start date.

The Mexican government is directed to recruit workers who will satisfy Canada's immigration laws and human resource needs when it comes to seasonal agricultural workers. Because the operational guidelines specify that Canada will not accept SAWP applications which have been obtained through the use of private contractors or private employment agencies, the Mexican government provides public employment services. The National Employment Service in the Ministry of Labor and Social Welfare is chiefly responsible for recruiting and selecting these workers, as well as processing their paperwork for documentation purposes.⁴⁹ Medical and security clearance must be done in Mexico and confirmed by the Canadian consular office prior to a worker's departure for Canada. Medical exams are provided by the Ministry of Health and the Federal District Government. Mexico's Operational Guidelines specify that the Mexican government will keep a surplus supply of workers readily available for their departure to Canada in the event of harvest-related emergencies or when replacements are needed. This surplus labour pool should be made up of at least 300 workers who are kept in reserve for such emergency requests. The Ministry of the Interior and the Ministry of Foreign Affairs issue the necessary documentation for individuals to work and travel. As part of its duties, the Ministry of Foreign Affairs through its Diplomatic and Consular representatives in Canada liaise with its Canadian government counterparts on matters of programming. These duties primarily involve consultation and coordination to match suitable workers with Canadian employers' needs. As a signatory to the Employment Agreement, the Government Agent in Canada alone carries the chief responsibility of representing its workers while they are employed in Canada. These dual responsibilities (i.e., program administrator and worker representative) can put the Mexican government in competing roles where the interests of the program and those of the worker conflict with each other. Critics of the SAWP cite this as a programming flaw in the SAWP's operational guidelines.

Both the Canadian and Mexican governments recognize an official role for Canadian employer associations in coordinating the day-to-day operations of managing the SAWP. In Ontario, this employer association is the Foreign Agricultural Resource Management Services (F.A.R.M.S.). In Québec, it is called the Foundation of Foreign Farm Labour Hiring Companies (the French acronym F.E.R.M.E.). These organizations are instrumental to program operations and have been attributed with the success of brokering an effective migration circuit of workers back and forth between Canada and the participating source countries. Incorporated as a not-for-profit organization in 1987, F.A.R.M.S. represents Ontario FVH growers who participate in the SAWP. It is governed by an elected Board of Directors, members of sectors which employ foreign workers, and is funded exclusively by administration fees collected from

⁴⁹ Valencia, 2-3.

the growers themselves. They are charged by the number of workers and transfers each year.⁵⁰ For example, 2006 administrative fees totalled CAD \$35 (plus GST) for each worker arrival or transfer. In essence then, the administrative costs once incurred by the Canadian government have been picked up and paid for by F.A.R.M.S. through its user fees. The authorization of an employer organization like F.A.R.M.S. to coordinate the processing of foreign worker requests is a particularly unique feature of the SAWP. The Live-in Caregiver Program has no such equivalent. Mobilization among FVH growers was driven by what growers saw as a real threat to the long-term sustainability of the Canadian FVH industry.⁵¹ Certain commodity sectors were especially sensitive to changes in production and marketing methods which were occurring within the larger FVH industry. Labour was one of the few production costs that could be contained with the assurance of a supplementary labour pool. The SAWP provided an answer to their labour shortage problem, but the possibility that they would not be represented in the negotiations of a foreign worker program prompted further mobilization. In effect, growers acted first by organizing a formal association, thereby pre-empting regulatory action being imposed on them. With a mandate and institutional structure that promised to support the program's operations, F.A.R.M.S. ensured itself an officially-recognized role in the daily operations, as well as annual bilateral negotiations, of the SAWP.

Compared to the Live-in Caregiver Program, it is unprecedented the degree to which a single, private organization is integrated into the daily operation of managing SAWP-related activities. F.A.R.M.S. acts as both program administrator and employer representative.⁵² In this dual capacity, F.A.R.M.S. is responsible for lobbying for policy changes on behalf of its members *and* for delivering program services to its clients. As program administrator, F.A.R.M.S. provides much of the employment details necessary for an employer to put together a request for SAWP workers. F.A.R.M.S. publishes its Employer Information Package on an annual basis. This booklet and its website provide contact information for commodity sector representatives and government liaison services, fee structures and program-related costs, travel and housing arrangements, occupational health and safety requirements, wage rates, employment standards, health care and tax withholding guidelines, and country-specific programming requirements.⁵³ After the local human resources centre has authorized an employer's request for SAWP workers, F.A.R.M.S. processes these orders and forwards them to the home countries of these workers. Moving these workers back and forth is also the responsibility of F.A.R.M.S. It makes the necessary travel arrangements through CanAg Travel Services, including

⁵⁰ Service Canada, "Caribbean and Mexican Seasonal Agricultural Workers Program: Policy."

⁵¹ Interview with an official from Service Canada, 2007; Verma, 4-12.

⁵² Verma, 45-7.

⁵³ Foreign Agricultural Resource Management Services, "Program Information," Foreign Agricultural Resource Management Services, <http://www.farmsontario.ca/> (accessed December 1, 2008).

international air travel and local pick-up from the airport to the employer's farm. CanAg is the authorized travel provider for the Seasonal Agricultural Workers Program. Founded in 1992, CanAg is a for-profit organization owned and operated by F.A.R.M.S. as the travel agency's only shareholder.

In addition to these day-to-day activities, the organization provides official program statistics and reports to Human Resources and Social Development Canada / Service Canada. It keeps a single mailing list, the only one of its kind, which keeps track of participating employers. Should the Government Agents of the sending countries request their intervention, F.A.R.M.S. may also respond to complaints made against employers.

As an employer representative, F.A.R.M.S. is a formally-recognized participant in the annual negotiations which occur between the countries over the policy and operational guidelines for administering the SAWP. This employer organization represents its members' interests on such matters as wage rates, employment benefits, and program costs. Although the MOU specifies in explicit terms that Canadian employers should expect to pay premium costs associated with importing labour using the SAWP, employers' concerns with rising premium costs have been a contentious issue taken up by F.A.R.M.S. on behalf of Ontario farmers at the annual meetings.⁵⁴ As one of its principal responsibilities, the organization lobbies the Canadian government for policy changes and gives voice to matters related to employers' relations with sending governments at these annual meetings.

The Employment Agreement is the final piece in the managed migration system that regulates the cross-border movement of foreign seasonal agricultural workers. More specifically, the Employment Agreement regulates the employment relationship between the foreign worker and the Canadian employer. It also formally recognizes the duties of the Government Agent of Mexico (and the Caribbean countries) as the workers' representative while they live and work in Canada.⁵⁵ In the capacity of Government Agent to the Employment agreement, the government representative is stationed in Canada to monitor the conditions of this employment relationship. The Government Agent plays the dual role of program administrator and worker representative. As an annex to the MOU, the Employment Agreement is reviewed and, if necessary, revised by the two governments on an annual basis. The MOU between the Canadian and Mexican governments stipulates that amendments are made only after the employer groups have been consulted first. This practice differs from the Canadian-Caribbean MOU which provides for consultation with interested parties.⁵⁶ It is a difference in language that opens up consultation to other non-governmental organizations, including workers' organizations. There has not, however, been an instance of a

⁵⁴ Interview with an official from Service Canada, 2007.

⁵⁵ Service Canada, "Agriculture Programs and Services: Overview."

⁵⁶ Verma, The Mexican and Caribbean Seasonal Agricultural Workers Program.

workers' organization taking part in these negotiations. Instead, employment issues have been taken up in the Canadian courts.

The employment agreement is divided into separate sections and is thorough in its details. Unlike the work contract for the Live-in Caregiver Program, Human Resources and Social Development Canada (HRSDC) has provided a single contract model. Each section sets out the conditions of the employment relationship, including the obligations assigned to each signatory; the employment period; working conditions; payment of wages; wage deductions; insurance for occupational and non-occupational injuries and diseases; work records and statement of earnings; travel arrangements; and premature repatriation.⁵⁷ The duration of the employment period falls between 240 hours in a six-week period and 8 months. The work day is typically eight hours, and six days of consecutive work requires one day of rest. The Agreement, however, specifies that employers may request from their workers additional work hours and a delayed rest period when the 'urgency of the situation' makes such requests appropriate. Housing may be provided without cost to the worker. The wage schedule identifies wages to be paid to the SAWP worker based on (1) the provincial minimum wage, (2) a prevailing wage rate set by Service Canada describing the different types of agricultural work performed by SAWP workers, and (3) the same wages paid to a Canadian worker who performs the same type of work. Whichever amount is the greatest becomes the determining factor used to set wages. Standard payroll deductions are made from the workers' wages, including taxes and pension contributions. Additional deductions include some portion of non-occupational medical coverage (CAD \$0.50 per day); meal costs (no more than CAD \$6.50 per day); travel arrangement costs and work permit processing fees (between CAD \$150 and \$700); and repatriation costs. The Caribbean Agreement makes arrangements for remitted worker earnings; the Mexican Agreement does not. The obligations of the worker to the employer, and vice versa, follow Canadian immigration laws and regulations, as well as Canadian tax laws and regulations. The Employment Agreement specifies that employers shall employ only those foreign agricultural workers authorized by HRSDC; they may be fined and/or imprisoned for unauthorized workers or for non-agricultural work performed by a SAWP worker. Workers are obligated to meet the conditions set out in their work permits, including the place of employment and the return date which are identified in the Employment Agreement.

The next section describes the regulatory framework and administrative operations of the Live-in Caregiver Program. The LCP is notable for its traditional approach to regulating labour migration flows which has each

⁵⁷ E.g., Human Resources and Social Development Canada, "Agreement for the Employment in Canada of Seasonal Agricultural Workers from Mexico – 2008," Human Resources and Social Development Canada, http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/forms/2008mexicansawp-e.pdf (accessed December 1, 2008).

government acting unilaterally to monitor the comings and goings of workers. No bilateral administrative arrangement exists to orchestrate how LCP program operations are coordinated between the Canadian and Philippine governments. There is no Memorandum of Understanding that establishes a formal migration system based on an agreed-upon regulatory framework. Another important difference between the Live-in Caregiver Program and the Seasonal Agricultural Workers Program is the degree of influence wielded by private employment agencies to recruit, select, and hire workers. The LCP is shaped by the de-regulation of private recruitment activities, a recent development which places more workers into the migration system with far fewer regulatory safeguards. I discuss these differences in my discussion of the LCP's operational features.

The Live-in Caregiver Program

Canada has an extensive history of importing foreign labour to provide in-home caregiving services to Canadian families.⁵⁸ One of the first migration waves which included live-in caregivers took root beginning in the 1920s. These domestic workers were originally from Eastern and Central Europe as well as the Scandinavian countries. Workers from Finland, Hungary, Poland, Romania, and the Soviet Union accounted for the majority of the caregivers in this first labour migration wave. The second major labour migration wave occurred between 1957 and 1968, with the arrival of foreign domestic workers from Jamaica and Barbados. These workers entered the country through a special Canadian immigration program, one that would serve as the prototype for subsequent programs involving caregiving services. In exchange for one year of employment providing in-home domestic services, participants of this program obtained permanent residence status upon landing in Canada.

By the 1970s, the wave of foreign labour arriving in Canada to provide in-home care services became a steady flow from the Caribbean and, later, the Philippines. This last wave has continued through to the present day. Compared to earlier waves, this most recent one is notable for the *temporary* immigration status of its workers, who together make up a transnational circuit of *permanent* migration flows. This most current labour migration wave has been shaped by major changes to Canadian immigration laws, policies, and regulations. These changes to immigration legislation and policies include Canada's implementation of a Points System and the Non-immigrant Employment Authorization Program. Both have shaped how the Live-in Caregiver Program (LCP) is administered by the Canadian government.

⁵⁸ Louise Langevin and Marie-Claire Belleau, *Trafficking in Women in Canada: A Critical Analysis of the Legal Framework Governing Immigrant Live-in Caregivers and Mail-Order Brides* (Ottawa: Status of Women, Research Directorate, 2000).

The distinction between permanent and temporary status is an important one in Canada's long history of importing foreign workers to provide in-home care services. The difference has to do with how Canada chooses to structure and regulate this set of labour migration flows. The 1967/1968 immigration policy change and the implementation of the Non-Immigrant Employment Authorization Program (NIEAP) in 1973 are a key turning point in the development of a dual-track system of importing foreign labour.⁵⁹ Following these policy changes, program operations entailed a number of key features. These features include (1) a definition of caregiving as general (or low- / less-) skilled labour and (2) restricted freedom of mobility.

The immigration policy framework under which these special programs have fallen since the 1970s designates immigration status based on education, training, work experience, and adaptability. The type of work provided by caregivers under these special programs is narrowly defined, involving in-home child care, senior support, or disabled care. Because no designated occupation exists for individuals providing in-home care services under the guidelines of Canada's National Occupational Classification (NOC) system, live-in caregivers would have difficulty applying for permanent residence status through the Points System. Instead, the system designates them as temporary visitors who are authorized to work in Canada as live-in caregivers for a specified period of time. Employment authorization under these special programs has been narrowly defined. Since the 1970s, visas have been issued based on the terms of agreement in the employment contract signed between a foreign worker and her or his Canadian employer. Conditions of entry and work are identified on the work permit, and the work permit is tied to the single contract / employer. It is this temporary immigration status that has given these transnational labour circuits their permanent nature.

Over the last three decades, Canada has relied on its work permit system and special foreign worker programs like the Seasonal Agricultural Workers Program (SAWP) and the Live-in Caregiver Program (LCP) to guarantee a permanent flow of temporary foreign workers. The Live-in Caregiver Program is not the first of its kind as a hybrid model of the temporary/permanent regulatory framework. It follows several earlier policy initiatives; in effect, the uniqueness of the LCP is the consequence of an evolution in Canadian immigration programming specific to the type of occupation.

The first of these efforts fell under the regulatory framework of the temporary work permit system. Individuals remained in Canada for an average of three years, providing live-in care services to Canadian families under the conditions of the single employer work contract, and returned to their home countries at the end of this time period. The option of permanent residence was

⁵⁹ Nandita Sharma, *Home Economics: Nationalism and the Making of "Migrant Workers" in Canada* (Toronto: University of Toronto Press, 2006).

not offered to these workers. This form of administrative operations lasted less than 10 years, from 1975 to 1981. At the same time that Canada was admitting live-in caregivers into the country through the temporary work permit system, it was also negotiating bilateral labour agreements for foreign agricultural workers with the Caribbean countries and Mexico. These developments reflected an immigration approach to border control that restricted the type of entry permitted and quantified skill level based on economic contribution. The practice of admitting foreign caregivers without opportunity for permanent residence, however, provoked community-group mobilization on behalf of domestic workers.⁶⁰ Canada followed with a revised set of policy guidelines that changed how it dealt with foreign workers providing live-in caregiving services.

In 1981, Canada implemented yet another special foreign worker program for the purpose of recruiting and hiring in-home child care providers. The Foreign Domestic Movement (FDM) operated as a temporary foreign worker program under the umbrella regulatory framework of Canada's temporary work permit system. The one significant change in program operations was the option of permanent residence. Canada recognized the opportunity for individuals participating in the FDM to apply for permanent residence. These applications for permanent residence, however, would not be accepted until after the *two-year* employment contract period was completed. The FDM set specific admissions requirements which were applicable to in-home care providers only. These specific admissions requirements were in addition to the general admissions criteria specified under Canada's temporary work permit system. As one of the first of its kind, the FDM reflected a hybrid approach to managed migration. It blended elements of the temporary work permit system, with its labour market testing and practice of issuing temporary visas, and elements of the permanent immigration system when it granted economic immigrant status to participating workers. The restrictive entry requirements and employer-specific work permits remained the fundamental component of program operations, but the opportunity for permanent residence became one of the defining characteristics of this special immigration program. According to Bals's research, the FDM averaged no fewer than 9,000 foreign workers over its 10-year period. At its height, the FDM admitted approximately 18,500 workers in a single year alone, followed immediately by another 16,500 workers the next year.⁶¹

The Live-in Caregiver Program replaced the Foreign Domestic Movement in April 1992. The LCP looked very similar to its predecessor, the FDM: The LCP's mandate specified regulatory provisions to import foreign labour for the purposes of providing in-home care services for Canadians where and when a labour shortage of permanent residents and Canadian citizens was determined to exist. The category of in-home care services, however, was expanded under the

⁶⁰ Interview with representative from INTERCEDE, 2007; Langevin and Belleau, 35.

⁶¹ Myriam Bals, *Les domestiques étrangères au Canada: Esclaves de l'espoir* (Montréal: L'Harmattan, 1999).

LCP to include senior care support and disabled care, in addition to child care.⁶² The employer's initial request for a foreign worker received the attention of Human Resources and Development Canada, which performed a labour market assessment and validated the employment offer. The LCP required that the validation occur first, before the worker arrived in Canada. By comparison to the FDM, over a 10-year period between 1992 and 2001, Canada admitted an average of no more than 2,700 foreign workers under the LCP. Only in recent years have admissions levels crept upwards to 4,000 workers per year.⁶³ By the end of the FDM in 1990-1991, the Philippines was supplying more than two-thirds of Canada's temporary foreign caregivers. Since 1992, when the LCP was formally implemented, the Philippines has increased the number of workers it sends to Canada through the LCP. Today, approximately 90 per cent of Canada's temporary foreign caregivers come from the Philippines. The remaining 10 per cent of the program's participants represent Eastern European countries like the Czech Republic and the Slovak Republic, and the North and South Asian countries like China, India, Singapore, and Taiwan.

The LCP is jointly administered by Human Resources and Social Development Canada and Citizenship and Immigration Canada. Individuals applying through the LCP must meet six mandatory immigration eligibility criteria in order to obtain a temporary work permit as a caregiver. Three of the six criteria are specific to foreign caregivers, and the other three are standard practice for foreign nationals working temporarily in Canada. First, HRSDC completes a review of the Canadian employer's application requesting permission to employ a foreign worker. This preliminary stage of the application process is initiated by the Canadian employer. HRSDC reviews this job offer in order to assess the impact of a foreign hiring on the Canadian labour market and to ensure that provincial labour standards will be met with the hiring. Second, the employer and caregiver must agree to and sign a formal written contract. The employment contract provides a description of the duties, work hours, salary, and benefits for the worker providing in-home care services. The employment contract is also supposed to be reviewed by Citizenship and Immigration Canada. Finally, a worker must hold a valid work permit before entering the country. Both the HRSDC confirmation letter and the employment contract are included in the application for a temporary work permit. Like all other immigration applications, regardless of whether they are for temporary employment authorization or permanent residence, LCP applicants must be able to prove good health and no criminal record. Applicants send their required documents and the processing fee

⁶² Citizenship and Immigration Canada, "Working Temporarily in Canada: The Live-In Caregiver Program," Citizenship and Immigration Canada, <http://www.cic.gc.ca/english/work/caregiver/index.asp> (accessed June 1, 2008); Citizenship and Immigration Canada, "Hiring a Live-in Caregiver – How to Apply," Citizenship and Immigration Canada, <http://www.cic.gc.ca/english/work/apply-how-caregiver.asp> (accessed June 1, 2008).

⁶³ Statistics obtained from an interview with an official from Citizenship and Immigration Canada, 2007. Note that these are described as initial entries under the LCP.

to one of Canada's overseas visa offices responsible for the region or country in which the applicant lives.

An LCP applicant may receive her or his work permit only after a Canadian immigration officer at an overseas Canadian visa office has determined whether the application meets the specific program requirements.⁶⁴ There are three of these. LCP applicants must show they have obtained a degree equivalent to a Canadian high school education. They must demonstrate that they are able to speak, read, and write in English or French. LCP applicants must also provide evidence of at least six months of full-time training or at least one year of full-time, paid work experience. This full-time training must have occurred in a classroom setting and may involve areas of study such as early childhood education, geriatric care, paediatric nursing or first aid. Applicants providing evidence of full-time, paid work experience must show at least six months of continuous employment with the same employer in a field similar to the kinds of duties expected of a live-in caregiver. This work experience should be recent, having occurred within the past three years immediately before the application for a work permit is made. The temporary work visa is valid for a one-year period; when it expires, workers apply for a renewal. Workers who change employers must apply for a new work permit, one that will then reflect the employment conditions with a new employer.⁶⁵ As a temporary foreign worker program, the LCP has one unique programming feature that no other Canadian program does. The Live-in Caregiver Program extends the opportunity for Canadian permanent residence to its workers. Unlike any other group of temporary foreign workers employed in Canada, LCP workers are eligible to apply for Canadian permanent residence after completing 24 months of employment. LCP requirements impose a 3-year time period in which workers must have completed their 24-month employment term.⁶⁶

Introducing the LCP to replace the FDM resulted in a number of modifications to the program's eligibility and admissions requirements.⁶⁷ Some have argued that the LCP's requirements became more restrictive compared to those of the FDM. For example, the FDM required only that LCP participants have "sufficient education" whereas the LCP required the successful completion of a high school education equivalent to Canada's own. Similarly, the LCP spelled out specific training and work experience requirements that the FDM only

⁶⁴ Citizenship and Immigration Canada, "Working Temporarily in Canada: The Live-In Caregiver Program."

⁶⁵ During the time in which the LCP worker looks for a new job offer and waits for a new work permit as a live-in caregiver, Canadian immigration rules prohibit the individual from working in another occupation while in Canada.

⁶⁶ Effective as of 31 December 2007, an LCP work permit does not need to be renewed on an annual basis, so long as the LCP worker remains with her or his employer of record. Furthermore, the three-year time period has been extended to three years and three months, a change which reflects processing times for visa renewals and permanent residence applications.

⁶⁷ Langevin and Belleau, 24-8. The authors provide an excellent comparative snapshot of program differences between the FDM and the LCP.

generally identified. Under the FDM, the employment contract included provisions for worker training in Canada. FDM workers received an additional \$20 per month and 3 hours per week for skills upgrading purposes. The language criterion was modified so as to require the LCP applicant to show “the ability to speak, read, and understand” either English or French. The FDM specified only that the applicant be able “to communicate orally” in one or the other of the two languages. Unique to the FDM, applicants were expected to demonstrate personal qualities of resourcefulness, maturity, stability, and initiative. The LCP makes no reference to personal qualities in its eligibility criteria. Both the FDM and the LCP required a 24-month employment term with the employer named on the work permit. With the LCP, however, the three-year grace period was added to give workers additional time in which to meet the 24-month employment term.

Critics of the FDM charged the Canadian government with imposing eligibility and admissions requirements and working conditions on caregivers that were not applied to other immigrant groups; they called for these discriminatory practices to be removed from the LCP. For reasons to be discussed in the next chapter, the Canadian government kept the live-in requirement and (temporary) employment authorization with a single employer as a defining feature of the LCP’s regulations. The Canadian government justified keeping these requirements based on immigration rules that would require it to follow the Canadian First labour market policy. Requests to import foreign labour to fill these positions still have to go through a labour market evaluation before authorization is granted.

What stands in the way of a live-in caregiver entering the country as a permanent resident, rather than as a temporary worker, comes down to the definition of skilled labour in the occupation of in-home care service provision. One might argue that Canada has continued to resist changing its policies on foreign live-in caregivers for reasons having to do with the categorization of skill type in particular occupational fields. As such, individuals immigrating to Canada who wish to work in many of the health care, education, or social service occupations are typically prohibited from working in their chosen profession until they have obtained provincial / territorial licensing to do so. Canada has categorized the kinds of services that live-in caregivers provide as that of general or low-skilled labour. Critics in turn raised questions asking why the need to change the LCP’s admissions requirements pertaining to education, training, and language. The Canadian government has responded with the argument that more education and training and better language skills are likely to ensure quicker assimilation into the labour market for those workers who wish to remain in Canada as permanent residents.

Canada processes and issues most of the temporary work permits for live-in caregivers through its Manila visa office in the Philippines.⁶⁸ The Hong Kong

⁶⁸ Statistics obtained from an interview with an official from Citizenship and Immigration Canada, 2007.

visa office is second behind the Manila office in the number of visas issued per year, at times making up more than half the total number of work permits issued in a year. Once these visas have been issued, the vast majority of the LCP participants are bound for Ontario and British Columbia, with Toronto and Vancouver as the top two urban areas for LCP workers. Since 1999, Toronto has been the number one destination city for these workers, and Vancouver is the second most popular destination city. Women make up the overwhelming majority of the program's participants; in recent years, they have consistently comprised between 94 and 96 per cent of the total number of live-in caregivers arriving in Canada as temporary workers. Permanent residence data⁶⁹ show that the majority of these workers [1] fall into the 25 to 44 years' age bracket; they tend to be [2] single, or report being single; and the total number of years of education completed is 13 or more years, with most holding [3] a post-secondary degree like a trade certificate, non-university degree, or Bachelor's and / or Master's degree. Even as the total number of live-in caregivers with the fewest years of education considered permissible under the LCP's eligibility requirements has steadily declined each year, the total number of caregivers with a Bachelor's degree has nearly doubled in a six-year period between 1998 and 2003. In 2003 alone, approximately 85 per cent of all live-in caregivers had completed a post-secondary degree, with 45 per cent of them having graduated with a Bachelor's degree.

The legislative and administrative responsibilities of regulating these transnational labour migration flows reveal the complexity of this migration system which has evolved between Canada and the Philippines. This migration system is best characterized as informal in nature. The linkages forged between the two countries are not based on a formal bilateral arrangement, but rather on informal linkages that are regulated by each government's national migration policies and regulations. As an example of a formal bilateral administrative arrangement, the Memorandum of Understanding between Canada and the Mexican and Caribbean governments is one of the defining features of the Seasonal Agricultural Workers Program. For the LCP, there is no equivalent between the Canadian and Philippine governments. Instead, the informal nature of this migration system is largely the result of familial linkages which have been created between overseas workers and their family or community members who remain in the Philippines. Although Canada accepts the vast majority of its LCP participants from the Philippines, it interprets this transnational flow of workers as a global movement.⁷⁰ If statistics on initial entries are any indicator, in recent years, the Canadian government has not engaged in active recruitment of live-in care providers like it has with foreign agricultural workers, nor compared to earlier waves of live-in caregivers before the LCP. From a governance

⁶⁹ *Ibid.*

⁷⁰ Statistics obtained from an interview with an official from Citizenship and Immigration Canada, 2007.

standpoint, the act of regulating these flows is dealt with separately by each country, as part of the traditional immigration and emigration policy domains. Consequently, the LCP is a Canadian immigration strategy, which is regulated by national policy measures. Likewise, the Philippine government regulates the outflows of its workers using national emigration policy measures. A migration system develops between them, but not necessarily because the two governments have actively coordinated their actions. Rather, it has typically been the case that Canada makes the first move, making adjustments to its program operations. The Philippines has had to respond with changes to its own regulatory framework in a manner that would, at the very least, maintain current emigration numbers to Canada.

There are three important differences in how the Live-in Caregiver Program is administered compared to the Seasonal Agricultural Workers Program. First, no formal bilateral arrangement exists between the Philippine government and the Canadian federal government which is specific to the LCP. Instead, the regulatory responsibilities of each government are defined by their respective national immigration / emigration policies. Without a formal agreement, coordination between the two countries has not been as forthcoming as it has been with the SAWP. The LCP lacks the inter-governmental cooperation which defines the SAWP and the relationship between the Canadian and Mexican governments. Second, the legislative mandate for administering the LCP rests primarily with Citizenship and Immigration Canada, and not with Human Resources and Social Development Canada. Although part of the Temporary Foreign Worker Program, the Live-in Caregiver Program functions more like a traditional immigration program and less like a specialized human resources (i.e., temporary foreign worker) program. Third, the actions of labour market intermediaries like employment or recruitment agencies and immigration consultants have gone largely unchecked, despite government efforts to curtail abuse and exploitation of LCP applicants by some labour market intermediaries. I discuss each of these points separately. The purpose is to describe the key actors and their roles in shaping the LCP's development. This brief description shows how the administrative operations of the Live-in Caregiver Program differ from those of the Seasonal Agricultural Workers Program.

Regulating the cross-border movement of thousands of live-in caregivers between Canada and the Philippines has been the outcome of nationally-constituted immigration and emigration policies. In the Philippines, emigration flows have been shaped by a government-led labour export strategy devised to create a labour migration circuit. It is useful to think in terms of a *labour migration circuit* with the Philippines because current patterns show that temporary workers make up the largest group of overseas Filipinos. This means that temporary workers make multiple entries and exits into and out of the Philippines within a prescribed time period. In response, the government has taken measured steps to regulate all stages of the migration cycle from deployment to reintegration. The Department of Labor and Employment (DOLE)

holds primary regulatory responsibilities for the well-being and protection of the country's overseas Filipino workers. Within the DOLE, regulatory responsibilities are shared between the Philippine Overseas Employment Administration (POEA) and the Overseas Workers Welfare Administration (OWWA). First created in 1982 by the Marcos administration, the POEA has evolved into a massive bureaucratic arm of the DOLE so that today it carries the greater part of the regulatory responsibilities for overseas deployment, transition, and return. The OWWA preceded the POEA by only a few years. The Marcos administration directed the creation of the OWWA in 1980. The OWWA functions as a membership-based organization which receives regular dues and contributions from its members.⁷¹

The Philippine Employment Authorization processes between 3,000 and 5,000 requests every day from different client groups interested or involved in overseas employment.⁷² These groups are representative of a large contingent, including: current overseas workers; prospective overseas workers; foreign employers; Philippine and foreign recruitment agencies; the media; non-governmental organizations; and foreign governments. The POEA is tasked with the regulatory responsibilities as defined by legal mandate under executive order (EO) and congressional legislation (RA). It is an extensive legal mandate that puts the POEA in charge of all aspects of overseas employment. The POEA acts in the capacity of chief industry regulator, employment facilitator, labour representative, and general administrator of overseas employment. As industry regulator, the POEA issues licences to recruitment agencies; supervises the Anti-Illegal Recruitment program; adjudicates complaints against recruitment agencies, employers, and workers; and monitors overseas employment advertisements and posts overseas job vacancies. The POEA is present at all stages of overseas employment. It issues the necessary documentation for workers to leave and return to the Philippines; provides pre- and post-deployment seminars; maintains a workers' registry; approves hiring requests and processes employment contracts; conducts labour market research and monitors labour market developments; and represents the Philippine government in inter-governmental administrative arrangements like the bilateral labour agreement. With the implementation of the Migrant Workers and Overseas Filipinos Act (1995; herein the Magna Carta⁷³), one of the most important services that the POEA provides to overseas workers is legal representation. The POEA is charged with the regulatory responsibility of providing information about citizenship and labour rights afforded to overseas workers. It also functions to provide technical, legal,

⁷¹ Overseas Workers Welfare Administration, "OWWA How-to Guides," Overseas Workers Welfare Administration, <http://www.owwa.gov.ph/index.php?page=howto> (accessed June 1, 2008).

⁷² Philippine Overseas Employment Administration, "About Us," Philippine Overseas Employment Administration, <http://www.poea.gov.ph/default.htm> (accessed June 1, 2008).

⁷³ "Republic Act No. 8042: Migrant Workers and Overseas Filipinos Act of 1995," <http://www.poea.gov.ph/rules/ra8042.html>.

and repatriation assistance to overseas workers who find themselves the victim of illegal recruitment activities. The POEA must issue an Overseas Employment Certificate and Electron Card before the worker is deployed for overseas employment. It is illegal for a Philippine citizen to leave the country as a tourist when he or she intends to work in another country. The POEA processing fee amounts to US \$100 or its equivalent in Philippine pesos.

The Magna Carta of 1995 expanded the administrative reach of the Overseas Workers Welfare Administration. Alongside the POEA, the Overseas Workers Welfare Administration functions to protect the well-being of overseas workers and their families.⁷⁴ Using membership fees from overseas workers and employers, as well as investment monies and interest income, the OWWA maintains a trust fund for workers and their families to draw on in need of welfare and legal assistance. Workers pay US \$ 25 into this trust fund; these membership dues are part of the processing fees that workers are expected to pay when they leave the country. Their OWWA membership gives them the opportunity to access this trust fund for two primary purposes: (1) reimbursement as a result of illegal recruitment and (2) repatriation. The Emergency Repatriation Fund and the Migrant Workers Loan Guarantee Fund were created by legislative mandate of the Magna Carta. Workers may use the Emergency Repatriation Fund in the event of natural or man-made disasters in the host country where they are working. The Magna Carta charged the OWWA with the responsibility of establishing the Loan Guarantee Fund. This Fund would be made available to workers struggling under the weight of excessive placement fees charged by recruitment agencies.

In Canada, the LCP falls squarely within the immigration policy domain, an area which is the chief regulatory responsibility of the federal government.⁷⁵ Live-in caregivers represent their own special class of economic immigrants under Canada's *Immigration Regulations* (since 2002, the *Immigration and Refugee Protection Act* [IRPA]). These regulations define the live-in caregiver status under specific terms and conditions: "*A live-in caregiver means a person who resides in and provides child care, senior home support care and care of the disabled without supervision in the private household in Canada where the person being cared for resides.*"⁷⁶ This status requires full-time employment with a specifically-named employer for a 24-month period within a 3-year period. Under IRPA regulations, the employment contract was made mandatory as part of the visa application process. LCP applicants must include a written contract specifying the terms and conditions of the employment relationship with their application. Upon completing their employment tenure, program participants are eligible to apply for Canadian permanent residence status. The regulation of

⁷⁴ Overseas Workers Welfare Administration, "Membership," Overseas Workers Welfare Administration, <http://owwa.gov.ph/page/membership/> (accessed June 1, 2008).

⁷⁵ Interview with an official from Citizenship and Immigration Canada, 2007.

⁷⁶ Citizenship and Immigration Canada, "Working Temporarily in Canada: The Live-In Caregiver Program."

working conditions and salary, however, does not fall within the federal government's jurisdiction. Setting and enforcing employment standards are the regulatory responsibility of the provinces and territories.

Despite their temporary immigration status, foreign nationals providing live-in care services are covered under provincial employment standards and labour codes. In Ontario, under the Employment Standards Act (ESA),⁷⁷ domestic workers are entitled to rights pertaining to regular payment of wages; minimum wage; overtime pay; severance pay; equal pay for equal work; regulated work hours; leave; public holidays; and vacation time. It also specifies how room and board may be deducted from the worker's pay and sets a maximum amount that may be charged for a private room and for each meal on a weekly basis. Employers must register with Canada Revenue Agency and should keep employee records with information about work hours, wage statements, as well as leave and vacation time. The employment contract signed between the employer and the worker should identify the job description, wages and work conditions, and terms of employment termination; it should meet provincial labour standards. The task of reporting a potential workplace abuse under provincial labour standards falls on the domestic worker. They must contact a Ministry of Labour office if they wish to request an investigation or to file a complaint. Neither CIC nor HRSDC are responsible for ensuring compliance with provincial labour standards.

The labour migration circuit for live-in caregivers is also notable for the influence of private employment and recruitment agencies that play a role in determining how Philippine workers access Canada's labour market for live-in caregivers. Like the Mexican Ministry of Labour, the Philippine Overseas Employment Administration has a designated role to play in recruiting workers for Canada's temporary foreign worker programs. The POEA closely monitors employment opportunities for live-in caregivers and advises interested workers of these job vacancies. The POEA also closely monitors the activities of private recruitment agencies.⁷⁸

In addition to its traditional duties of authorizing the individual's cross-border movement into and out of the Philippines, the POEA is also assigned the responsibility of regulating the activities of private recruitment agencies.⁷⁹ Individuals who look for overseas employment opportunities are instructed by the POEA to use accredited recruitment agencies that have been licensed by the POEA. Private recruitment agencies placing individuals in overseas jobs are

⁷⁷ Ministry of Labour, Ontario, "Employment Standards Fact Sheet: Domestic Workers," Ontario Ministry of Labour, http://www.labour.gov.on.ca/english/es/pdf/fs_domestics.pdf (accessed January 31, 2008).

⁷⁸ Philippine Overseas Employment Administration, "POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers," Philippine Overseas Employment Administration, <http://www.poea.gov.ph/rules/POEA%20Rules.pdf> (accessed June 1, 2008).

⁷⁹ Philippine Overseas Employment Administration, "POEA Rules and Regulations."

instructed by the POEA to obtain a licence to do business in the Philippines. These agencies must be able to show that (1) at least 75 per cent of the business's stocks are owned and controlled by Philippines citizens; (2) a minimum capital amount of 2 million pesos is available at start-up and efforts will be made to increase this amount over the duration of the license's term; and (3) they are in good standing with the POEA, having never been disqualified to practice in the Philippines for previous derogatory behaviour involving illegal recruitment. A licence may be effective for four years, and the POEA maintains a public record of licensed agencies. Although the POEA is authorized to monitor the activities of private recruitment agencies, there is an opposing push which seeks to promote the deregulation of recruitment activities for economic reasons. Unlike the SAWP with its MOU that designates recruitment, selection, and hiring of workers as the duties of the two governments, the Live-in Caregiver Program runs the danger of being captured by the influence of private recruitment agencies.

Without a bilateral agreement which authorizes governments to provide public employment services, the labour migration circuit for live-in caregivers has been shaped by the activities of private employment agencies. Filipinos who look for overseas work as live-in caregivers have suffered the abuse of exorbitant service (e.g., placement) fees and false employment-related documentation as a result of unregulated private employment agencies. They have found themselves in situations where they were promised a waiting job, only to discover upon their arrival in another country that no such employment offer existed. In other instances, they learn that the job had already been handed over to someone else, a consequence of a placement agency offering the employment opportunity to numerous candidates. Some of these agencies are known to take their money beforehand, for services rendered, without actually placing them in a job. Estimates put the average total in recruitment / placement service fees paid out by overseas Filipino workers at US \$5,000.⁸⁰ Harsh criticism made by non-governmental organizations representing these workers and their families condemn the unscrupulous behaviour of these agencies and the governments that turn a blind eye to their activities by choosing not to regulate them, as in the case of Ontario. They have pointed out that high service fees become the burden of the workers and their families to pay, many of whom cannot afford the fees and must take out loans to pay upfront what is owed to the employment agency. They argue that these costly service fees give rise to a form of bonded servitude because the forthcoming salaries of these workers have already been leveraged to pay back the employment agency. Information about the Live-in Caregiver Program that prospective Canadian employers and foreign workers find on CIC's website only warns them to take care in their decision to use a private employment agency.

⁸⁰ Interview with a representative from INTERCEDE, 2007; Interview with an official from the Philippine Consulate, Toronto, 2007.

For its part, the Philippine government has tried to take the middle road when it comes to the regulation of private employment agencies. As part of the country's national economic development plan, the Philippine government recognizes the important role that private employment agencies must play in securing overseas employment opportunities for its citizens. It also recognizes, however, that private employment agencies left alone to regulate their own behaviour can lead to abuses in how workers are recruited, selected, and hired for overseas employment. The Philippine government has had to use its own national emigration policy framework to provide guidelines for recruitment activity. The Philippine government has directed the POEA to establish rules and regulations pertaining to overseas recruitment practices. These rules and regulations specify that (1) individuals and/or businesses must be authorized to hire Philippines citizens for overseas work and (2) employment agencies must be licensed to provide recruitment and selection-related services to prospective employers and workers.⁸¹ Employers who hire the services of an employment agency may be charged for service fees pertaining to the recruitment, documentation, and placement of Philippine workers; they may also be charged for airfare and the visa fee, as well as POEA processing fees and OWWA membership fees. The rules specify that workers may be charged for recruitment and placement services provided by the employment agency for only the amount equivalent to one month's salary.

In addition to service fees, workers are also responsible for paying for their documentation fees. These expenses include the birth certificate and passport; police clearance and authentication; medical examinations and inoculations; medicare; and trade-related tests. The POEA rules and regulations direct the employment agency to collect its payment only when it has seen the worker placed and hired in a job which has been secured by the agency's services. An incentive-based system has been built into this regulatory framework to reward employment agencies practicing good behaviour. The POEA is directed to classify and rank employment agencies.⁸² It takes into account such factors as recruitment procedures, terms, and conditions; placement numbers of workers in overseas jobs; and growth potential in new labour markets. Incentives awarded by the POEA to employment agencies can include extending the validity of the agency's license beyond the four-year time period and providing quicker processing times for travel and / or employment documentation.

⁸¹ Philippine Overseas Employment Administration, "POEA Rules and Regulations."

⁸² Philippine Overseas Employment Administration, "POEA Rules and Regulations."

CHAPTER FOUR

CANADA AND MEXICO: CONVERGING MOTIVES IN POLICY AND PROGRAM OBJECTIVES FOR THE SEASONAL AGRICULTURAL WORKERS PROGRAM (SAWP)

This chapter examines the interests and motivations which have compelled the Mexican and Canadian governments to support the development of the Seasonal Agricultural Workers Program (SAWP). The SAWP has evolved in size and scope in relation to changes in the fruits, vegetables, and horticulture (FVH) sectors. It is important to situate Canada's FVH sector growth within the bigger picture that today dominates policy issues around competitiveness and trade in agricultural products. To capture the changes occurring in the FVH sector, one must look first to production and consumption rates as well as total traded shares for a more complete picture of a developing global market in these products. The first section of the chapter provides this context.

The relationship between the Canadian and Mexican governments is notable for its high degree of coordination in how the SAWP is managed. Tanya Basok was one of the first to consider the motivations and interests that have contributed to the program's administration.⁸³ She argued that the SAWP succeeded where most other guest worker programs had failed; SAWP workers returned home after their contracts ended, whereas other guest worker programs posted high numbers of undocumented workers as incidences of non-return. Comparing Canada's SAWP to the Bracero program in the United States, Basok argued that program design helped to explain the difference in return rates between the two programs. Canada kept its program relatively small, factored in public recruitment strategies, and defined enforcement procedures for guaranteeing minimum standards for housing and employment. Her analysis showed that the Canadian government was not beholden to agribusiness interests in the same way that the U.S. was, and preserving its citizenship model was also an important factor in shaping the design of its foreign worker programs.

The influential work of Basok in this area is the jumping-off point for this chapter. The SAWP feeds into two important niche markets: the fruits, vegetable and horticultural sector and remittances. Globally-speaking, both are worth billions, and it is in the best interest of both countries to maintain stability in the

⁸³ Tanya Basok, "He Came, He Saw, He ... Stayed. Guest Worker Programmes and the Issue of Non-Return." *International Immigration* 38, no. 2 (2000): 215-238.

flow of workers between them. For Canada, the SAWP ensures a steady supply of ‘just-in-time’ workers, and slight modifications to program management have been designed to facilitate these flows. Labour costs matter, but equally important to Canadian farmers is having access to a continuous circuit of workers – many of whom have years of experience working Canadian crops. For Mexico, this stability is significant enough for creating employment opportunities through a regularized, securitized circuit. Program design does reflect these governments’ motivations and interests, as Basok has argued with great effect. It is, however, in reviewing their motivations by using the lens of the migration system framework that one sees that they cooperate in order to best maximize their interests.

*The Foundations of a Bilateral Relationship:
International Competitiveness
In the Fruits, Vegetables and Horticulture (FVH) Sector*

The historical place-marker for some of the most intense changes in the FVH sector has occurred only within the last couple of decades. A recent USDA report found that no other agricultural commodity has experienced the same measure of expansion as international trade in fruits and vegetables.⁸⁴ FAO data reveal similar findings: The FVH sector has been one of the fastest growing agricultural markets and that its prospects for growth remain dynamic.⁸⁵ Statistics Canada reported that total acreage devoted to vegetable production has increased by nearly 5 per cent since 2000, citing modest gains in most crops produced in the FVH sector to explain the growth.⁸⁶ According to all of these reports, there are a number of factors explaining this dynamic growth in the FVH sector. First, there are structural changes owing to transportation and technology improvements in which a more diverse yield of products is being grown in regions across the world. Produce travels faster and further across distance. Second, rising household incomes and an expanding middle class demand variety in their produce selections. Third, national trade liberalization policies and trade agreements target these sectors for growth. Supply and demand pressures for FVH agricultural products have fostered a complex network of trade relationships. As Huang notes, “[g]lobalization of the fruit and vegetable trade

⁸⁴ Sophia Wu Huang, *Global Trade Patterns in Fruits and Vegetables*, Electronic Outlook Report from the Economic Research Service, WRS-04-06, June 2004, <http://www.ers.usda.gov/publications/wrs0406/wrs0406fm.pdf> (accessed December 1, 2008).

⁸⁵ Directorate-General for Agriculture and Rural Development, European Commission, “Agricultural Commodity Markets – Past Developments: Fruits and Vegetables,” July 17, 2007, <http://ec.europa.eu/agriculture/analysis/tradepol/worldmarkets/fruitveg/072007.pdf> (accessed December 1, 2008).

⁸⁶ Agriculture and Agri-Food, *2002-2003 Canadian Vegetable Situation and Trends* (Ottawa: Agriculture and Agri-Food Canada, 2003), http://www4.agr.gc.ca/resources/prod/doc/misb/hort/sit/pdf/veg02_03_e.pdf (accessed December 1, 2008).

has made fresh produce accessible to consumers around the world, overcoming seasonality and smoothing price fluctuations.”⁸⁷

These data show the extensiveness of trade in fruits and vegetables over a 40-year period.⁸⁸ In 1961, shares in fruits and vegetables comprised 10.6 per cent of the total share in agricultural trade, with a nominal value of \$3.4 billion. In 2001, these shares made up 16.9 percent of the total, reaching a nominal value that topped almost \$70 billion. FAO data identifies more than 60 items of trade in fresh fruits and vegetables, but the five most frequently traded products are apples, bananas, grapes, oranges, and tomatoes. Between 1982 and 1984, these five products accounted for more than 50 per cent of the trade occurring within the FVH sector; they have more recently, however, dropped to 40 per cent of total trade in the sector. Shares in tomatoes and grapes have grown slightly at the same time that shares in apples, bananas, and oranges have declined slightly.

There are two important trends to take away from these data: the FVH sector is notable for (1) the degree of diversification in types of products traded and (2) the degree of market-share concentration held by a select number of import and export countries. A report published by the European Commission found that “[i]f in 1982-84 the top 10 importers had a market share of 73% of the world's imports, it reached 80% in 2002-2004.”⁸⁹ On the export side, the top 10 exporters gained from 51% to 67% of the world [fruit and vegetable] export market. The European Union and the United States are the largest importers of fresh fruits and vegetables (with approximately 50 percent of the total shares between the two of them), while Canada, Japan and China round out the top five importers. The export market is dominated by the United States, followed by Mexico which recently surpassed the European Union. China is expanding its shares in the export market, particularly in apples and tomatoes.

Consumptions trends are equally revealing of the dynamic nature of this sector. The European Commission's report found that the consumption of fruits and vegetables has increased an average of 4.5 percent per year. The tomato and apples sectors are particularly instructive here for beginning to see the linkages between the global trade in FVH produce and transnational flows of farmworkers. In Ontario for example, international competitiveness is being intensely felt by its farmers producing apples and tomatoes. Worldwide tomato production has doubled in a 20-year period, and China in particular has more than quadrupled its total production of tomatoes (as measured in metric tons). During this same 20-year period, apple production has demonstrated modest gains in production rates, but again, China alone has more than tripled the number of apples it grows. Of all horticultural commodities grown in Ontario, however, apples make up a very small portion of the total farm-gate value. Floriculture (32%), tobacco (17%) and vegetables (16%), and greenhouse vegetable (13%) together comprise almost 70

⁸⁷ Huang, iv.

⁸⁸ Directorate-General for Agriculture and Rural Development, 4.

⁸⁹ *Ibid.*

per cent of total value in Ontario.⁹⁰

Competition for access to the dynamic markets of an increasingly global FVH sector has been intensified by international and regional trade agreements. These agreements place demands on governments to liberalize and modernize their FVH sectors. The North American Free Trade Agreement (NAFTA) between Canada, Mexico, and the United States led to significant policy changes in the individual member countries which have impacted farming practices and market organization. According to Gisele Henriques and Raj Patel, Mexico is a signatory to more trade agreements than any other country.⁹¹ In his study of NAFTA's impact on the Mexican FVH sector, Yunez-Naude found that the export of major fruits and vegetables to the United States rose by 30 per cent following the implementation of the regional trade agreement. Sales to Canada grew from USD \$12.1 million to USD \$17 million between 1994 and 2000.⁹² For Canada, the triple threat of intensified international competition, declining prices due to currency fluctuations, and increasing costs of production has been identified within the government as a real danger to the viability of the Canadian agricultural industry in general, and the FVH sectors in particular.⁹³ Although beyond the scope here to reveal the full detail of agricultural policy changes in these countries, it is important to relate how conditions prompting trade liberalization and market competition in the FVH sectors have continued to affect the SAWP's development. It has been argued that the sector has been sustained in recent years by governmental assistance and the contributions of foreign agricultural workers.⁹⁴

As the FVH sector has evolved to keep pace with technological changes to production, export-driven trade, and year-round consumer demand for these products, the need for agricultural labour has similarly evolved to fit the production-trade cycle of the FHV sector. The Seasonal Agricultural Workers Program is evidence of how transformation in market structures and trade relations affects demand for foreign agricultural labour. Since the SAWP's introduction more than 30 years ago, a series of changes have been implemented to modify program operation in important ways. From an IPE perspective, these program changes are connected to the broader transformation shaping market and trade relations in the FVH sector. Some of the most significant changes to the SAWP's operational guidelines have to do with expanding program parameters. Others are related to cost and wage structures. All of these changes, however, can be described as part of a larger push by both the Canadian and Mexican

⁹⁰ Interview with an official from Service Canada, 2007.

⁹¹ Gisele Henriques and Raj Patel, "NAFTA, Corn, and Mexico's Agricultural Trade Liberalization," (Americas Program Special Report, February 13, 2004), <http://americas.irc-online.org/pdf/reports/0402nafta.pdf> (accessed December 1, 2008).

⁹² Antonio Yunez-Naude, "Lessons from NAFTA: The Case of Mexico's Agricultural Sector," (final report to the World Bank, 2002), 22.

⁹³ Interview with an official from Service Canada, 2007.

⁹⁴ *Ibid.*

governments to create and maintain a continuous, uninterrupted circuit of agricultural workers between them.

The Motivating Power of Common Interests

The Mexico-Canada SAWP agreement typifies a coordinated regulatory framework between a sending and receiving government for the purpose of creating a stable transnational circuit of temporary farmworkers. The crux of this argument is founded on the observation that the two countries have maintained a cooperative bilateral relationship for more than 30 years, following the adoption of the Mexico-Canada Memorandum of Understanding in 1974. Furthermore, the agreement itself has changed very little over this 30-year period. The few modifications which have occurred within the program effectively expedited the recruitment process and lengthened the program's calendar year.

First, the quota system within the SAWP was replaced with a far less restrictive system, one which is based on domestic labour market conditions evaluated by HRSDC. For example, under the old quota system, requests made by a farmer for foreign workers were capped based on the previous year's total number of foreign workers employed under contract. Today, the new system requires that farmers post advertisements for domestic agricultural workers for a short time (i.e., two weeks) before submitting their applications for foreign workers. Second, recent modifications to policy guidelines and program operations have allowed an almost 12-month cycle. The wording here is important because, to date, the SAWP is specific in its guidelines that workers remain in the country to work for no more than eight months at a time, but the general cycle of hiring and return of foreign workers, including individuals from Mexico, begins shortly after and ends shortly before the new calendar year. At one time, the program cycle was shorter than it is today, running for approximately 10 months of the year. Third, the program has expanded to include additional commodities which are permitted to employ SAWP workers.

From both countries' perspective, the selling point of the SAWP as a strategic tool for regulating these flows is its potential to solve multiple policy problems across multiple policy domains, including: (1) security, defined as documented work with return dates specified on the contract and work permit; (2) labour market, in which shortages in Canada are filled by surplus labour from Mexico; and (3) development, whereby there is a form of economic redistribution underway between the two countries based on remitted workers earnings and skills development opportunities for Mexican workers to train on new farming technologies. From an IPE perspective, the one factor which likely matters most to the two governments is the high degree of responsiveness that the program offers them to adapt to the intensified restructuring in the FVH sector. In fact, one might argue that Canada is as dependent on this bilateral relationship as Mexico is. Weston's data is instructive for thinking about the power dynamics in

the relationship from the Canadian government's perspective.⁹⁵ Her work contains agricultural data for Ontario and Canada, as well as employment data for Ontario. The following tables replicate her data from Statistics Canada.

Table 4.1. Canada's farm cash receipts by major agricultural commodity⁹⁶

	1996 (\$ million)	2006 (\$ million)	% of Total Crops 1996	% of Total Crops 2006
Floriculture	999	1,907	7	14
Canola	1,969	1,855	14	14
Wheat	3,482	1,722	25	13
Vegetables	968	1,611	7	12
Corn	808	634	6	5
Barley	960	341	7	3
Total Crops	14,016	13,500	100	100

Table 4.2. Production of selected SAWP crops in Ontario by value and growth rates⁹⁷

Commodity	2000 (\$ 000s)	2005 (\$ 000s)	Growth (%) 1980-2000	Growth (%) 2000-2005
Greenhouse Tomatoes	177,223	205,455	1058	16
Greenhouse Cucumbers	97,252	93,738	994	-4
Tomatoes	56,730	77,500	27	37
Apples	97,200	51,700	223	-47
Cherries	3,030	8,180	-56	170
Tobacco	239,947		-18	

⁹⁵ Ann Weston, *The Changing Economic Context for Canada's Seasonal Agricultural Workers Program* (Ottawa: North-South Institute, 2007), http://www.nsi-ins.ca/english/pdf/economic_context%20CSAWP.pdf (accessed December 1, 2008).

⁹⁶ Weston, 8.

⁹⁷ *Ibid.*, 12

Table 4.3. SAWP workers in Ontario by selected commodity

Commodity	1996 by Per Cent (%)	2006 by Per Cent (%)
Tobacco	37	16
Vegetables	27	23
Fruit	16	21
Greenhouse	7	19
Apples	4	7
Nursery	3	7
Canning/Processing	0	2

The tables show important trends for Canadian and Ontario agriculture. First, within the 10-year period between 1996 and 2006, only floriculture and vegetables registered a gain in total farm cash receipts, and floriculture was the only one to double its value as a percentage of the total value. Second, in Ontario, those crops that are experiencing gains in total values are the same ones employing increasing numbers of SAWP workers. In 2006, the vegetables, fruits and greenhouse sectors employed more than 60 per cent of SAWP workers. Another point to keep in mind about the Canadian government's reliance on the SAWP program is production cycles. Table 4.4 replicates Quintana's data⁹⁸ obtained from STyPS, one of Mexico's government agencies. It goes without saying that the major growing months in Canada bring large numbers of farmworkers to Canada; the numbers begin to pick up in March and peak in July.

Since the mid-1990s, UFCW Canada has targeted the agricultural industry for its campaigns championing better employment standards for seasonal agricultural workers. Like those of Canadian workers, the experiences of SAWP workers have also been embraced by UFCW Canada in their campaigns. Collective bargaining, freedom of association, health and safety, mandatory pension contributions, and living wages and inclusion under the Labour Relations Act as well as Employment Standards Act have been fought for by UFCW Canada on behalf of Canadian and SAWP agricultural workers using the judicial system primarily as its battle front. Throughout this period, it has been the position of F.A.R.M.S. Ontario that one of the key threats to Canada's FVH sector is labour shortages – a particular danger for an industry integrated into a global market and which is affected by growing international competitiveness, exchange and interest rate fluctuations, high debt loads, increased regulations (e.g., labour

⁹⁸ Ofelia Becerril Quintana, *Relación de género, trabajo transnacional y migración temporal: Trabajadores y trabajadoras agrícolas mexicanos en Canadá* (paper presented at the Primer Coloquio Internacional: Migración y Desarrollo: Transnacionalismo y nuevas perspectivas de integración, Zacatecas, Mexico, 2003), http://meme.phpwebhosting.com/~migracion/ponencias/20_3.pdf (accessed December 1, 2008).

and environment), and trade relationships.

In a confidential report of research conducted by an academic and commissioned by F.A.R.M.S. Ontario, the relationship between wage differentials and the economic viability of Ontario's agricultural industry was explored. The report noted that in a competitive industry like agriculture the value of the product produced determines the equilibrium wages for workers. Two factors – the productivity of the worker and the value of the product produced by the worker – are key determinants in setting this equilibrium wage. As the report suggests, for work that employs workers in manual harvesting over a short period of time, wage increases are typically constrained by low productivity and low valued products. A second institutional factor cited by the report as an explanation for low wage levels is the highly competitive and low-profit environment which is characteristic of this particular sector. The categorization of farms is important for understanding the analysis that the Canadian and Ontarian agricultural industry has continued to experience declining economic viability, a factor which in turn constrains wage increases within in a narrow range.

According to the report, there are three categories of farmers: commercial farmers, limited resource farmers, and hobby farmers. Commercial farmers represent 30 per cent of all farmers, produce more than \$100,000 in gross sales, and generate approximately 80 per cent of production and most net farm income. At the other end of the spectrum, hobby farmers also represent 30 per cent of all farmers, generate approximately 2 per cent of production, and report negative farm incomes. Limited resource farmers represent 40 per cent of all farmers, generate between \$25,000 and \$100,000 in gross sales and almost 20 per cent of production. An additional factor to consider in this analysis is farm debt levels. The report found that farm debt increased by 90 per cent over a 10-year period between 1995 and 2005, and by more than 175 per cent since 1981. In 1981, debt levels approached \$16 billion; hit \$23 billion in 1995; and reached nearly \$45 billion by 2005. Net farm incomes have stayed consistently within the range of \$2 billion to \$4 billion per year and have not recorded any significant improvement over time. Injections into the industry reported as net government support included approximately \$4.5 billion in 2005.

Table 4.4. Mexican SAWP workers in Canada by month, 1997-2002⁹⁹

Month	1997	1998	1999	2000	2001	2002	Total
January	0	0	0	13	21	21	55
February	290	641	531	692	1,010	901	4,065
March	429	669	796	837	1,168	1,009	4,908
April	800	693	1,245	1,629	1,694	2,177	8,238
May	827	920	918	1,362	1,406	1,540	6,973
June	826	1,028	1,235	1,356	1,870	1,465	7,780
July	1,437	1,770	2,028	2,157	2,173	2,148	11,713
August	671	572	571	797	889	944	4,444
September	367	193	250	332	298	357	1,797
Total	5,647	6,486	7,574	9,175	10,529	10,681	50,092

The sector's concern about economic viability is also about profit losses incurred when fresh fruits and vegetables go unpicked and rot or are handled incorrectly resulting in spoiled produce. From the Canadian government's perspective (as well as the farmer's), another potential threat facing the FVH sector is a growing season interrupted by a shortage of available and able agricultural workers. It is, then, a most interesting trade-off that farmers in the Ontario FVH sector weigh when they choose to use the SAWP instead of employing Canadians or using another temporary foreign worker program. The SAWP introduces program premium costs, adding several dollars per worker to labour costs. It is a concern why wages for Canadians are not then raised if a program premium indicates a higher value for the work performed by the agricultural labourer. However, employers have turned towards the SAWP as a solution to high turnover among the domestic labour force owing to the nature of the work. The unique design of the SAWP promises farmers a reserve supply of workers year-round.

One could argue that the SAWP wage structure and program premium are the likely outcomes of a series of compromises brokered by the Canadian government as a response to objections raised by key interest groups. Such compromise does not go far enough to address concerns that the program reinforces racial, ethnic and gender hierarchies by denying SAWP workers the right of residence. Nor has it allowed for recognition of rights relating to collective bargaining: it is a damning exclusion from Canada's Charter of Rights that all farm workers face, regardless of residency status. Moreover, it has been a long fight to extend coverage to workers under the Ontario's Occupational Health

⁹⁹ Quintana, 9.

and Safety Act, a gain only recently won in 2006. What is accomplished through the SAWP is a basic set of standards regulating wage levels and safeguards against undocumented, illegal labour migration, both of which left out of program design would intensify abuses suffered by agricultural workers, as is the case in the United States. It is a position I do not take in order to defend the program, but rather to illustrate key institutional practices that make the SAWP different from other temporary foreign worker programs. These institutional practices shape relations between political actors and, ultimately, the foundations of the migration system between the two countries.

For Mexico, program coordination with the Canadian government using the SAWP has at least three immediate consequences. First, the SAWP creates labour migration flows that target exactly those workers who have been displaced from their own lands and fields in Mexico as a result of structural adjustment programs and other structural conditions associated with underdevelopment and poverty. Second, the SAWP maintains the structure of a closed circuit of workers back and forth between the two countries, one which then ensure continuous employment opportunity for Mexican farmworkers and a constant stream of remitted workers earnings back to Mexico. Third, this type of bilateral arrangement assigns the Mexican government a position at the negotiating table with its counterpart, the Canadian government, where at least it can voice its interests in the agreement's design and implementation. In effect, the Mexican government acts as a labour market intermediary or broker when it secures a route for the cross-border movement of its citizens.

Compared to the Live-in Caregiver Program, the most notable feature of the SAWP is the one feature that is noticeably absent from the SAWP agreement: i.e., the right of residency for a farmworker after so many documented years working in Canada. Unlike the LCP, there is no clause extending residency rights to these workers. Instead, recent issues taken up by the Mexican government over the course of their annual negotiations over policy guidelines have included (1) increased work hours; (2) extended program duration; (3) work transfers between farms; (4) recognition pay; and (5) job classification/job descriptions related to the type of work performed by farm labourers.¹⁰⁰ Only the last point regarding job classification might have some bearing on negotiations around residency. The other points demonstrate the willingness of the Mexican government to act as a labour market intermediary on behalf of its workers to ensure they have maximum access to Canada's agricultural labour market.

Although the Canadian government has shown itself to be dependent on massive, uninterrupted flows of temporary farmworkers, the SAWP is designed to allow employers to draw from multiple source countries. The multilateral arrangement which characterizes the SAWP's MOUs can put the Mexican government and governments of the Caribbean islands in direct competition with each other. The data which follows on the next page (see table 4.5 and table 4.6)

¹⁰⁰ Interview with an official from the Mexican Consulate, Toronto, 2007.

illustrate the immigration cycle for agricultural workers in Canada. The first table shows the relatively small percentage of workers permitted to immigrate to Canada with the right of residence extended to them upon arrival. Satzewich refers to this wave as “free immigrants,” many of whom came from the Netherlands to settle in Canada between 1950 and 1966 as part of the Assisted Passage Loan program which covered their transportation costs to Canada.¹⁰¹ Subsequent waves were characterized by what he calls the movement of “unfree immigrants” and “unfree migrants.”¹⁰²

With the signing of the MOU between Canada and Mexico in 1974, inflows of agricultural workers intensified. A comparison of the two tables (see table 4.5¹⁰³ and table 4.6¹⁰⁴) shows that the number of SAWP workers entering the country was twice that of immigrant workers. In less than two decades, by 1989, the number of SAWP workers doubled again, totalling some 12,000 workers. Most recently, the total number of workers arriving in Canada has hovered around 15,000, but in fact Service Canada approved more than 18,500 vacancies annually in 2007 and 2008.¹⁰⁵ The data point to two significant conclusions. First, as Stasiulis and Bakan have found with LCP workers, immigration policy for seasonal agricultural workers constructs racial, ethnic hierarchies that reinforce labour market segmentation based on access to residency rights. The second conclusion is that these migration flows have intensified over the same period of time that a global FVH market has developed putting pressure on the Canadian industry to compete.

¹⁰¹ Vic Satzewich, *Racism and the Incorporation of Foreign Labour: Farm Labour Migration to Canada since 1945* (London: Routledge, 1991), 100.

¹⁰² *Ibid.*, 84.

¹⁰³ Satzewich, 111.

¹⁰⁴ *Ibid.* (data from 1966 through 1985); Philip Martin, “Managing Labour Migration: Temporary Worker Programs in the 21st Century,” (paper presented at International Symposium on International Migration and Development, Turin, June 21, 2006), http://www.un.org/esa/population/migration/turin/Symposium_Turin_files/P07_Martin.pdf (accessed January 31, 2008). Note that Martin’s data cover the period from 1987 through 2002.

¹⁰⁵ Foreign Agricultural Resource Management Services, “Statistics.”

Table 4.5. Total number of agricultural workers immigrating to Canada, 1946-1980

Year	Agricultural Workers Immigrating to Canada	Total Number of Immigrants
1946-1955	138,195	1,222,314
1956	7,500	164,857
1957	10,838	282,164
1958	5,071	124,851
1959	4,965	106,928
1960	5,531	104,111
1961	2,341	71,689
1962	1,923	74,585
1963	2,398	93,151
1964	2,234	112,606
1965	2,362	146,758
1966	3,153	194,743
1967	3,203	222,876
1968	3,164	183,974
1969	2,283	161,531
1970	2,129	147,713
1971	2,160	121,900
1972	2,127	122,006
1973	3,079	184,200
1974	2,637	218,465
1975	1,511	187,881
1976	1,162	149,429
1977	1,215	114,914
1978	935	86,313
1979	1,597	112,096
1980	2,462	143,117

Table 4.6: Total number of SAWP agricultural workers, 1966-2002

Year	Mexican Farmworkers	Caribbean Farmworkers	Total	Per Cent Mexican (%)
1966	-	264	264	0
1967	-	1,077	1,077	0
1968	-	1,258	1,258	0
1969	-	1,499	1,499	0
1970	-	1,279	1,279	0
1971	-	1,271	1,271	0
1972	-	1,531	1,531	0
1973	-	3,048	3,048	0
1974	195	5,342	5,537	3.5
1975	382	5,584	5,966	6.4
1976	580	4,875	5,455	10.6
1977	510	4,419	4,929	10
1978	550	4,434	4,984	11
1979	584	4,384	4,968	11.8
1980	676	5,325	6,001	11
1981	668	5,130	5,798	11.5
1982	691	4,819	5,510	12.5
1983	612	3,952	4,564	13
1984	673	3,829	4,502	15
1985	832	4,173	5,005	16.6
1987	1,547	4,655	6,202	25
1988	2,721	5,682	8,403	32
1989	4,468	7,674	12,142	37
1990	5,149	7,302	12,451	41
1991	5,111	6,914	12,025	43
1992	4,732	6,198	10,930	43
1993	4,710	5,691	10,401	45
1994	4,848	6,054	10,902	44
1995	4,884	6,376	11,260	43
1996	5,194	6,379	11,573	45
1997	5,670	6,705	12,375	46
1998	6,480	6,901	13,381	48
1999	7,528	7,532	15,060	50
2000	9,222	7,471	16,693	55
2001	10,446	8,055	18,501	56
2002	10,778	7,826	18,604	58

As a sending country of a large number of migrant workers, one of the key motivators for the Mexican government is remittances. It has often been cited as a program flaw that the Mexican government juggles a difficult role in acting as an employment recruiter and rights advocate for its workers, but remittances are an important driver in shaping the government's responsibilities to the worker and to the state. Interviews of workers conducted by a number of researchers have found that workers consistently send money home.¹⁰⁶ The amounts vary, with one group of interviewees attesting to sending more than \$1,000 CDN each month for a period of 4.8 months – or the equivalent totalling \$32,011 pesos. Another reported amount closer to \$1,375 per month over a similar period of time. SAWP workers reported to the Binford research group that their remitted earnings added up to the annual equivalent of nearly 2.5 salaries in the region of Tlaxcala, México.¹⁰⁷ Another significant finding from the Binford research is the average length of contract.¹⁰⁸ Their interviews found that workers with 3 years or less of experience signed contracts for an average of 4.4 months. Those with 4 to 8 years of experience received 5-month contracts on average. Six-month contracts went to workers with more than 9 years of experience. Furthermore, the less-experienced worker was assigned shorter contracts, typically in fruits and tobacco, whereas those with more experience worked an average 7-month contract in the greenhouses and nurseries. Tobacco workers reported remitting \$100 CDN more per month than the average. One can only speculate that the Mexican government has calculated optimal placement opportunities to ensure that it benefits from the maximum in remitted worker earnings.

The SAWP is equally interesting as a case study to examine competition between source countries trying to place as many of their workers as they can in SAWP jobs. The multilateral regulatory framework is reminiscent of a hub-and-spokes model built upon a series of separate, bilateral agreements with the receiving country (i.e., Canada) setting the key rules for regulating short-term labour migration flows. The Caribbean SAWP source countries face the same balancing act as their Mexican colleagues, having to play the dual role notable for its potential conflict of interest. They are responsible for protecting their workers' rights to safe working conditions and a living wage while at the same time playing the role of chief recruitment agent. The arrangement has the effect of discouraging collaboration or solidarity between SAWP source countries in their efforts to improve employment standards; arguably, their negotiating positions with the Canadian government can be compromised because they are essentially pitted against each other as they vie to fill as many vacancies as possible with their own workers. Insofar as the Mexican government sees the SAWP as

¹⁰⁶ Quote translated from Spanish. Leigh Binford, et al., *Rumbo a Canadá: La migración canadiense de trabajadores agrícolas tlaxcaltecas* (Col. San Rafael, México: Sociedad Cooperativa de Producción S.C.L. Ediciones Taller Abierto, 2004), 78. Note that external research cited in Binford's study includes Tanya Basok.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*, 79.

stepping stone to encourage Canadian and U.S. investment in the Mexican FVH sector, including technology transfers, the temporary foreign worker program has become part of a broader state strategy of economic development embraced by the Mexican government.¹⁰⁹

In the next chapter, I examine the interests driving the development of the Live-in Caregiver Program (LCP). Although there are some similarities motivating Canada and the Philippines to administer a temporary foreign worker program, the differences are great enough to hinder cooperation and coordination on important points in program design and implementation.

¹⁰⁹ Bauder, quoting Zwarenstein (2002), 25.

CHAPTER FIVE

CANADA AND THE PHILIPPINES: DIVERGING MOTIVES IN POLICY AND PROGRAM OBJECTIVES FOR THE LIVE-IN CAREGIVER PROGRAM (LCP)

Cooperation between the Canadian and Philippine governments acts differently than the relationship that has developed between Canada and Mexico. Like the Seasonal Agricultural Workers Program, the Live-in Caregiver Program (LCP) functions as a temporary foreign worker program, but with opportunities extended to participants to apply for permanent residence upon completing the LCP in Canada. No formal agreement of recognition (i.e., Memorandum of Understanding) has existed between the Canadian and Philippine governments. The Philippines has signed numerous bilateral labour agreements regarding the movement of domestic workers or caregivers with other countries such as Singapore, Jordan, and Japan most recently, but Canada is not one of these countries. Despite pressure from the Philippines for government-level negotiations, Canada has continued to decline formalizing a bilateral relationship with the Philippines over the content of a labour agreement. Approximately 75 per cent of the LCP's participants come from the Philippines, a percentage that has more than doubled since the early 1980s.

This chapter continues the discussion about the political will, or motives, that have driven Canada and the Philippines to support the creation of transnational labour migration flows between their two countries. I argue here that the willingness of the Canadian and Philippine governments to cooperate with each other is compromised by disagreement over program objectives, or what I would suggest are diverging interests concerning the purpose and structure of regulating cross-border labour migration. Unlike the process of managing the SAWP, Canada does not have to formally consult the Philippine government in determining the regulatory framework that shapes Philippine citizen's experiences of work in Canada. The same kind of intensity to find cause for negotiating the terms of agreement for a temporary foreign worker program does exist between the Canadian and Philippine governments as it has, arguably, between Canada and Mexico. On the one hand, similar push-pull migration factors can be used to explain why the Canadian and Philippine governments have created a transnational circuit of domestic workers between them. These same push-pull migration factors that have driven the SAWP's development also compel the Canadian and Philippine governments to support a certain degree of cross-border labour migration between them.

On the other hand, the foundations of cooperation that underpin the SAWP bilateral relationship between Mexico and Canada are missing in the relationship

between the Philippines and Canada due to an apparent much smaller demand for live-in caregivers. Canada also perceives the LCP as an avenue to citizenship that it does not seem to want to expand. The fact that the workers involved are mostly women may be a latent reason for this reluctance to expand. The willingness to create a formal bilateral labour arrangement between the Canadian and Philippine governments is hampered by differences based on each government's motives or interests. These differences are rooted in a broader set of concerns about the purpose and structure of regulating cross-border labour migration that is specific to the domestic caregiving occupation.

My reference to the terminology, occupation, is done intentionally. I use the term occupation regarding the development of a labour migration circuit for a couple of reasons. First, like seasonal employment in the FVH sector, work as a domestic caregiver is yet another example of how labour markets are a social construction which are developed and maintained as both a condition and effect based on the interplay of interests and motives between social forces. In this case, individuals market or sell their labour to fit within a particular market (i.e., caregiving) and the specific parameters of employment conditionality (in-home care to children, seniors, and disabled, with residence tied to the worksite). Second, evidence suggests the development of an emerging caregiving industry, one which is likely the result of a culmination of factors. Among others, some of these key factors include changes to the family-work structure, with more households experiencing both parents employed and away from the home; the retrenchment of national child care policies, an outcome which leaves increasing numbers of families looking for workable daycare arrangements, either of the public or private kind; and an aging population that requires an increasingly specialized type of care for seniors.

Individuals who come to Canada through means of the Live-in Caregiver Program share an important characteristic in common with those workers recruited through the Seasonal Agricultural Workers Program: Both groups of workers travel within a transnational circuit of migration which is defined by the type of work or skill set brought by these workers to their host countries. Each is part of a larger set of migration flows that are definably transnational in nature. The composite image of these flows is notable for the very reason that they reveal the extent to which the start and end points followed by these workers cross and intersect national borders. They move back and forth between host and home countries, as well as among groups of host countries (e.g., regional patterns of movement), disciplined by a social construction of labour market supply and demand. The fact that these two occupations are defined as general labour or low- (less-) skilled work means that foreign nationals who are employed in these occupations are more likely to experience limits to their mobility within or access to the broader labour market as well as to permanent residence and citizenship rights of the host country. As such, there is a sharp division drawn between specialized or high-skilled labour and general or low-skilled labour that has over time made its way into immigration policy. The status of general labourer or low-

skilled worker gives these migration flows their transnational, transitory characteristics.

This chapter is divided into two parts. Each discusses the political will and motives shaping the actions of the Canadian and Philippine governments. The first considers what each government seeks to gain from the creation, maintenance, and regulation of this cross-border labour migration circuit between the two countries. It does so by examining the conditions of migration that have compelled Canada as the host government and the Philippines as the home government to support the creation and regulation of these migration flows. The second half explains the current trajectory of programming based on a discussion of the diverging motives or interests that the Canadian and Philippine governments have towards the development and regulation of short-term labour migration flows. Cooperation, then, takes a form that has put the Philippine government in a periphery relationship with the Canadian government when it comes to the act of regulating movement. Compared to the SAWP, the development of the Live-in Caregiver Program is notable for the lack of a formal agreement between the two countries. The LCP and its predecessors represent a highly institutionalized set of regulations that are very much nationally-bound and conditioned. This puts the two governments at odds with each other over issues concerning the purpose and structure that regulation finally takes.

Without the formal institutionalization of governmental level negotiations, opportunities for sustained cooperation between the two countries are continuously challenged by their differences and what, in the end, likely functions as a very traditional core-periphery relationship between the two governments. It is not uncommon to read or hear the LCP described as a distinctly Canadian immigration program that attracts Philippine citizens seeking opportunities for permanent residence in Canada. Although certainly this arrangement may very well be the norm, it is not guaranteed that one leads to the other. The point must not be overlooked that the LCP brings in foreign workers under temporary contract, and that the cooperative relationship between the two governments has had to develop in this context. The implication, of course, is that how the LCP is implemented is conditioned by the motives and interests that each government seeks from the development of a foreign worker program. I begin here with a discussion of these motives, examining first those of the Philippines and then those of Canada.

The Philippines

The Philippines' relationship with Canada's Live-in Caregiver Program shares part of its beginnings with the development of a government-initiated practice that promotes and supports the outbound migration of its citizens. Each year, thousands of Filipinos leave their homes in search of employment opportunities in other countries. Cumulative estimates put the figure at between 7

and 10 million Philippine citizens who have moved abroad since the 1970s.¹¹⁰ These figures suggest that more than 2500 Filipinos leave the country daily. Other estimates indicate that the total number of Filipinos working overseas comprise 10 per cent of the country's labour force. The magnitude of change measuring total stocks are revealing of the intensity and extensiveness today of these outbound migration flows. In the year 1975, some 36,000 Philippine overseas contract workers were processed. The 1970s and 1980s saw almost 75 per cent of these workers destined for the Middle East.¹¹¹ Twenty years later, in 1995, the total of overseas workers had reached 389,000. Today, this figure has nearly reached the one-million mark, with approximately 900,000 Philippine citizens living and working abroad. This most recent wave of labour migration shows that the average deployment rate per month has doubled (nearly 70,000 overseas workers) since 1975. Based on stock estimates compiled by the Commission on Filipinos Overseas,¹¹² more than one-third of these workers (approximately 3.5 million) are employed in the Americas region. Estimates put the United States as the largest destination country for Filipinos, with figures ranging somewhere between 2 and 4 million.¹¹³ Another one-third of Filipino workers (approximately 3 million) are in Asia, with a large number of them having found employment in the Middle East and in Southeast Asian countries like Hong Kong, Japan, Singapore, and Taiwan.¹¹⁴

The distribution of these deployments based on the individual's immigration status in the receiving country shows that the majority of these overseas workers are temporary residents, followed by permanent immigrants and unauthorized migrants. If nearly one million Filipinos now leave the home country each year, more than a third of them are expected to return to the Philippines because their temporary immigration status requires them to leave the host country when their contracts and work permits have expired. The creation of

¹¹⁰ Maruja M. B. Asis, *Preparing to Work Abroad: Filipino Migrant Experiences Prior to Deployment* (Quezon City, Philippines: Scalabrini Migration Center, 2005), 11; Michael Angelo A. Cortez, "The Human Development Implications of Temporary Labour Migration: The Case of the Philippines," (conference paper presented at International Migration, Multi-Local Livelihoods and Human Security: Perspectives from Europe, Asia and Africa, The Institute of Social Studies, the Netherlands, 30-31 August 2007), 7, www.iss.nl/content/download/8270/80768/file/Panel4_Cortez.pdf (accessed June 1, 2008); Ely Manalansan, "Brain Drain Refrain," (Special Report, Part 1, January 26-February 1, 2003), Migrant Watch/Butlatlat.com, <http://www.bulatlat.com/news/2-50/2-50-braindrain.html> (accessed January 31, 2008).

¹¹¹ Elena Samonte, Catherine P. Maceda, et al., *Issues and Concerns of Overseas Filipinos: An Assessment of the Philippine Government's Response* (Quezon City, Philippines: UP Press, 1995), 3.

¹¹² Cited in Cortez, 8.

¹¹³ Dave Llorito and Kristine R. Payuan, "OFW Dollars Help Cushion Impact of Economic Troubles, *Manila Times*, November 4, 2002.

¹¹⁴ Joy S. Guzman, "Globalization and Its Impacts on the Philippines," (paper presented to ECOFIL, The Hague, The Netherlands, 14-16 September 2001), 7, <http://www.december18.net/web/docpapers/doc535.pdf> (accessed June 1, 2008).

transnational circuits of labour migration between the Philippines and other host countries like Canada has become an increasingly significant component of the country's overall development strategy. The Philippine government's willingness to sustain these outbound flows suggests that its interests are bound up with the benefits it derives from the mobility of its citizens. The first of these has to do with massive remittance flows into the country. The second has to do with trade liberalization in services. As a labour supplying country of workers who are educated and trained to work in the services industry, the Philippines has a vested interest in being part of any dialogue that will influence their citizens' access to employment opportunities in other countries. Although it may have started as a temporary strategy for relieving political and civil discontent that was a consequence of high unemployment rates and soaring foreign debt, the outbound migration of its citizens has become part of a permanent economic development plan. The origins of a labour export plan began with the Marcos regime, and every successive administration since the Marcos regime has relied on the mass exodus of Filipinos to relieve the country's economic troubles.

The heaviest of these economic burdens is the Philippines' foreign debt. The number of Philippine citizens leaving the country for employment opportunities elsewhere has grown in direct proportion to the amount of money owed by the Philippine government to foreign lending institutions. The post-World War II period saw the Philippines' foreign debt reach US\$ 640 million. By the 1990s, the Philippine experienced the fallout from the crushing weight of its foreign debt, for an amount of some US\$ 40 billion.¹¹⁵ The creation of a permanent structure to support the massive outward flow of Philippine citizens has been justified by each of the subsequent governments, beginning with the Marcos regime, as part of a larger economic recovery plan. Remittances in particular have become an important component of this economic recovery plan. Defined in terms of the amount or percentage of overseas workers' earnings sent back to the home countries of these workers, remittances from Filipinos have reached amounts in recent years exceeding US\$ 10 billion. In 1982, remittances were measured at some \$US 810 million, hitting US\$ 1 billion in 1990 and \$7.38 billion in 1998.¹¹⁶ According to Manalansan, a total of US\$ 50 billion have cycled through the formal banking system between the years 1990 and 2001, with these remittances comprising approximately 5 per cent of the Philippines' gross national product.¹¹⁷ Like Mexico, the Philippines has come to rely on this steady flow of workers' earnings as a partial answer to their economic troubles. Also, like Mexico, it finds itself part of a region of economic heavyweights, with its economic performance regularly compared to its ASEAN neighbours. In fact, the Philippines is a case study in economic paradox. In 2005, it recorded its best GNP in the last 5 years, at 5.7 per cent, but it also recorded staggeringly high

¹¹⁵ Guzman, 2.

¹¹⁶ Cortez, 22.

¹¹⁷ Manalansan, "Who Profits from the Brain Drain?"

poverty rates, measured by 42.5 million people who are considered to be living in poverty. The massive influx of remittances explains this paradox. After India, China, and Mexico, the Philippines draws in billions of dollars in remittances from its citizens living abroad.¹¹⁸

The Philippine government's interests in supporting the transnational migration of its citizens are motivated by the impact that remittances have for the country's short- and long-term economic security. For the Philippine government, remittances have become a means by which to both stabilize and grow the country's national economy. Foreign currency earnings have gone towards ending the worst of the balance of payments crisis of the 1980s, as well as financing the country's debt service which averages annually around US\$ 5 billion.¹¹⁹ According to a study conducted by the Asia Pacific Mission for Migrant Filipinos, remittances have made up a significant proportion of the current account budget.¹²⁰ This report draws its conclusions from analysis conducted by the South-East Asian Central Banks Research and Training Centre (SEACEN). As this report explains, overseas workers' remittances are recorded in different sections of the accounting, including the service account, income account, and current transfers, a practice which follows the format of the International Monetary Fund's Balance of Payments Manual (BPM-5). It writes that, by including overseas workers remittances in its Balance of Payments statements, "this has created a buffer or cushion to the otherwise collapsing money supply and financial instability of the Philippine economy."¹²¹ Remittances, then, act much like short-term capital trade financing when they are used as a buffer against the "impacts of deficits in the trade balance and non-merchandise trade balance."¹²²

In order to secure the flow of overseas workers' remittances into the country, the Philippine government enacted a series of legislative acts in the early 1990s that has since ensured remittances make their way into the country through formal channels representing official exchange and banking sectors. The net effect of these legislative changes was to increase the total amount of remitted foreign exchanges earnings channelled into the country. Following the International Monetary Fund's Balance of Payments Manual, the Philippines has been able to record overseas workers remittances under the non-merchandise and services account of their Balance of Payments statement. This practice gives a

¹¹⁸ Tony Lopez, "Why the Economy Is Growing," *Manila Times*, February 3, 2006.

¹¹⁹ *Ibid.*

¹²⁰ Asia Pacific Mission for Migrant Filipinos, *The Role and Process of Remittances in the Labor Export Industry in the Philippines* (Kowloon, Hong Kong: Asia Pacific Mission for Migrant Filipinos, n.d.), <http://www.apmigrants.org/research/Philippines/Research-preliminary%20output.pdf> (accessed June 1, 2008).

¹²¹ *Ibid.*, 5.

¹²² Manalansan, para. 10, citing Asia Pacific Mission for Migrant Filipinos, *The Role and Process of Remittances in the Labor Export Industry in the Philippines*.

positive impression of the Philippine economy's growth potential, while minimizing the extensiveness of the country's trade deficit.

Concerns about the dangers of becoming overly dependent on foreign exchange earnings remain an issue that has to be weighed against the benefits gained from remittances. Cortez writes on this point: "Changes in the external labour market, political instability including war and terrorism and economic slowdown can threaten the balance of payments and external balances of an economy overly dependent on remittances."¹²³ In part, the types of concerns raised about overexposure have helped propel the Philippine government to seek formal agreements and cooperative arrangements that support the institutionalization of transnational labour migration. Beginning with the Marcos regime, each administration has accepted labour migration as an important element of the country's larger economic development plan. Although a great number of the overseas employment opportunities available to Philippine citizens have tended to be of the temporary kind,¹²⁴ the government has derived significant benefits from regularizing labour migration, making what is temporary appear more permanent by supporting the practice of continuous movement. The increasing availability of billions of dollars in remitted foreign exchange earnings is significant motivator for the Philippine government to support labour migration in whatever form it takes. When foreign currency earnings from overseas employment have this kind of immediate impact on a national economy, particularly one trying to rebound from economic downturn and depression, any opportunity to secure even a temporary fix is motive enough for creating a transnational circuit of workers.

It has long been Philippine government practice to cultivate opportunities for transnational labour migration between its country and labour receiving countries of its citizens. This practice can be traced back to the Marcos regime when the government implemented a labour export policy. Since the Marcos regime, subsequent governments have followed a similar practice but have stopped short of calling it policy. In fact, the practice of encouraging and supporting the outbound migration of its citizens dates as far back as the early 1900s when institutional and procedural regulations were first developed and enacted to support these migration flows. Of the different waves of labour migration that the Philippines has experienced, this most recent period of migration is particularly noteworthy because it is comprised overwhelmingly of economic migrants who have been recruited by governments and private agencies to work overseas. For its part, the Philippine government has approached the process of regulating these outbound labour migration flows so that it accomplishes two objectives. The first of these has to do with maximizing the economic benefits from labour migration. Regulations that have developed with this objective in mind have defined the overseas workers' obligations to the state.

¹²³ Cortez, 22

¹²⁴ *Ibid.*, 7-8.

The second of these has to do with protecting the human rights of its citizens while they are employed overseas. These regulations have defined the state's responsibilities to overseas Filipino workers. Together, they constitute a regulatory framework that the Philippines has used to support the creation and maintenance of its labour migration flows.

This first set of regulations established the necessary administrative and operational guidelines for securing the state's portion of worker earnings and tax revenues. Under both the Marcos (1966-1986) and Aquino (1986-1992) administrations, for example, these regulations dealt specifically with maximizing the economic benefits derived by the state from the overseas employment of their citizens. The language of these regulations and policies defined overseas labour migration in terms of the country's national interest. Although the country has a long history with labour emigration, the Marcos administration was the first to institutionalize the practice. Presidential Decree 442, also known as the Labor Code of 1974, created a bureaucratic infrastructure that placed the government in the centre of the recruitment process. This bureaucratic infrastructure functioned as an administrative network of government departments, agencies, and boards who were responsible for recruiting and placing Filipinos in overseas employment positions. Eventually, this administrative network was consolidated to create the Philippine Overseas Employment Administration (POEA). According to Oishi, the Marcos administration was motivated to create these transnational migration flows because of high unemployment and a rising national deficit.¹²⁵ Gonzalez found that, of the 19 presidential directives on labour migration issued by the Marcos administration between 1974 and 1986, only three of them addressed worker protection and welfare, or somehow recognized the social costs carried by overseas workers and their families as a result of their overseas status.¹²⁶ The first created the Welfare Fund for overseas workers and their families, the second included within the Welfare Fund's mandate the responsibility to pay the burial expenses for Filipinos killed while working overseas, and the third instituted a re-integration program for returning workers.¹²⁷

The Aquino administration followed a similar approach that linked a national economic development plan with labour migration. Under Executive Order No. 247, the Aquino administration articulated an institutional mandate for the Philippine Overseas Employment Administration that addressed both national economic development and workers' rights. This mandate challenged the Philippine Overseas Employment Administration to "enhance its [the Philippine Overseas Employment Administration] effectiveness in responding to changing market and economic conditions and to the call of the national development plan for the strengthening of the worker protection and regulation components of the

¹²⁵ Nana Oishi, *Women in Motion: Globalization, State Policies and Labor Migration in Asia* (Palo Alto, CA: Stanford University Press, 2005), 63.

¹²⁶ Joaquin Gonzalez, *Philippine Labour Migration: Critical Dimensions of Public Policy* (Singapore: ISEAS, 1998),

¹²⁷ *Ibid.*

overseas employment program.”¹²⁸ Gonzalez suggests that the structural reorganization of the POEA implemented under this particular executive order acted to prioritize economic development over worker protection and welfare. Santiago, however, argues that the reorganization of the POEA represented the first such effort of its kind taken by the government to ensure that the administrative capacity was sufficient to protect the citizenship and labour rights of Philippine citizens working overseas.¹²⁹ This executive order directed the POEA to devise a system for promoting and monitoring overseas employment in relationship to the worker’s welfare and the country’s domestic manpower requirements. It also directed the POEA to promote and protect the well-being of the overseas Filipino worker through means of fair and equitable recruitment practices and by securing the best terms and conditions of employment.

It was during the Aquino administration that the Philippine Houses of Congress filed 142 resolutions and bills on the matter of labour migration.¹³⁰ Of these 142 proposed measures, only one passed to make it law: Republic Act 7111. The Republic Act 7111 established the Overseas Workers Investment Fund. Its mandate defined the following two goals: (1) “to encourage the greater remittance of earnings of Filipino workers overseas” and (2) “to safeguard and oversee the participation of said worker’s remittances and savings in the debt-reduction efforts and other productive undertakings.” This legislative act would not be the last of its kind. Under the Aquino administration, the wheels were put in motion to deregulate and consolidate foreign exchange rules. The objective behind deregulation was two-fold.¹³¹ The first was to channel overseas workers remittances through the formal banking and exchange sectors. The second was to enhance the speed and efficiency of the banking system to service overseas workers remittances. Overseas workers had been expected to remit to their domestic banks a portion of their income based on the type of work performed by the individual (e.g., seaman/mariners, 80 per cent; land-based with free room and board, 70 per cent; others without room and board, 50 per cent), selling their foreign exchange earnings for pesos to an Authorized Agent Bank licensed by the Philippine Central Bank.¹³²

Following deregulation, overseas workers remittances were included as part of the income account of the Philippine Balance of Payments. According to the Asia Pacific Mission for Migrant Filipinos, both remittances and the peso conversion of foreign exchange currency deposits have had the effect of growing the current account balance. Beginning with the Aquino administration, bank

¹²⁸ Cited in Gonzalez, 122.

¹²⁹ J. Sedfrey Santiago, “The Europol Convention and Filipino Migrant Workers’ Rights: Lessons from the European Union?” In *Migration in the Asia Pacific: Population, Settlement and Citizenship Issues*, ed. Robyn Iredale, Charles Hawksley, and Stephen Castles (Cheltenham, UK: Edward Elgar, 2003), 206-7.

¹³⁰ Gonzalez, 121-4.

¹³¹ Asia Pacific Mission for Migrant Filipinos, 1.

¹³² *Ibid.*, 1-2.

efficiency had been promoted through a series of policies that (1) allowed banks to open additional branches for servicing foreign exchanges, including those of overseas workers remittances; (2) authorized banks to lengthen their work day beyond the normal banking hours for purchasing foreign exchange; and (3) permitted telegraphic swap arrangements for foreign exchange transactions.¹³³ These policy changes have all been implemented within the last 15 years and are indicative of the strong support that the Philippine government continues to show towards the creation and maintenance of a transnational circuit of workers.

Despite the reticence of each subsequent administration after the Marcos administration to admit to an official “labour export policy,” the types of legislation, policies, and programs all point to a concerted effort to recruit, market, and place Filipinos in overseas employment. The motive to do so is bound up with the country’s ongoing economic troubles. Labour migration has become a permanent strategy for addressing the country’s problems with poverty, unemployment, trade deficits, and foreign debt. This side of the story is particularly revealing of the degree to which the work of overseas Filipinos has been commodified by the Philippine government in order to secure a steady flow of remittances into the country.¹³⁴ Remittances fuel the Philippine economy. Although 6 in every 100 Filipinos report suffering from hunger, and more than half of the Philippine’s 91 million citizens make less than \$2 a day, the Philippine service sector has grown significantly, with consumption comprising approximately 80 per cent of the country’s GDP.¹³⁵ Remitted foreign exchange earnings have kept the Philippine economy solvent, and the Philippine government has been able to secure this steady flow of remittances by fostering the development of a transnational circuit of Philippine workers. Its emigration policies are one component of a larger economic development strategy that relies on the inflow of overseas workers’ remittances.

Like other developing countries that are also labour supplying countries, the Philippine government has had to respond to criticisms of both its motives and actions. Like Mexico, the Philippines has been a signatory of the International Convention on the Protection of the Rights of Migrant Workers since its adoption by the United Nations General Assembly in 1990. The Philippines ratified¹³⁶ the convention in 1995, and it was during this time that the Philippine government signalled the beginning of a policy change that started with the Aquino administration and continued under the Ramos administration. This change underscores the human rights dimension that pertains especially to labour migration and migrant workers. As a labour supplying country of nearly one million overseas Filipino workers, the Philippine government has a vested interest

¹³³ Asia Pacific Mission for Migrant Filipinos, 2-3.

¹³⁴ Guzman, 3-4.

¹³⁵ Lopez, “Why the Economy Is Growing.”

¹³⁶ Office of the High Commission for Human Rights, “Fact Sheet No. 24: The Rights of Migrant Workers,” Office of the High Commissioner for Human Rights, <http://www.ohchr.org/Documents/Publications/FactSheet24rev.1.en.pdf> (accessed June 1, 2008).

in portraying its efforts to protect the fundamental human rights of its citizens while they work overseas.

The human rights dimension forms the second component of the Philippine government's regulatory framework for labour migration. Elements of its emigration policies reflect this regulatory framework. International agreements are yet another place to find the Philippine government's efforts to include human rights protections for its citizens who work abroad. To that end, the Philippine government has been active in negotiating formal agreements with labour receiving countries. These formal labour agreements and other similar institutional arrangements serve a dual purpose. They provide the opportunity for government-level negotiations that address (1) the number and type of workers permitted to enter the country for employment reasons and (2) the number and type of human rights extended to foreign nationals while they live and work in their host countries.¹³⁷ Including the International Convention on the Protection of the Rights of Migrant Workers, the Philippine government has signed a number of bilateral and multilateral labour agreements. The first set of bilateral labour agreements were negotiated in the late 1970s and early 1980s, beginning with Iran (1975), Nauru (1976), Nigeria (1976), Libya (1979), Papua New Guinea (1979), Qatar (1981), Jordan (1981), Iraq (1982), and Liberia (1985).¹³⁸ The most recent round of agreements have included cooperative arrangements with the Commonwealth of the Northern Mariana Islands (2000), Switzerland (2002), Taipei (2003), the United Kingdom of Great Britain and Northern Ireland (2003), and the Republic of Korea (2004),¹³⁹ and the Association of South East Asian Nations (ASEAN). These agreements are in addition to bilateral and multilateral trade agreements, which may also address matters related to labour migration like the most recent one signed between the Philippines and Japan in 2007.

The third component of the Philippine government's regulatory framework for labour migration pertains to those measures developed and implemented to protect overseas Filipino workers from the potential abuses they may suffer while they are employed abroad. A great number of these measures have to do with the employment relationship and the role of the Philippine government in acting as the representative agent of all overseas Filipino workers. Acting in response to criticisms levelled at the Philippine government by workers, their families, and non-governmental organizations, the Philippine government has enacted a series of regulatory measures to guarantee social and welfare services to its overseas workers and their families. In essence, these regulatory measures recognize the responsibilities of the state to provide protection and support to its citizens who are living and working overseas.

As the composition of these labour migration flows began to change, calls for new regulations and rules to protect the rights of workers intensified. These

¹³⁷ See Ruh and Chang, 69-102.

¹³⁸ Gonzalez, 133.

¹³⁹ Information obtained from an interview with an official from the Philippine Consulate, Toronto, 2007.

labour migration flows began to comprise increasing numbers of women who were leaving the Philippines to find work in other countries. Migration figures¹⁴⁰ for 1993 indicated that women made up 50 per cent of the total number of Filipinos deployed for overseas employment assignments. Furthermore, approximately 50 per cent of the new jobs that overseas workers took were categorized as vulnerable occupations, with the vast majority of these positions filled by women. Figures for 1994 show that nearly one-third (28.57 per cent) of the total number of overseas employment assignments were taken by domestic helpers. Women were particularly vulnerable to employment abuses because of the type of work they regularly performed that led to abuse and exploitation. The Aquino administration was the first to respond to charges that women experienced differential treatment as overseas workers which required government intervention. Oishi's research found that one of the most drastic of these measures occurred in 1988 when the administration exercised a worldwide ban prohibiting the deployment of Filipina domestic workers.¹⁴¹ The response of a number of countries was to negotiate bilateral labour agreements or some other form of institutional arrangement with the Philippine government which would address working conditions specific to domestic helpers.

This legacy has had three effects. The first has been to implement emigration restrictions which are specific to women. For example, women who seek employment as domestic workers must be at least 21 years of age, and for women who wish to work as nurses, they must be at least 23 years of age, have matriculated with a university degree in nursing, and have practiced for one year in the Philippines.¹⁴² Only after meeting these requirements would these women be eligible for overseas deployment. The second has been to prescribe a standard employment contract for overseas Filipino workers. The content of this standard employment contract has been described by Felicisimo Joson, an administrator of the Philippine Overseas Employment Administration, as follows:

guaranteed wages for regular working hours; overtime pay for services rendered beyond regular working hours; free transportation from point of hire to site of employment and return; free emergency, medical and dental treatment and facilities; just causes for termination of contract; workmen's compensation benefits and war hazard protection; repatriation of worker's remains in case of death; assistance on remittance of worker's salaries; and free and adequate board and lodging facilities.¹⁴³

¹⁴⁰ Samonte, Maceda, et al., 4.

¹⁴¹ Oishi, 65.

¹⁴² Oishi, 60.

¹⁴³ Felicisimo O. Joson, "Existing Philippine Laws, Rules and Regulations Affecting Filipino Women Migrant Workers," in *OCWs in Crisis: Protecting Filipino Migrant Workers*, ed. Ateneo Human Rights Center (Makati, Philippines: Ateneo Human Rights Center, 1995), 24.

The Philippine government has tried to show itself as being proactive in negotiating a model of employment contracts that would be specific to each receiving country. These employment contracts recognize both the Philippine and host governments' labour laws, regulations, and procedures. The third effect has been to practice "selective overseas promotion."¹⁴⁴ The Philippine government has negotiated a series of bilateral labour agreements that privilege the relationship between the two governments, making the effort to send workers to countries that will recognize and respect workers' rights.

A major turning point in the development of a regulatory framework that included a human rights dimension was the 1995 Executive Order No. 231 issued under the Ramos administration. This executive order required the establishment of a Presidential Fact-Finding and Policy Advisory Commission on the Protection of Overseas Filipinos (the Gancayco Commission). Following the policy recommendations of the Gancayco Commission, the Philippine Congress passed the Republic Act 8042 and President Ramos signed it, making the Migrant Workers and Overseas Filipinos Act an integral part of Philippine law pertaining to labour migration. Referred to as the Magna Carta for overseas Philippine workers, the 1995 Republic Act defined the state's specific responsibilities to its citizens who worked overseas. In a notable shift of language compared to earlier measures, the mandate of the 1995 Act specified the following:

While recognizing the significant contribution of Filipino migrant workers to the national economy through their foreign exchange remittances, the State does not promote overseas employment as a means to sustain economic growth and achieve national development. The existence of the overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of the Filipino citizen shall not, at any time be compromised or violated.

This change reflected the growing pressure that the Philippine government faced from its overseas workers, their families, and the non-governmental organizations representing them. One of the overarching objectives of the Magna Carta was to address concerns of exploitation and abuse suffered by overseas workers.

This legislation attempted to widen the legal jurisdiction of Philippine labour law to recognize the multiple stages of deployment that make up the labour migration circuit. Santiago categorizes these provisions or amendments into three stages: pre-deployment, deployment, and post-deployment.¹⁴⁵ Joson has argued that the single greatest effect of the Magna Carta may be found in the provision that specifies "deployment of overseas Filipino workers will be allowed only in countries with laws protecting migrant workers."¹⁴⁶ The legislation had four

¹⁴⁴ *Ibid.*

¹⁴⁵ Santiago, 208.

¹⁴⁶ Joson, 25.

immediate effects on the procedural aspect of protecting overseas workers' rights, namely: (1) it expanded the definition of the term migrant worker and/or overseas Philippine worker to include any individual involved in a "remunerated activity;" (2) it directed the establishment of Resource Centers to provide counselling and legal services in countries where "at least 20,000 Filipino workers" are employed and living; (3) it required the Philippine government to ban the deployment of its citizens where cause is shown that the "national interest" or "public welfare" has been or is being compromised; and (4) it provided for an alternative site for legal arbitration that may occur within the Philippines through the National Labor Relations Commission when workers cannot expect to receive adjudication from within the host country.¹⁴⁷

Numerous authors have pointed out the weaknesses or failings of the Philippine government to implement the Act. The most significant of these shortcomings has to do with the actual practice of translating the Act's procedural content into substantive gains which would have real effects in improving the working conditions of the overseas Philippine worker. There is a general recognition in the literature from both practitioners and academics alike of this difficult, if not impossible, task that faces the Philippine government in its efforts to bring monitoring and enforcement powers to the employment relationship when it exists outside its territorial jurisdiction. The next chapter picks up on this issue. For the purposes of this chapter, however, it is important to understand the development of this regulatory framework in terms of the broader motives or interests that are served by brokering the terms of agreement for labour migration.

The motives that have driven the Philippine government to support the creation of these transnational circuits for moving workers back and forth between host and home countries must be contextualized to fit in a much broader set of developments related to economic globalization and the integration or interdependence of markets. Remitted foreign exchange earnings from overseas employment have continued to be a significant driving force in the Philippine government's strategy to manage labour migration flows. The Marcos regime's 1974 Labor Code effectively institutionalized the process of regulating labour migration flows, with its conceptualization of how the state bureaucracy would function to support and channel these flows. Remittances, however, are not the only economic motivator shaping Philippine emigration policy developments around labour migration. Today, these policy objectives are also being shaped by the extent to which trade liberalization is taking hold within an emerging global services industry. The Philippines has been proactive in its efforts to develop a comparative advantage in supplying skilled workers for employment in the various service sectors. The Philippine government is not unique in these efforts, especially as other labour supplying countries are increasingly competing with the Philippines to secure employment positions for their citizens. Where both level of education and type of skills matter for accessing foreign labour markets that

¹⁴⁷ Gonzalez.

determine employment opportunities, the Philippine government has championed a highly competent and competitive labour force. Negotiations between the Philippine government and receiving governments of Filipino workers are about how the Philippine government seeks to shape the development of a global labour force of which its citizens are a significant feature of the changing employment landscape in service delivery. Accordingly, any such motive in supporting the creation of transnational labour migration flows has to be understood in terms of how the Philippine government seeks to re-define its position in the global economy based on its contributions to an emerging global labour force in service trade and delivery.

For example, negotiations that have ensued in the course of developing and implementing the General Agreement on Trade in Services (GATS) are indicative of these broader trends in international competitiveness. According to data from the World Trade Organization, services now account for “over 60 per cent of global production and employment,” and make up “24 per cent of total trade [calculated from Balance of Payment data].”¹⁴⁸ The classification system used by World Trade Organization has identified 12 core service sectors, including: business; communication; construction and engineering-related; distribution; educational; environmental; financial; health-related and social; tourism and travel-related; recreational, cultural, and sporting; transport; and other services. Insofar as multilateral trading arrangements like the GATS are relevant to this discussion about the creation of transnational migration flows, their significance lies with the definition of labour migration related to the trade and delivery or provision of services as temporary in nature. These agreements have the potential to determine the intensity and extensiveness of labour migration flows that are linked specifically to employment in the service industry. The distinction between Modes 3 and 4 is an important one, but a detailed discussion is beyond the scope of this work. Their definitions should be sufficient enough for the argument developed here.¹⁴⁹ Mode 3 covers services provision and delivery provided through the *commercial presence* of a local representative of a foreign-owned and controlled company. Mode 4 covers service provision and delivery provided through the *presence of natural persons*. Foreign nationals enter a country to work as independent service providers. It has been the case that developed and developing countries disagreed on matters of implementing a multilateral trading arrangement. In the case of the GATS, and specifically to the Mode 4 provision on the Movement of Natural Persons, one of the main points of contention between developed and developing countries like the Philippines has to do with entry restrictions or limitations within different service sectors based on numbers of foreign workers permitted entry and the classification of skills.

¹⁴⁸ World Trade Organization, “The General Agreement on Trade in Services: An Introduction,” World Trade Organization, http://www.wto.org/english/tratop_e/serv_e/gatsintr_e.htm (accessed June 1, 2008).

¹⁴⁹ *Ibid.*

Developing countries that are also labour exporting or sending countries of foreign workers are especially pressed to find policy options that maximize the benefits and minimize the risks associated with the liberalization of services. For the Philippines, a multilateral arrangement like the GATS has complicated its approach to negotiations, particularly around issues of market access and national treatment. The Philippine government's concerns about opening its own service sectors to foreign competition are having to be weighed against the perceived benefits of liberalizing trade in services where the Philippines wants to export its workers as independent service providers. Where these multilateral arrangements have been slow to take off, the Philippine government has pursued bilateral agreements. It has become common practice by the Philippine government to initiate negotiations over bilateral labour arrangements, some of which are attached to the implementation of free trade agreements. These agreements have the advantage of both facilitating trade and managing migration on case by case basis.

In total, the Philippine government is a signatory to 38 bilateral trade agreements and 3 Memoranda of Understanding on trade and investment cooperation. Recent negotiations between the Philippine and Japanese governments resulted in the Japan-Philippine Economic Partnership Agreement, a bilateral trade arrangement that may provide improved access to Japan's labour market for Philippine nurses and caregivers. Other recent trade agreements which include provisions for labour migration have been negotiated and signed between the Philippines and the U.K., South Korea, Taiwan, and Switzerland. The only agreement signed between Canada and the Philippines pertains to social security. The Agreement on Social Security was signed between the two governments in September 1994, and came into effect in March 1997. The Philippines' efforts to see the Live-in Caregiver Program evolve into something more closely approximating a trade proviso within a bilateral labour agreement have been stopped by Canada's insistence that labour migration between the two countries is an immigration matter for consideration only.

Among sending countries, the Philippines has been cited for its emigration policies and administrative operational guidelines that make it a model of best practice for others to follow. With decades of experience in regulating the practice of labour migration, the Philippine government is now motivated to use this regulatory model as a starting point for negotiations. The country seeks to take advantage of the potential windfall that trade in services represents for the country's economic development and growth. By having a regulatory framework already in place that institutionalizes the process of administering labour migration flows, the Philippine government finds itself in the unique position of making the case that it is ahead of the others. Bargaining becomes a matter of persuading receiving countries like Canada for greater access to its labour markets while justifying its cause by showing its history of commitment to regularized forms of labour migration through domestic regulations found in the Philippine legal framework.

Subsequent policy developments initiated by the Philippine government since the 1995 Magna Carta on labour migration reveal these two motivators, economic development and international competitiveness. Domestic policy objectives have typically reinforced the significance of labour migration, and more specifically remitted foreign earnings from overseas Filipino workers, for the country's economic security. They have, however, also been expanded to encompass matters having to do with certification and accreditation of education, training, and skills. These developments in policy prescription are signifiers of the Philippine government's broader interests in positioning its citizens to take advantage of employment opportunities that may be coming available with increasing frequency in the services sectors. The Philippine government, however, has enacted legislation protecting the labour and citizenship rights of overseas Philippine workers.

The Philippine government's most recent approach has been to link the protection of citizenship and labour rights with the different stages of deployment. This approach is significant for two reasons. First, it suggests that the Philippine government is willing to recognize that abuse or exploitation in the employment relationship can occur at any number of points in the migration system. These regulations have been drafted in such a manner as to define the types of protections guaranteed to overseas workers based on the deployment stage in which the workers find themselves. Second, this approach demonstrates the Philippine government's attempt to link the two discourses on international competitiveness in services and the protection of rights afforded to foreign workers.

How successful the Philippine government has been in these attempts is the subject of the next chapter. In terms of the kinds of motives that compel a sending country like the Philippines to negotiate the terms of agreement for a more regularized form of labour migration, this kind of approach is representative of the Philippine government's broader interests in shaping how an emerging global market in services may function. This debate has been as much about service provision and delivery as it has about those individuals who provide these services and the protections afforded to them while in the duty of performing such services.

Canada

Although the Philippine government has shown every indication of wanting to cooperate with the Canadian government over the terms of agreement for a formal arrangement, Canada's continued resistance to a bilateral labour agreement with the Philippines has been caught up in the broader debate occurring in the Canadian public sphere. These debates capture a broader discourse being articulated about government responsibility for service provision and what a social development model in policy areas such as health care and child

care should look like. As demand for formal caregiving provisions¹⁵⁰ has increased, the intensity of this debate has spilled over into other policy areas, most notably the immigration policy domain. Questions and concerns have arisen in response to the practice of importing labour to meet niche-specific labour market needs, like those for child care and health care providers. The immigration policy domain, however, is equally divided by the debate about what immigration policy should look like. These internal divisions have left the Live-in Caregiver Program in a holding pattern at various times over the course of its development. Interests have been expressed in changing the status quo, but no real action has been taken to initiate long-term change to this status quo. As a consequence, such internal divisions have put labour sending countries like the Philippines at odds with labour receiving countries like Canada when it comes to translating government-specific interests into an action plan that recognizes both countries' interests and objectives for supporting labour migration between them.

Academics and practitioners familiar with this subject have cited the role and impact of gender as one of the primary causes for why the LCP has evolved in the manner it has. A movement that is predominantly characteristic of women seeking overseas employment opportunities, many have suggested that the LCP has taken the shape it has in order to compensate women for the program's live-in requirement. Unlike any other foreign worker program of its kind, both within Canada and abroad, the LCP promises permanent residence at the end of the 24-month employment term. To date, no other country has a program like Canada's LCP. Research conducted using a gender-focused lens has gone far to illustrate the difficulties faced by women in particular who have moved overseas in search of employment opportunities as caregiving providers. It has stopped short, however, in explaining the nature of the relationship between the Philippine and Canadian governments, which in turn have impacted the development of the LCP. For example, there is little by way of explanation for why the two governments have been unable or unwilling to negotiate the establishment of a formal bilateral labour agreement between them. For a program that is, for all intents and purposes, a Filipino-driven movement, the LCP does not bring the Philippine government into formal negotiations the same way that other bilateral agreements have. Instead, the program seems to be a reflection of an informal arrangement between the two governments. Reasons for Canada's resistance to any additional measures that would formalize the two government's relationship are important for understanding why the LCP functions the way it has. In effect, Canada has been motivated to develop and regulate transnational labour migration specific to

¹⁵⁰ It may be too early to speculate about the emergence of a caregiving industry, and yet a Senate Bill from the Fourteenth Congress of the Republic of the Philippines found that formal caregiving provision had reached totals amounting to US\$ 115 billion. This figure represents the findings conducted in a 1997 nationwide research. For information, see: Senate Bill No. 858, Fourteenth Congress of the Republic of the Philippines, introduced by Senator Manuel M. Lapid, July 3, 2007.

caregiving service provision that is different from the set of motives driving the Philippine government.

Recent data on labour migration and caregiving service provision help to put the LCP's development in a broader global context. Since the 1990s, approximately 35 per cent of Filipinos leaving the country are categorized as *basic service providers*.¹⁵¹ This figure has continued to increase, as have those for Filipinos who are categorized as high-skilled professionals like registered nurses. The Philippines provides approximately 90 per cent of the total number of *live-in caregivers* employed worldwide. For example, Taiwan has continued to be one of the top destination countries for Filipino caregivers, having attracted approximately 80 per cent of the Filipino caregivers over a five-year period. In one year alone, nearly 14,000 Filipinos took employment as caregivers in Taiwan.¹⁵² In comparison, Canada has granted entry to approximately 2 per cent of the total number of Filipino caregivers employed worldwide. Over a similar five-year period as that of Taiwan, Canada issued a total number of 17,125 visas to live-in caregivers. Of this total, the Canadian Embassy in Manila issued 13,154 visas to Philippine citizens.¹⁵³ The Philippines, then, remains the top source country of live-in caregivers destined for Canada. Canada is not, however, one of the top destination countries for Filipino caregivers. Furthermore, estimates have shown that this particular set of migration flows is comprised predominately of *women*. In Canada, women have consistently made up 95 per cent of the LCP's total number of caregivers.¹⁵⁴

For its part, Canada has resisted taking policy action that would further institutionalize labour migration flows which are specific to the caregiving profession. Compared to the Philippines, Canada has not shown the same desire to create formal ties that would open its borders to increasing numbers of people who are trained as caregivers. Its annual immigration plans are revealing of this reticence. Occupations which traditionally fall within the broader scope of formal caregiving service provision and delivery are regulated at the provincial/territorial level. These occupations require particular educational credentials and licences certifying competency and experience in the field. Individuals who sought to immigrate to Canada for employment and residence purposes found it nearly impossible to apply through the Skilled Workers Program because their educational credentials, job-related training, and work experiences did not meet Canadian (i.e., provincial) standards.

¹⁵¹ Robert Burgess and Vikram Haksar, *Migration and Foreign Remittances in the Philippines*, IMF Working Paper WP/05/111 (2005), International Monetary Fund.
<http://www.imf.org/external/pubs/ft/wp/2005/wp05111.pdf> (accessed June 1, 2008).

¹⁵² Senate Bill No. 858.

¹⁵³ Statistics obtained from an interview with an official from Citizenship and Immigration Canada, 2007.

¹⁵⁴ Statistics obtained from an interview with an official from Citizenship and Immigration Canada, 2007.

Compared to other temporary foreign worker programs, the Live-in Caregiver Program was unique for extending the opportunity of permanent residence to workers providing in-home care to children, elderly persons, or persons with disabilities. Otherwise, individuals with these skills and experiences were not able to apply for permanent residence any other way. They could not apply through the Skilled Workers Program because no such occupational title or job description existed under the National Occupational Classification matrix. Basic caregiving service provision constituted low- or less-skilled labour and, thus, individuals were not eligible to apply for permanent residence using the points system in the Skilled Workers Program. Additional restrictions would be added to the Live-in Caregiver Program when it replaced its predecessor, the Foreign Domestic Movement, in April 1992. The LCP required more education, more work experience in the field, and higher language proficiency from its applicants. Like the FDM and Canada's other temporary foreign worker programs, employment authorization under the LCP is specific to a single employer; individuals who change employers are required to apply for new employment authorization. Through these immigration policies, Canada has restricted entry into the country which is specific to individuals who can provide formal caregiving services.

From Canada's standpoint, the LCP answers a niche-specific demand for a group of workers who can provide basic caregiving services from within the home. In effect, the LCP's scope has been narrowly defined to bring in only those workers who offer in-home (e.g., child) care services. Servicing as few employers as it does, relatively speaking that is, the LCP has been a minor character in the patchwork composite that typifies Canada's approach to child care service provision. This approach has followed a social-liberal trajectory¹⁵⁵ in which families who can afford private child care service provision use the market to shape and determine their choice and families who cannot afford private services look to the state for other options. In this regard, the LCP is but one example of a market-based option available to middle- and upper-income families who seek caregiving services. A 2006 Statistics Canada report provides analysis of recent trends in early child care arrangements, using the National Longitudinal Survey of Children and Youth (NLSCY). This report found that (1) the percentage of families using in-home child care by a non-relative, like a live-in caregiver, has steadily declined; and (2) of those families using this particular type of child care arrangement, they are representative of the highest level of household income¹⁵⁶. In 1994-95, 14 per cent of children between the ages of 6 months and 5 years were in-home care arrangements with a non-relative. This

¹⁵⁵ Jane Jensen, Rianna Mahon, and Susan D. Phillips, "No Minor Matter: The Political Economy of Childcare in Canada", in *Changing Canada: Political Economy as Transformation*, ed. Wallace Clement and Leah Vosko (Montreal and Kingston: McGill-Queen's University Press, 2003), 139-40.

¹⁵⁶ Tracey Bushnik, *Child Care in Canada*, research paper for Children and Youth Research Paper Series (Ottawa: Ministry of Industry, 2006), 11-14.

rate fell to 8 per cent in 2002-03. Domestic pressures for these services are articulated within a small, select group of employers. The profile¹⁵⁷ of this group of employers is characterized by a two-parent household with a gross annual income in excess of CAD\$ 100,000. The average age of each employer is 35 years, and the household is typically comprised of two children who require caregiving services while their parents are working. Families that use the LCP must be able to provide room and board. Families also typically cover costs for using a recruitment agency, for filing Canadian work authorization applications, and for subsidizing travel arrangements for individuals into and out of the country. Because of these additional costs, the LCP is not an immediate option for most Canadian families.

Although developed with the intention of filling a particular labour shortage, i.e., the live-in caregiver for children, seniors, and disabled individuals, the LCP services a minute fraction of the total percentage of families relying on child care in the home from a non-relative. Any interest that the Canadian government may have for expanding the LCP's reach is tempered by the recognition that live-in caregiving services comprise a very small niche market in Canada. It thus acts to put numerical limits on the number of caregivers authorized to work in Canada under the regulatory framework of the Live-in Caregiver Program.

Comparing the two programs, the SAWP and the LCP, reveal important differences in the data¹⁵⁸ on temporary foreign worker admissions. Taking into account the ratio of individuals entering the country as live-in caregivers to the total number of temporary foreign workers, work visas issued to live-in caregivers have accounted for a mere fraction of the total number of work visas issued to all temporary foreign workers. Between 1992 and 2000, the average ratio of live-in caregiver to all temporary foreign workers was 3 per cent. During the inaugural year of the LCP, live-in caregivers made up 2 per cent of the total number of temporary foreign workers. This ratio climbed to 3.5 per cent in 1995, only to drop back to 2.6 per cent in 2000. Only in recent years has this ratio suggested doubling itself, from 3 to 6 percent, but the number of live-in caregivers arriving in Canada still remains well under 10 per cent of all temporary foreign workers.

The number of worker arrivals through the Seasonal Agricultural Workers Program is nearly 10 times that of live-in caregivers. Between 1992 and 2000, SAWP workers consistently accounted for approximately 17 per cent of the total number of temporary foreign workers entering Canada. In 1986, SAWP workers made up a little more than 8 per cent of all temporary foreign workers. By 1996, this ratio had doubled: SAWP workers accounted for approximately 16 per cent of the total number of temporary foreign workers. No less than six years later, the ratio peaked at nearly 20 per cent. Estimates for 2002 showed that SAWP

¹⁵⁷ Langevin and Belleau, 35. The authors provide an important composite of the type of employer who might typically hire a live-in caregiver.

¹⁵⁸ Statistics obtained from an interview with an official from Citizenship and Immigration Canada, 2007; Philip Martin, "Managing Labour Migration."

workers accounted for 19.8 per cent of all temporary foreign worker flows into Canada. In her book, *Home Economics*, Nandita Sharma has argued convincingly that the total number of temporary foreign workers arriving in Canada has steadily risen. Increasing numbers of foreign workers have been recruited to work in Canada each year. Using Citizenship and Immigration statistics¹⁵⁹ for the years 1992 through 2005, the data reveal that the total number of temporary foreign worker increased from 70,000 in 1992 to nearly 100,000 in 2005. Accounting for the different subgroups of temporary foreign workers based on occupation, or arrival through one of the two foreign worker programs, a slightly different picture emerges. The simple fact is that the number of live-in caregivers admitted into the country comes nowhere near the total number of SAWP workers. Between 1992 and 2000, both groups have experienced an overall growth in the *total number* of arrivals. However, the *ratio* of each group to all temporary worker arrivals reveals that the percentage of live-in caregivers stayed relatively consistent while the percentage of SAWP workers steadily increased each year.

Using statistics that comprise overall totals, Sharma has demonstrated that Canada has accepted increasing numbers of foreign workers through a particular strategy of immigration policies and programs. Her argument suggests that Canadian immigration policies have had the effect of opening Canada's borders to more and more foreign workers. These policies, however, restrict the rights afforded to these individuals while they live and work in Canada.¹⁶⁰ Sharma's evidence shows an overall annual increase in the number of workers entering the country through the Non-Immigrant Employment Authorization Program (NIEAP; 1973). The NIEAP has brought tens of thousands of workers to Canada, resulting in a practice that channels individuals from other countries into the Canadian labour market based primarily on their skills level. An individual's skills level and potential labour market contribution are largely determined by educational and training credentials and work experience.

Sharma's argument that Canada has experienced a rise in the number of temporary foreign workers entering Canada is supported by the data. By comparing the two immigration categories, temporary flows and permanent flows of foreign workers, the statistics show a consistent pattern. Over a 14-year period between 1992 and 2005, temporary foreign workers accounted for an average of 40 per cent of all worker immigrants, i.e., compared to economic immigrants.¹⁶¹ For every 10 individuals admitted to Canada under the policy guidelines of the NIEAP, four of them received temporary employment authorization and held work visas, and six of them landed as part of the economic immigrant class giving them permanent residents upon arrival in the country. Economic immigrants

¹⁵⁹ Citizenship and Immigration Canada, *Facts and Figures: Immigration Overview Permanent and Temporary Workers 2005* (Ottawa: Citizenship and Immigration Canada, 2006), <http://dsp-psd.pwgsc.gc.ca/Collection/Ci1-8-2005E.pdf> (accessed January 31, 2008).

¹⁶¹ Citizenship and Immigration Canada, *Facts and Figures 2005*.

receive permanent residence upon landing in Canada, an immigration category which removes all restrictions to their access to the Canadian labour market.

By comparison, immigration regulations restrict how temporary migrants access the Canadian labour market. Prior to arriving in Canada, these workers are required to have pre-arrangement employment, the terms of agreement which have to be first cleared through the practice of internal labour market assessment (i.e., Human Resources Labour Market Opinion). Work visas issued to temporary foreign workers are directly tied to the employment contract reached between the employer and the employee. When the contract ends, the work visa is no longer valid. When a temporary foreign worker seeks to change employers, they are required to re-apply for employment authorization and a work visa.

One of the striking differences between the SAWP and the LCP is the trajectory characterizing admissions by group. Scholars like Nandita Sharma and Saskia Sassen, among others, have attributed the correlation between precarious work and immigration flows with the development of neo-liberal capitalism. Labour market segmentation based on race, gender, and nationality is an effect of this development. In particular, the right of mobility is withheld to Canada's temporary foreign workers. For these workers, the freedom of movement and residence is restricted to the single employment contract. The employment contract determines when and where these workers will live and work. Both SAWP and LCP workers are bound by these immigration rules. LCP workers, however, can eventually apply for Canadian permanent residence, an opportunity denied to other groups of temporary foreign workers in Canada, including the SAWP's workers. Research on labour migration flows into Canada has not typically compared admissions by group, like that between the SAWP and the LCP. The comparison is useful for understanding how Canada has interpreted, and responded to, the pressures of neo-liberal capitalism. Sharma has argued that Canada's immigration policies are part of a larger national project, i.e., Canadian nationalism, which privileges and reinforces a White-insider / Non-White outside demarcation of national-territorial boundaries. One of the effects following this practice has been a stratified labour market based on race, gender, and skill level. Another has been the institutionalization of permanent flows of temporary foreign workers into Canada. The Canadian government has typically supported an annual increase of temporary foreign workers who are admitted into the country. Both the SAWP and LCP are revealing of these trends.

The difference in admission levels between the SAWP and the LCP are also revealing of how the notional construct of international competition has played out differently in shaping Canada's foreign worker programs. As the previous chapter has showed, admission levels for the SAWP have increased with FVH sector developments. The push to make Canada's FVH sectors more competitive at an international level has driven policy developments that would have increasing numbers of foreign agricultural workers brought into the country on a yearly basis. For example, in a two-year period between 2005 and 2006, Service Canada approved 36,458 vacancies for SAWP workers, i.e., a little more

than 18,000 workers each year. The combined total of worker arrivals over this same two-year period amounted to 30,999 SAWP workers from Mexico and the Caribbean islands, or approximately 15,500 workers each year.¹⁶² These data show that the SAWP has an 85 per cent arrivals-to-vacancies ratio. This ratio signifies that, of the large number of vacancies approved by Human Resources / Service Canada each year, approximately 85 per cent of them are filled, a percentage that increases if worker transfers are included with the arrival figures.

By comparison, since 1992, Canada has generally limited the number of admissions approved for individuals providing live-in caregiving services.¹⁶³ Processing data from the Canadian Embassy in Manila provide an important contrast to the SAWP's statistics. Between 2000 and 2004, the Canadian Embassy received approximately 24,000 applications from individuals seeking employment in Canada as a live-in caregiver. In 2000, the Embassy received approximately 3,000 applications. By 2004, the total number of applications had doubled itself, with the Embassy reporting nearly 7,000 applications received by the year's end. Over this same time period, the Canadian Embassy in Manila issued approximately 12,000 visas. Although the Embassy recorded an annual increase in the number of applications (i.e., cases) that were in process, the annual percentage increase of visas rose only modestly from year to year. In fact, three of the six years between 1999 and 2004 resulted in a ratio of less than 50 per cent of visas- to-applications. Compared to the processing data from the SAWP, Canada has approved far fewer vacancies and has generally limited the number of visas issued to individuals providing live-in caregiving services.

The Canadian government's willingness to expand the LCP through bilateral agreement with the Philippine government is subsequently compromised by a set of inter-related factors. First, despite this ongoing acknowledgement of a labour shortage for caregivers that dates as far back as the 1950s, overall demand among Canadian families for in-home child care by a non-relative has shown signs of decline, with current levels holding steady only among households having the highest income level. Any interest that the Canadian government may have for expanding the LCP's reach is tempered by the recognition that live-in caregiving services comprise a very small niche market in Canada. It thus acts to put numerical limits on the number of caregivers authorized to work in Canada under the regulatory framework of the Live-in Caregiver Program. Although the Philippine government has continued to lobby for increased access to Canada's labour market in certain service sectors, Canada's reticence to expand the size and scope of the Program's mandate has been carefully couched in terms of the current domestic (i.e., Canadian) labour market conditions. Like the SAWP, regulation of the kinds of migration flows that bring Philippine caregivers to Canada is determined by labour market evaluation tools that impose economic testing to

¹⁶² Foreign Agricultural Resource Management Services, "Statistics."

¹⁶³ Statistics obtained from an interview with an official from Citizenship and Immigration Canada, 2007.

assess supply and demand for employment in this occupation (i.e., the Canadians First labour market policy and the HRSDC labour market opinion that is used to assess labour market conditions). Suggestions that the future may unleash greater demands for caregiving services remain just that: estimated projections. Even the Philippine government has had to modify its position on the market's elasticity and employment prospects for workers providing caregiving services. A recent report issued by the Philippine government sees demand falling in exactly those countries that have typically welcomed overseas Philippine workers as caregivers.¹⁶⁴ Unlike the SAWP, Canada's interests in negotiating changes to program operations with the Philippine government are compromised by the limited growth potential in market demand for live-in caregiving services. It remains the contention of the Philippine government and other stakeholder groups that removing the live-in requirement of the LCP's mandate potentially changes the employment growth curve, suggesting opportunities for increased demand where before they may have been hidden. For its part, Canada has held fast to its position that no such labour shortage exists for Canadians and permanent residents who can provide live-in caregiving services.¹⁶⁵

The LCP's developmental trajectory is inherently bound up with a broader immigration plan that has consistently functioned to restrict labour migration inflows specific to certain service sectors. These sectors have typically included the health occupations, as well as child care and education. For example, the foundations of the NIEAP are based on Canada's National Occupational Classification (NOC) system. The points necessary for an individual to be able to apply for permanent residence through the Skilled Workers Program are determined by a set of NOC criteria for education, job training, and / or work experience. Canadian immigration policy reflects a set of operational guidelines that require individuals to meet provincial standards for education and / or certification. Potential applicants whose profession involves health care services, like nurses and technicians, have comprised their own category, Group 3. The NOC outlines a set of criteria requiring Canadian education, training, and / or work experience. A similar set of criteria exists for other caregiving professions, including child care providers. For individuals providing live-in care services, there is no functional NOC equivalent that provides a specific job description. In effect, the live-in caregiving profession has gone unrecognized in the NOC's occupational designations, making it all but impossible for these individuals to immigrate to Canada through its Skilled Workers Program. As Sharma and others have argued, the NIEAP has had the effect of narrowly channelling individuals who provide these services into the

¹⁶⁴ TESDA, 2006. Internet.

¹⁶⁵ Interview with an official from Citizenship and Immigration Canada, 2007; cf. Sharryn Aiken, Audrey Macklin, and Chantal Tie, "Brief on the Proposed Immigration and Refugee Act (Bill C-11)," National Association of Women and the Law, 2001.

temporary labour migration circuit. The implication of this practice has been to burden these individuals with ‘outsider’ status because they constitute part of these temporary migration flows.

Compared to its predecessor, the Foreign Domestic Movement, the LCP brings in far fewer workers. According to Bals,¹⁶⁶ during the first year of the FDM, more than 10,000 workers were admitted into the country as live-in caregivers. By the end of its tenure (1990 and 1991), a combined total of approximately 25,000 workers had been admitted into Canada as live-in caregivers. Not only have there been far fewer employment authorizations granted through the LCP, but the application requirements pertaining to education, job training, and work experience are more demanding than the FDM’s had been. These changes to the LCP’s operational guidelines have been consistent with Canada’s overall immigration strategy restricting labour migration inflows specific to particular occupations in certain service sectors. The LCP has functioned as a traditional “gate-keeping” program. In this regard, the functional purpose of the LCP is the same as the SAWP’s. Both programs constitute a practice of managed migration; they set out guidelines and rules for regulating labour migration inflows. These regulations give structure to these inflows that can be closely monitored and, when necessary, modified. Sharma and Sassen are right to point out that countries like Canada have increasingly relied on immigration policy to engage with the neo-liberal, global capitalist system. An important distinction remains, however. With the SAWP, Canada looked outward and recognized a need to protect the whole of the FVH sector from international competition by increasing the number of workers admitted into the country. With the LCP, Canada has looked inward and recognized an opportunity to protect certain service sectors from international competition by restricting the number of workers admitted into the country.

The pressures of international competition unleashed as a result of intensified trade in services have warranted a restrained response from Canada. This response has been to limit arrival numbers, and it has done so by introducing “quality-control” measures in the LCP’s regulations pertaining to admissions criteria. For example, during the same time period that the Canadian Embassy experienced a two-fold increase in the number of applications it received from Filipinos, it also reported an enormous jump in the number of caregiving schools in the Philippines. In 1999, there were nine caregiving schools in the Philippines. In 2004, there were 728 schools.¹⁶⁷ Canada’s response has been to conduct onsite visits of these schools and to increase the number of interviews with the applicants. The emergence of an industry which specifically provides certification and accreditation to individuals seeking employment as caregivers is but the tip of the iceberg when it comes to identifying the potential effects of trade liberalization in services. The impact of trade liberalization in the areas of

¹⁶⁶ Bals, *Les domestiques étrangères au Canada*.

¹⁶⁷ Interview with an official from Citizenship and Immigration Canada, 2007.

education, health care, and social services is hotly contested: Critics concerned about outsourcing these services through means of privatization and commercialization are met by challengers asserting improved access to a wider and more cost-efficient selection of services.¹⁶⁸ The Philippines has taken the unilateral policy action to increase labour migration outflows of highly skilled workers for employment in all service sectors. Canada has taken the unilateral policy action to restrict labour migration inflows, especially in those service sectors specific to the formal caregiving occupations.

¹⁶⁸ For cost-benefit analysis, see for example J. Anthony VanDuzer, “Health, Education, and Social Services in Canada: The Impact of the GATS,” In *Trade Policy Research 2004*, ed. J. M. Curtis and D. Ciuriak (Ottawa: International Trade Canada, 2004), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=747545#PaperDownload (accessed January 31, 2008).

CHAPTER SIX

THE “MANAGED” MIGRATION SYSTEM: CHARACTERISTICS, COMPARISONS, AND CONCLUSIONS

The present period in international labour migration is singularly remarkable for the type of regulatory action being utilized by governments today. This regulatory action is known as managed migration, or migration management. The terminology gained distinction with the publication of two high-level reports: the International Agenda on Migration Management (IAMM; 2004)¹⁶⁹ and the Report of the Global Commission on International Migration (GCIM; 2005).¹⁷⁰ The IAMM is the end result of a three-year consultative process specifically designed to create a forum for dialogue between governments. The GCIM represents the renewed efforts of the United Nations system to address the issue area of international migration. Both advocate a similar position, namely: (1) that governments recognize international migration as a priority area for policy development; (2) that governments recognize policy development requires concerted efforts at consultation, coordination, and cooperation between all participants, including governments, employer organizations, and worker organizations; and (3) that governments recognize effective migration policy as one which encourages and supports greater transparency and accountability in order to maximize the benefits and minimize the abuses derived from cross-border migration. As a conceptual framework for policy development, managed migration's single greatest promise is that it may bring procedural transparency and administrative accountability to regulatory standard-setting practices for international labour migration. If it is the intention of governments to secure a route for the authorized movement of workers back and forth across national-state territorial jurisdictions, then the responsibility is placed upon them to determine a set of rules, criteria, and conditions that can be observed, applied, and scrutinized.

The Migration Branch of the International Labour Organization (ILO) estimates the current stock of international migrant workers to have reached almost 81 million people. Approximately 50 million of them are found in higher-income countries. The population of international migrant workers as a percentage of developed countries' work force has grown three-fold in less than a

¹⁶⁹ International Organization for Migration, *International Agenda for Migration Management* (Berne: Secretariat for the International Organization for Migration, 2004).

¹⁷⁰ Global Commission on International Migration, *Migration in an Interconnected World: New Directions for Action* (Switzerland: SRO-Kundig, 2005), <http://www.gcim.org/attachements/gcim-complete-report-2005.pdf> (accessed December 1, 2008).

decade, from 4.2 per cent in 1998 to an average estimate of 12 per cent in 2000.¹⁷¹ Their labour is used by governments and employers to harness the developmental potential of an increasingly integrated (globalized / regionalized) economic system.¹⁷² What impact immigration has had on economic output has been difficult to establish with any degree of technical accuracy, but the correlation between them appears to be positive. Martin has argued that rising migration numbers may signal increasingly intensified competition for goods in an increasingly globalized marketplace, and that GDP may increase with immigration when it acts as a brake on the growth of wages.¹⁷³ Between 1988 and 1998, the United States attracted the largest number of new migrant workers from developing countries within the OECD – 81 per cent of them, according to ILO estimates.¹⁷⁴ For Canada, the figures are smaller, 11 per cent, but they hold up as part of a larger trend in international labour migration. The first of these trends is the significance of intra-regional movement, and the second is the labour market stratification of this movement between highly-skilled and low-skilled workers. Between 1997 and 2006, the Canadian governments issued the vast majority of its temporary work permits to U.S. and Mexican citizens.¹⁷⁵ Together, the two countries accounted for approximately 35 per cent of all temporary work permits issued by the Canadian government. Notably, the margin between the two sending countries, the US and Mexico, has narrowed each year since 1997.

Temporary work permits issued by skill level is an equally important indicator. Over the same time period, an average of 30 per cent of Canada's work permits went to professional workers. Another 30 per cent of these work permits went to individuals categorized in the clerical or intermediate skill level. These workers must hold 1 to 4 years of secondary education and up to 2 years work experience or job training.¹⁷⁶ The total number of work permits issued to professionally-skilled workers decreased at almost the same rate that those issued to intermediate-skilled workers increased; by 2002, Canada was issuing more work permits to intermediate-skilled workers than it did to any other group, including professionals. These trends are reversed for those individuals obtaining

¹⁷¹ Manolo Abella, "Cooperation in Managing Labour Migration in a Globalizing World," (Reference Paper for Special Session, n.d.), 1.
http://www.jil.go.jp/foreign/event_r/event/documents/2004sopemi/2004sopemi_e_session5.pdf (accessed December 1, 2008).

¹⁷² For this analysis, see Ong, *Neoliberalism as Exception*.

¹⁷³ Martin, "Migrants in the Global Labor Force," 13.

¹⁷⁴ Abella, 107.

¹⁷⁵ Citizenship and Immigration Canada, "Canada: Annual Flow of Foreign Workers by Top Source Country, Citizenship and Immigration Canada,
<http://www.cic.gc.ca/ENGLISH/resources/statistics/facts2006/temporary/03.asp> (accessed June 1, 2008).

¹⁷⁶ Citizenship and Immigration Canada, Canada: Annual Flow of Foreign Workers by Gender and Occupational Skill Level, Citizenship and Immigration Canada,
<http://www.cic.gc.ca/ENGLISH/resources/statistics/facts2006/temporary/03.asp> (accessed June 1, 2008).

permanent residence status. Increasing numbers of professional workers are entering Canada as permanent residents compared to intermediate-skilled workers.

Temporary foreign workers are mobile on a transnational scale when they move back and forth between their host and home countries, but they experience very limited mobility within the host country's labour market. They are extended the right of visitation – and perhaps, hospitality (as Derrida refers to it), but increasingly they are not afforded the right of residence.¹⁷⁷ The distinction is an important one because it clearly differentiates the type of mobility lived by the temporary foreign worker from that experienced by the permanent settler. The regulatory practice of Canadian immigration operates on this two-track classification system: permanent residence versus temporary residence. This regulatory practice extends the right of visitation, or hospitality, to the seasonal agricultural labourer or live-in caregiver who holds temporary employment authorization in the country. But only the foreign worker who is recognized as a permanent settler upon landing in Canada is extended the right of residence. The right of residence ties the permanent settler to her or his new home country's political system and labour market in a way that interrupts or breaks the transnational cycle of return migration. Whereas the temporary resident is instructed to leave the country within a specified time period, the permanent resident is instructed to stay in the country for a specified time period.¹⁷⁸ To contravene these regulations, both the temporary visitor and the permanent resident may lose their status to live and work in Canada.

A managed migration system that deals specifically with the cross-border movement of temporary workers can be a complex governance arrangement if it is to achieve its desired end. The preceding two chapters examined the motivations and interests which have driven Canada, Mexico, and the Philippines to initiate the development of a migration system between them based on the cross-border movement of temporary workers. Both the Seasonal Agricultural Workers (SAWP) and Live-in Caregiver Programs (LCP) exemplify the regulatory practice of managed migration. The Canadian government, as well as the Mexican and Philippine governments, have demonstrated a political will and administrative capacity to support this particular type of labour migration. These two programs were developed as part of a long-term strategy to support the organized movement of workers back and forth between Canada and their home countries. Canada's work permit system constituted a pre-emptive regulatory action taken by the Canadian government anticipating the economic and social impact of international migration.

¹⁷⁷ Jacques Derrida, *On Cosmopolitanism and Forgiveness*.

¹⁷⁸ For the SAWP worker, the longest they may work in the country is 8 months. The worker who comes to Canada using the Low-Skilled Workers Program may renew their work permit for up to 2 years. As conditions for keeping permanent residence status, a new immigrant must be physically present in the country for five of the first 6 months, and for 720 days for every 5 year period.

Furthermore, both the SAWP and the LCP operate using a form of labour market testing to determine the need for foreign workers to fill employment vacancies and to assess the impact of foreign hirings on the overall health of the Canadian labour market. These programs fit the description of managed migration as examples of unilateral policy development. The Canadian government implemented its Non-Immigrant Employment Authorization Program (NIEAP) as a designated work permit system that temporary foreign workers must use if they are to gain lawful admission to Canada for employment purposes.

Although each in its own distinct way, these programs also fit the description of managed migration as examples of bilateral regulatory action. Both Mexico and the Philippines have a clear stake in how the managed migration system develops between their countries and Canada. Each of these three governments has actively pursued the creation of a permanent circuit of temporary workers with these two foreign worker programs. Their appeal is that they provide a permanent and securitized route for the authorized movement of workers based on shared regulatory responsibilities. The SAWP makes this route both functional and efficient through its bilateral administrative arrangement with each of the source countries, Mexico included. By comparison, the LCP has not achieved the same degree of coordination between the two governments. The LCP has not developed without some influence from the Philippine government's own unilateral policy development, specifically its labour export policy. The Canadian government has had to respond to the Philippine government's push to send more of its workers abroad as part of a skilled labour force providing social and health services. Coordination between the Philippine and Canadian governments does not function the same way as it does with the SAWP. Yet, even without a bilateral administrative arrangement between them, the LCP shows some element of the coordinated rhythm of bilateral regulatory action when each government acts to secure the authorized movement of workers back and forth between the two countries. The migration system which has developed between Canada and the two sending countries draws some of its legitimacy from this two-level governance structure in which unilateral policy development is supported by bilateral regulatory coordination.

Comparing the institutional design of the Seasonal Agricultural Workers Program and the Live-in Caregiver Program shows important differences in programming choices made over the course of developing a managed migration system. I have used the preceding two chapters to examine the inter-governmental relations which influence these programming choices. The SAWP and LCP are both temporary foreign worker programs, as set by Canada's immigration system; however, they differ in significant ways, differences which can be explained by this initial impetus to create a permanent circuit of temporary workers in the first place. Although the SAWP and LCP are Canadian programs that are representative of unilateral policy action taken by the Canadian government, their implementation has required a certain degree of coordination with the two sending governments. Some of the differences we see in

programming choices have been directly influenced by each government's interest in the instrumental value of a migration system between them. The functional relationship between the Canadian and Mexican governments varies in important ways compared to the inter-governmental relationship which exists between the Canadian and Philippine governments. I have traced the source of one of the major differences, the decision to formalize a bilateral administrative arrangement, back to the motivations and expectations that each government holds for labour migration. Overlapping interests to support a managed migration system characterize the bilateral relationship between Mexico and Canada. The same cannot be said for the Live-in Caregiver Program. The Philippine and Canadian governments come at the issue of labour migration with different interests for a managed migration system between them. I argue that their interests have diverged at important times over the course of the program's development, whereas those of the Canadian and Mexican governments have dovetailed at critical points in the SAWP's development.

This chapter takes as its starting point the conceptual framework of managed migration to compare the Seasonal Agricultural Workers Program and Live-in Caregiver Programs as examples of a managed migration system supported by bilateral governance. This case study of Canada's two foreign worker programs demonstrates that explaining the development of a migration system between countries is as much about bilateral governance as it is any other factor. Unilateral policy development is reinforced by bilateral regulatory action taken to coordinate movement between the two countries. Bilateral governance securing managed migration between these countries has succeeded where multilateral effort at international norm-setting has not. Participation by way of acceptance and ratification of the three international conventions on the rights of migrant workers has been spotty for all three countries. The ILO's Migration for Employment Convention has not been signed by any of the three governments¹⁷⁹; its Supplement, the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, was only recently signed by the Philippine government in September 2006.¹⁸⁰ Mexico and the Philippines both ratified the UN's Convention on the Protection of the Rights of Migrant Workers and their Families.¹⁸¹ Canada has continued to withhold signing them. It has been a long standoff for the Canadian government; the first Convention entered into force in 1952, the second in 1978, and the last one was adopted in 1990 and ratified in 2003. Bilateral governance has filled a void in managed migration that neither unilateral nor multilateral efforts can solve entirely on their own.

¹⁷⁹ International Labour Organization, Convention 097, International Labour Organization, <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C097> (accessed December 1, 2008).

¹⁸⁰ International Labour Organization, Convention 143, International Labour Organization, <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C143> (accessed December 1, 2008).

¹⁸¹ Office of the High Commissioner for Human Rights, United Nations, "Fact Sheet No. 24: The Rights of Migrant Workers."

The first part of this chapter examines how a managed migration system works by applying the conceptual framework of managed migration to Canada's Seasonal Agricultural Workers and Live-in Caregiver Programs. I highlight their similarities and differences using primarily the International Agenda on Managed Migration. The IAMM operationalizes the concept of managed migration in a way that lends itself well to comparing Canada's two foreign worker programs. As expected, the two programs share many of the IAMM guidelines in common. They propose moving workers between the countries in a safe and efficient manner, and they establish programming criteria that can be implemented unilaterally. Issues like labour markets assessments, immigration / emigration numerical quotas, recruitment and employment standards or labour rights are part and parcel of the unilateral policy development cycle that allows managed migration to operate between these countries.

The chapter's conclusion explores the trade-offs that governments carry when they choose bilateral regulatory action to structure the movement of workers back and forth across their borders. There are currently 173 formal bilateral agreements which deal specifically with the international labour migration phenomenon and have been signed between OECD member-countries and governments in all regions. These agreements cover all aspects of migration – including, for example, regularization, free circulation, return migration, extradition, and labour conventions. They address matters of remitted earnings, social security, and taxes. Issues like the recognition of education and training credentials, equal treatment and non-discrimination, and the right of residence and mobility are also included in some of these bilateral labour agreements.¹⁸² The bilateral labour agreement represents significant coordination between governments because it formalizes a legal structure of defined objectives and shared responsibilities. Comparing Canada's two foreign worker programs, the SAWP comes closest to this particular model, with its Memorandum of Understanding which acknowledges the special relationship between the Canadian government and the sending governments, as well as between Canadian farmers and the seasonal agricultural workers.

By comparison, the functional inter-governmental relationship which exists between Canada and the Philippines to manage the LCP develops from a different form of bilateral governance. This type of bilateral governance is one step removed from the formal system of recognition and coordination. The SAWP and the LCP are excellent case studies because coordination between governments and their stakeholders does not take the same form. It should come as no surprise, then, that the trade-offs which governments and stakeholders groups are willing to accept also do not take the same form. In many ways, managed migration as policy prescription sharply deviates from the traditional forms of regulatory action. It generates both benefits and costs that other types of regulatory action do not. There are, then, significant externalities created with

¹⁸² Abella, 116.

managed migration that have to be recognized for their own distinctive legacy to shape practices of community.

*Comparing Institutional Characteristics of Managed Migration:
The SAWP and LCP*

Managed migration has gained credence among policy makers and practitioners in recent years. Its implementation promises to reinforce the sovereign authority of both host and home governments, while purporting to provide better protections for the workers who travel these transnational circuits across national-state territorial jurisdictions. Cooperation of this type brings certain advantages that unilateral policy action has not been able to deliver as effectively. One of the most significant of these is curbing illegal migration. Managed migration proposes to offer a secure route for both workers and their remittances to move with formal authorization. Where multilateral efforts at ratifying a set of labour standards for migrant workers have been less than successful, attention has turned again to the promise of bilateral coordination.¹⁸³ The desired outcome is to see managed migration developed as a policy prescription which is negotiated between two governments, thereby putting the issue of residence – and the types of labour and citizenship rights attached to residence – on the table.

Detractions of managed migration, especially those attached to the temporary foreign worker program, speak of the need for governments to exercise greater caution in their policy decisions to support international labour migration. The most significant of potential problems is that of dependence.¹⁸⁴ Instead of upgrading skills and technologies, employers become dependent on foreign labour, and migrant workers become dependent on the availability of these jobs. Both receiving and sending governments of these workers risk having to deal with the fallout from such unintended consequences as labour market distortion (where investment decisions are made assuming the continued presence of foreign workers to expand labour market supply)¹⁸⁵ and transfer problems (where remittance inflows cause an appreciation of the real exchange rate, which then reduces export competitiveness).¹⁸⁶ Mounting concerns about creating a two-tier system of international labour migration, as well as calls for greater transparency

¹⁸³ See Martin Ruhs, "The Potential of Temporary Migration Programmes in Future International Migration Policy," (paper prepared for the Global Commission on International Migration, September 2005), <http://www.gcim.org/attachements/TP3.pdf> (accessed December 1, 2008).

¹⁸⁴ See Martin, "Managing Labor Migration: Temporary Foreign Worker Programs for the 21st Century," 3.

¹⁸⁵ *Ibid.*

¹⁸⁶ E.g., Ernesto López-Córdova and Alexandra Olmedo, "International Remittances and Development: Existing Evidence, Policies and Recommendations," (paper prepared for proceedings of the G20 Workshop on Demographic Challenges and Migration, Sidney, Australia, 2005), 23, <http://works.bepress.com/jelopezcordova/2/> (accessed June 1, 2009).

and accountability, are important drivers behind the push for coordinated action among governments in the form of migration management.

The previous two chapters discussed the motivations and interests which have compelled the three governments to support the creation of a labour migration circuit between them. These generalizations, which other researchers have made about the interests and motivations driving governments to act, do hold up when applied to the SAWP and LCP. The comparison of these two programs, however, brings to light important variations in the generalizations about how migration systems develop. In this section, I focus on the institutional design of managed migration as practiced in the Seasonal Agricultural Workers and Live-in Caregiver Programs.

After exploring the motivations and interests which underpin the creation of a migration system between these countries, this final section brings the discussion back around to the issue of institutional design for the purposes of bilateral governance. The research in this area has often examined the internal or domestic politics of migration policy, and typically as a single case study of either the host or the home country of these workers. As this final chapter demonstrates, any study of managed migration should also see policy developments in light of the interests and motivations that both governments hold for the practice of regulating cross-border labour migration. A comparison of the SAWP and the LCP reveals that managed migration as a policy prescription takes different forms. The Live-in Caregiver Program represents a unilateral approach to managed migration, whereas the SAWP characterizes a bilateral approach to managed migration. The significance of these differences speaks as much about the interests and motivations that each government brings to the negotiating table as they do about the desired outcomes that governments seek from a managed migration arrangement.

The International Agenda for Migration Management (IAMM) is one of the best reference points for understanding what exactly constitutes managed migration. In 2001, the government of Switzerland initiated the Berne Initiative process to identify and evaluate international legal norms. One such area of investigation in this large study of international legal norms is migration, including the kind which involves the cross-border movement of people for employment purposes. A series of government-level consultations over a period of three years resulted in the IAMM's release in December 2004.

One objective of the IAMM is to provide a comprehensive reference system for policy makers as they work to develop and implement an effective regulatory practice of managed migration. As a non-legally binding document, the IAMM's principal function is to create an environment for consultation to occur that may lead to "dialogue, cooperation and capacity-building at the national, regional and global levels."¹⁸⁷ Its efforts at creating this positive environment for consultation are subsequently channelled towards achieving two

¹⁸⁷ International Organization for Migration, *International Agenda for Migration Management*, 1.

overarching objectives with the IAMM. The first of these is to identify shared assumptions and principles that go towards defining the concept of managed migration. The second objective is to identify those regulatory practices which are considered to be the most effective for attaining a successful approach to managed migration.¹⁸⁸ The desired end result of this initiative is an assemblage of statements, declarations, and plans of action based on experiences with developing legislation, policies, and programs of managed migration. The practical end result of an initiative like the IAMM has been the creation of an international and regional forum where consultation can occur regularly to discuss immediate and future migration issues facing policy practitioners at all levels of governance.

The IAMM itself is a massive undertaking which covers the many facets of international migration. Among these, the IAMM addresses matters concerning national migration policy; permanent and temporary migration; regular and irregular migration; migration specific to refugees and asylum-seekers; human rights; and policy linkages between migration and other issue areas such as trade, development, national security, health, and the environment. Labour migration crosscuts a number of these identified areas, most notably that of temporary migration, but is covered separately in the IAMM as well. The IAMM approaches the issue area of international labour migration specifically in terms of the influence that labour market conditions have in shaping a government's approach to migration policy and program development. These labour market conditions affect government-level decisions in the home country that sends and the host country that receives these workers. The IAMM also identifies a set of 18 "best practices" for managed migration in the issue area of temporary foreign labour. The table below lists the 18 practices as found in the IAMM and hypothesizes the uptake of them by comparing the administrative features of the SAWP and LCP.¹⁸⁹

¹⁸⁸ *Ibid.*, 6.

¹⁸⁹ International Organization for Migration, 22-23; see also Global Commission on International Migration, 18.

Table 6.1. International Agenda on Migration Management: Labour Migration

		SAWP	LCP
1	Consideration of developing national measures that regulate supply of and demand for human resources, that are linked to bilateral and multilateral efforts and are developed in consultations with key stakeholders.	Y	N
2	Consideration of labour migration schemes for highly skilled, skilled and lower skilled migrant workers that are systematically developed to meet labour demand in countries of destination and respond to labour supply and unemployment in countries of origin	Y	Y
3	Consideration of bilateral programmes in order to meet the specific needs of both source and destination countries, addressing the rights and responsibilities of all parties and providing for the protection of migrant workers including by ensuring access to consular officials of the country of origin.	Y	N
4	Transparency of legislation and procedures defining categories of labour migrants, selection criteria as well as length and conditions of stay.	Y	Y
5	Consideration of consultation both at the national and international level bringing together relevant officials to address labour market and labour migration issues.	Y	N
6	Enhanced information-sharing and consultations on policy, legislation and procedures more systematically to identify surplus and deficits in respective labour markets and possibilities for matching labour demand and supply.	Y	N
7	Consideration of measures to prepare potential migrant workers for entry into foreign labour markets, and arrange for pre-departure assistance, such as language and cultural orientation, and vocational training as needed.	Y	Y
8	Provision of information to departing migrant workers on working conditions, health and safety, their rights and sources of support potentially available in the country of destination	Y	Y

		SAWP	LCP
9	Exploration of measures for the mutual recognition of qualifications.	N*	N*
10	Consideration of programmes to foster skills development and savings and investment schemes that will provide incentive for and assist migrants returning to their home countries.	N*	N*
11	Protection of migrant workers through implementation of public information campaigns to raise awareness of migrants' rights, and ensuring that migrants receive the social and employment benefits that they are due.	Y	Y
12	Promote the enjoyment by authorized migrant workers of the treatment accorded to citizen workers, such as access to training, minimum wage, maximum hour rules, prohibition of child labour and right to establish unions.	Y	Y
13	Adoption of measures to ensure respect for the rights of female migrant workers.	N*	N*
14	Provision of full access for temporary migrant workers to consular assistance.	Y	Y
15	Adoption of measures for the integration of migrant workers in order to encourage cultural acceptance, and to ensure that the rights of migrants and members of their families are respected and protected.	N	Y
16	Implementation of measures to recognize and facilitate the use by highly skilled workers of their skills in the country of destination.	N*	N*
17	Consideration of providing information on employment vacancies to potential migrants, on the recognition requirements for occupational qualifications and other practical information, such as taxation and licensing.	Y	Y
18	Promotion of research and analysis on the impact of migrant workers on the local labour market.	Y	N

The IAMM's set of guidelines for managed migration is useful for comparing the differences in regulatory practices between Canada's Seasonal Agricultural Workers and Live-in Caregiver Programs. Throughout the entire document, the IAMM draws on a language that speaks of cooperation and consultation; transparency and accountability; and a rights-based procedural foundation. It stops short, however, of advocating a single model of best practice.

The IAMM's approach uses a discourse that advocates embracing flexibility in policy development and program implementation. Flexibility is supposed to create the space or opportunity to negotiate cooperation that fits the specific circumstances as they arise between two or more governments in their efforts to achieve a regulatory practice of managed migration. The language invoked in the IAMM also respects and reinforces the principle of state sovereignty to control, monitor, and regulate migration flows across their national-state borders as each government sees fit to do so. It embeds the principle of state sovereignty in a discourse that speaks of *national measures* of regulation. It recognizes that the regulatory practice of managed migration is born of and prompted by individual government *needs*, or national interests. It does not specify any one single model for developing a universal rights-based framework to protect temporary foreign workers from exploitation or abuse of their citizenship and labour rights. Nor is there any substantive reference to coordinated enforcement measures for monitoring and effecting compliance.

Instead, the IAMM advocates the development of bilateral or multilateral administrative arrangements which build a formalized process of consultation, dialogue, and information-sharing into the relationship between governments. It gives great importance to *information-sharing* capacity as the cornerstone of effective migration management. The administrative arrangement which is coordinated between the receiving and sending governments may facilitate achieving a second objective of managed migration: *cooperation*. Great hope is placed on consultation to improve transparency and accountability in the relationship between the two governments. The underlying assumption here is that a bilateral administrative arrangement acts as a checks-and-balances system where other arrangements do not. It is this formalized coordination in the practice of information sharing and capacity building between governments that distinguishes this new approach at managed migration from the more traditional approach based on unilateral policy development where governments act independently of each other.

The formal recognition of shared responsibilities is key to the success of managed migration. An administrative arrangement brokered between governments has its greatest chance of success when certain conditions are met. The objectives of managed migration should be negotiated and agreed between them. This is the consultation component of the IAMM guidelines that has governments meeting regularly to discuss labour market and migration issues that affect them. The administrative arrangement brokered between governments should also clearly define the responsibilities and duties that each government has to the other and to the workers who move back and forth between them. This is the cooperation component of the IAMM guidelines which folds a checks-and-balances system of the bilateral administrative arrangement into national regulatory practices. The formal recognition of shared objectives and responsibilities can add another layer to what would otherwise be a nationally-based regulatory framework only. The one single advantage of managed

migration is the opportunity created by a regulatory framework which distributes the relative gains of managed migration among all participants. The effectiveness of managed migration, however, depends on governments' willingness to design a regulatory framework between them that clearly designates institutional responsibilities and rules of engagement.

Canada's Seasonal Agricultural Workers Program more closely approximates the IAMM's conceptualization of a managed migration system than the Live-in Caregiver Program does. One of the best ways to illustrate this point is to show it in a table format using the guidelines identified in the IAMM. The columns correspond with the guidelines as they are listed in the IAMM. Each row corresponds with the Canadian foreign worker program.

There are three immediate observations to make from the comparison of the Seasonal Agricultural Workers Program and the Live-in Caregiver Program. These observations are based on a loose interpretation of the IAMM's guidelines as they are applied to the SAWP and LCP. The first of these observations to note is that the SAWP and LCP share eight of the 18 IAMM guidelines in common. The second observation is that four of the IAMM guidelines are generally not included in either the SAWP or the LCP. The third of these observations is that SAWP and LCP differ on six of the 18 IAMM guidelines. Of these six guidelines, the SAWP meets five that the LCP does not, and the LCP meets one that the SAWP does not. It is this final observation that is most important for evaluating different institutional designs for achieving managed migration through bilateral governance.

With an immigration policy framework that is now approaching 40 years, the Canadian government has supported two types of labour migration: the worker who enters Canada as a permanent resident with unlimited access to its labour market and the worker who is admitted into the country as a temporary resident holding a work permit with an expiration date. Over these years, the Canadian government has seemed not to waiver from its position that immigration is the business of measuring applicants for their potential economic contribution. Old and new titles given to Canada's immigration programs offer a glimpse into the history of this union between immigration, economic development, and political citizenship: the Federal Skilled Workers Program for would-be permanent residents with experience as managers and professionals; the Canadian Experience Class for permanent resident applicants with Canadian university and college degrees; the Low Skilled Workers Program for the 'other' categories of labour and which applies to temporary resident applicants. The practice of citizenship is always evolving, and our understanding of citizenship as it is practiced in Canada has to include how the right of residence shapes the terms and conditions of employment, work, and ultimately political belonging. I raise this point because there are four IAMM guidelines that neither the SAWP nor the LCP include in their own policy and operational guidelines. The recognition of skills qualifications, access to social and employment benefits, and even freedom from discrimination in the workplace are in some way or another compromised as a

consequence of programming design. The Mexican agricultural labourer working in Canada's fields and greenhouses cannot apply for permanent residence, despite being able to show accumulated Canadian work experience. The Philippine caregiver who decides to leave her job faces the very real and immediate problem of being evicted from her home. Both groups contribute to Canadian social programs through payroll deductions and income taxes, and both are promised access to many of these services, should they qualify for them. From procedure to practice, however, it is a very real problem for workers who find their access denied because temporary status, return migration, and even language make it difficult for them to make a request for these services.

The four IAMM guidelines which do not apply to either the SAWP or the LCP are highlighted with an asterisk in the table above. They are the core elements of purposive regulatory action that distinguish the SAWP and LCP as temporary foreign worker programs from other immigration programs promising permanent residence status to their applicants. In fact, they are notable for how they create and maintain labour market stratification between groups of workers by locking workers into a migration circuit defined by gender and skill level. These administrative programming features help to illustrate how legislation and policy – that is, the procedural act or process of delegating rights and responsibilities – shape an entire group's experience of membership. Policy decisions influence institutional design, and institutional design influences policy decisions. The Seasonal Agricultural Workers and Live-in Caregiver Programs testify to this relationship between policy decisions and institutional design, and the impact they have on the practice of citizenship. Especially for temporary foreign workers, their own home governments play as equally important a role as the Canadian government does. This point should not be overlooked because it illustrates the complexity of a managed migration system.

For workers caught in this permanent circuit of labour migration, we see how the Canadian, Mexican, and Philippine governments have each chosen to approach negotiating the temporary worker's access to the right of residence. The Live-in Caregiver Program meets one IAMM guideline that the Seasonal Agricultural Workers Program does not. With its promise of permanent residence status after successful completion of the program requirements, the LCP includes measures for integrating these workers and their families into the Canadian political community through the formal citizenship process. This is, of course, an argument constructed by viewing only the procedural component of these programs. It fails to take into account the lived experiences of these workers, many of whom have experienced difficulties entering the Canadian labour market because of the de-skilling of their professional training or have faced discrimination because of their previous association with the LCP. It is equally telling of the complicated relationship between procedure and practice that for many years LCP participants who sought Canadian citizenship did so knowing that they had to relinquish their Philippine citizenship. Only recently has the Philippine government reversed its position on dual citizenship. The right of

residence is as much a part of the face given to the institutional design of managed migration as organization structure or program mandate is. The tendency, however, is to see one more visibly than the other. Governments are dealing in trade-offs when they accept this marriage of economic development to migration policy. Perhaps it is a marriage of convenience for these present times, but its legacy is far reaching for the communities affected by these policies.

In the case of the eight IAMM guidelines that the SAWP and LCP share in common as policy strategies of managed migration, I would argue that *unilateral* policy action which is taken independently by each government has shaped much of the development of a managed migration system between the countries. For example, Canada's immigration system explains many of the commonalities shared between the SAWP and the LCP. Canada's immigration system meets the IAMM's recognition of the validity of (1) multiple migration programs distinguishing between types of labour migration; (2) transparency in legislation and procedural operational guidelines; (3) incentives for return migration [or penalties for non-return]; (4) extending the same labour rights to foreign workers as those which are held by citizens and residents occupying the same or similar employment position; and (5) labour market opinions which research and analyze the impact of hiring a foreign worker on the local labour market. Their similarities have less to do with the negotiations which occur between the two governments, and may have more to do with the regulatory framework that defines Canada's immigration system. The NIEAP, together with the Points Systems, sets the course of labour migration inflows on two parallel tracks: one for permanent residents who enter the country as part of the economic immigration class with immediate and unlimited access to Canada's labour market and one for temporary residents whose labour is contracted prior to arrival in the country and whose mobility rights within the Canadian labour market are waived as a condition for entering the country.

As unilateral policy development goes, the Canadian government's efforts at managed migration have been channelled towards adopting a two-pronged strategy when it comes to temporary foreign workers.¹⁹⁰ The first is to place some of the onus on employers to support a managed migration system. The SAWP and LCP have made foreign hirings possible through government-supported programming, but in return employers have to initiate the immigration process by seeking authorization to hire a foreign worker in the first place. The second part of the strategy relies on rewarding workers for their cooperation. Both programs promise their own form of the 'carrot' to keep workers within the managed migration system. As the SAWP and LCP demonstrate, Canada's unilateral policy development of the temporary foreign worker program is

¹⁹⁰ Human Resources and Social Development Canada, "Steps to Hire Temporary Foreign Workers," Human Resources and Social Development Canada, http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/temp_workers.shtml (accessed December 2008). The website provides an online orientation for employers explaining the approval process for hiring temporary foreign workers.

premised on the development of a managed migration system that distributes rewards and penalties between employers and workers. Both face penalties for disregarding immigration rules and regulations, but the general function of this managed migration system operates by giving greater weight to the promise of rewards than the threat of penalties. The SAWP in particular is set up this way.¹⁹¹ The naming process by which workers are invited to return year after year extends the rewards of secured employment and accumulated benefits. Similarly, employers can rely on a more simplified immigration process, one that is streamlined to recognize that they request the same or similar numbers of workers each year. The type of penalty for contravening SAWP regulations is quite similar for employers and workers alike: There is the possibility that they lose access to the program. The Live-in Caregiver Program has often been criticized for the heavy burden carried by workers alone. The reward of permanent residence silences many of them from reporting abuses suffered in the workplace while they complete program requirements.

The Mexican and Philippine governments have also applied managed migration strategies to regulate the migration outflows of their citizens through particular emigration policies and practices. This constitutes *unilateral* policy action taken towards achieving a managed migration system between their countries and Canada. Whereas Canada has developed these two foreign worker programs to orchestrate the orderly and authorized movement of workers *into* the country, Mexico and the Philippines have responded in kind with policies and regulations that facilitate the orderly and authorized movement of workers *out of* their countries.

The Philippine government has one of the most highly developed emigration system for moving large numbers of people through authorized channels. The development of this emigration system goes hand-in-hand with the Philippine government's support of labour export as part of a broader economic development strategy. The POEA and OWWA create the administrative institutional support necessary to translate emigration policy objectives into feasible regulatory action. With specific reference to the LCP, the Philippine government's emigration policies contribute to the system of managed migration in such ways as providing pre-departure assistance to its citizens who intend to work abroad, including information about employment vacancies and opportunities for vocation and language training. For example, in the early months of 2008, the POEA issued a labour market advisory informing potential Overseas Filipino Workers (OFWs) that Canada had limited demand for live-in caregivers and that the issuance of work permits would be affected by these changes in labour market conditions.¹⁹² Similarly, the Philippine's government's decision to regulate training schools and recruitment or employment centres is

¹⁹¹ Service Canada, Policy and Operational Guidelines, Internet; Verma, The Mexican and Caribbean Seasonal Agricultural Workers Program.

¹⁹² These advisories are listed on the POEA's website, <http://www.poea.gov.ph> (accessed January 31, 2008).

representative of this on-going effort at unilateral policy development to support managed migration. The LCP makes no specific provisions for the regulation of recruitment and employment agencies.¹⁹³ Consequently, the Philippine government has had to try to fill this void by using its own policies and regulations to regulate the actions of these agencies supplying recruitment and employment services to Philippine citizens.¹⁹⁴ There may be less room for coordination between the governments as a result of the unilateral regulatory action that each government takes to satisfy its interests for short-term labour migration. However, I argue that the LCP still constitutes a form of managed migration because the program makes provisions to secure the orderly migration of documented workers, with both governments issuing their own form of authorization permitting the movement to occur. Compared to the Seasonal Agricultural Workers Program, however, the LCP looks more like the traditional model of independent unilateral policy development than one based on coordinated bilateral regulatory action.

The SAWP and LCP differ between one another on as many IAMM guidelines as they share in common with each other. This single observation points to an important difference in *bilateral regulatory practices*. The SAWP demonstrates how managed migration can evolve into something more than just unilateral policy action. The bilateral administrative arrangement involves bilateral regulatory action coordinated between both host and home governments. As the SAWP demonstrates, cooperation (i.e., coordination) is very much part of long-term strategy.

The two previous chapters described the motives and interests which push each of these governments to support *creating* a permanent circuit of temporary foreign workers between them. More importantly, however, all three governments have a vested interest in *maintaining* a migration system between them that is the result of authorized movement of documented workers only.

¹⁹³ In Ontario, for example, the activities of employment agencies have not been regulated following changes made to provincial legislation in 2001. Deregulation has impacted not only the workers who use these agencies for their recruitment and placement services, but also small-business owners of employment agencies within Ontario who find themselves being pushed out of the market because they are increasingly competing with multinational corporations that can provide a wide range of employment services.

¹⁹⁴ As an example, the LCP applicant who uses a Canadian-owned private recruitment/employment agency from Ontario might pay a non-refundable screening fee for recruitment services. The employer may also pay an initial search fee, as well as a placement fee for services rendered. According to Philippine regulations, land-based recruitment/employment agencies are regulated in how they charge and collect placement fees from Philippine workers. In the scenario where the host government prohibits the charging and collection of placement fees, Philippine workers should not pay these fees because it is the responsibility of the employer, or should only pay the equivalent amount of one month's salary (excluding documentation fees). See the Philippine Overseas Employment Administration, "Placement Fee Policy for Canada," Memorandum Circular No. 03 (December 14, 2007), <http://www.poea.gov.ph/mc/memo0298.jpg> (accessed January 31, 2008). Problems arising from recruitment, and which are specific to the LCP, have been documented by representatives of advocacy organizations and community groups.

From the vantage point of both the host and home governments of these workers, managed migration can be the most effective strategy for achieving a permanent and securitized circuit for moving workers and remittances between countries. Both the SAWP and the LCP have achieved this objective through the use of entry and exit visas as well as employment authorizations that are tied to a single work contract. Of those six guidelines that the SAWP meets and the LCP does not, all of them have to do with information-sharing, consultation, and capacity-specific coordination. The inter-governmental administrative arrangement between Canada and the source countries of these seasonal agricultural workers facilitates *bilateral regulatory action* in a way that the LCP has not been able to achieve between the Canadian and Philippine governments.

I borrow from Philip Martin's notion of the 3Rs to compare the two systems of managed migration found in the Seasonal Agricultural Workers Program and the Live-in Caregiver Program. According to Martin, the 3Rs refer to (1) Recruitment; (2) Remittances; and (3) Return.¹⁹⁵ As temporary foreign worker programs, the SAWP and LCP have developed around two core policy objectives which have been shared by both host and home governments, namely: (1) that a continuous and uninterrupted circuit of temporary workers is maintained between the countries and (2) that neither the foreign worker nor the Canadian resident and citizen are adversely disadvantaged by the creation of a labour migration circuit between the countries. The first objective links the policy domains of border security, labour markets, and economic development. The second objective speaks to the issue of rights-based protections like employment standards and legal representation.¹⁹⁶

Having compared these two Canadian foreign worker programs, I propose adding a fourth *R* to Martin's framework: Rights. Although the two programs share these core objectives as temporary foreign worker programs, the institutional design that goes into coordinating the implementation of these programs takes two different forms. Cooperation between the Canadian government and the home governments of the SAWP workers is an intended part of strategy. The degree of cooperation which occurs between the Canadian and Philippine governments is, at best, an unintended consequence that occurs over the course of policy development and regulatory action. A comparison of the SAWP and the LCP is illustrative of the choices governments make about who holds primary responsibility as legal representatives of these workers. With the SAWP, the Mexican government retains its full legal responsibility to represent its citizens while they live and work in Canada.

The LCP is far less clear-cut on this matter. The legal mandate of representation is complicated by a multi-jurisdictional system in Canada where authority is divided between the federal and provincial governments. In large part, the SAWP solves this jurisdictional problem because the Mexican

¹⁹⁵ Martin, "Migrants in the Global Labor Market," 51.

¹⁹⁶ See Ruh and Chang, 69-102.

government has the authority to step into such matters on behalf of its citizens. For example, the final decision to repatriate a SAWP worker due to a legal dispute in the employment contract lies with the Mexican government, and not the Canadian government. Without a bilateral framework to assign responsibilities and duties to both governments, the LCP leaves the Philippine government with less room to manoeuvre.

The Memorandum of Understanding (MOU) signed between the Canadian and Mexican governments provides the foundations for bilateral governance to take shape between them. Although it is not a legally-binding treaty, the MOU acknowledges a special relationship between the countries which is built on a mutual respect that both share for the other's contribution to a well-functioning migration system. With this MOU as its starting point, the SAWP functions with the help of a highly-evolved administrative arrangement based on policy and operational guidelines that direct each government and the employers' organizations, F.A.R.M.S. / FERME, to honour their responsibilities and duties to the development of a managed migration system. If one takes the managed migration framework as reference, it appears to be the case that the SAWP meets each aspect of the 3Rs. Only the Mexican government is responsible for recruitment, providing public employment services to its workers, and the Canadian government will only accept workers who have been recruited through these formal channels. The Mexican government also coordinates the deployment and placement of their citizens, working with Canada's employer organizations to achieve this. According to official statistics, the number of Mexican workers who stay beyond their work permit is negligible.¹⁹⁷ A combination of factors helps to explain the SAWP's success with return migration; these factors have to do with information sharing, consultation, and capacity-building coordination. Information sharing between the two governments ensures that the Mexican government is able to provide the needed number of workers plus a reserve supply, and that the Canadian government receives only the number of workers necessary to fill its labour market shortages. Consultation in the form of regular inter-governmental meetings secures a formalized process to discuss those programming features that work and those that do not before anyone signs a new employment contract. To that end, Employment Agreements are renewed every year, and wage rates are revisited every three years. Capacity-building coordination is the end result of a formalized arrangement where both governments share a common goal for return migration. There is structure to the SAWP's institutional design that is possible because of information sharing, consultation, and capacity-building coordination between the governments.

¹⁹⁷ David Greenhill and Jorge Aceytuno, "Managed Migration and the Seasonal Agricultural Worker Program," RIIM Working Paper Series #00-S7 (Vancouver: Vancouver Centre of Excellence, 1999/2000), <http://riim.metropolis.net/Virtual%20Library/2000/wp00S7.pdf> (accessed December 1, 2008).

The Live-in Caregiver Program lacks this formalized inter-governmental arrangement, and without it, cause for information sharing, consultation, and capacity-building coordination is missing between the Canadian and Philippine governments. As unilateral policy development goes, both governments have tried to secure the *4Rs* of managed migration through independent efforts at immigration / emigration controls. Lacking the element of coordinated regulatory action, however, means that there are gaps in knowledge and delays in action between the two governments. One example of this gap in knowledge is how the secondary labour market functions for live-in caregivers who leave one job for another or who work additional jobs without authorization.¹⁹⁸ A related example is that of recruitment where both governments have deregulated private recruitment activity. The consequences of such gaps or delays in regulatory action expose the migration system to particular abuses, including unscrupulous recruitment behaviour and hiring practices; unauthorized work or stay; inaccurate estimates of inflows and outflows; and the cleaving of representation from authority when neither government has the clear jurisdiction mandate to act on behalf of the aggrieved party.

By comparison, recent Memoranda of Understanding (MOUs) signed between the Philippine government and various destination countries share these common features: (1) a clear purpose statement for labour migration and regulation; (2) definitions of terminology and conditions for worker eligibility; (3) the recognition of responsible government agencies and a description of their duties; (4) public recruitment / employment services provided by the Philippine government; (5) reference to a labour contract or employment agreement and (6) the terms (or rights) of visitation or residence in the host country.¹⁹⁹ Between December 2006 and April 2008, the Philippine government signed individual MOUs with four of Canada's provinces: Alberta, British Columbia, Manitoba, and Saskatchewan. These are the first of their kind in which the provincial governments are attached to these agreements. For example, the Manitoba-Philippine arrangement promises to streamline the immigration process for skilled workers and to allow registered local businesses access to licensed Philippine recruitment agencies so long as these recruitment agencies follow provincial guidelines for screening and recruitment.²⁰⁰

It has taken the implementation of the Expanded Labour Market Opinion (ELMO) in British Columbia and Alberta in recent months to bring federal requirements for the LCP under close scrutiny once again. Proposals that would require employers to pay transportation, medical coverage, and repatriation costs are interesting developments for their potential impact on the LCP. They are same provisions that the Philippine government has had in place since 2006, and

¹⁹⁸ Interview with an official from Citizenship and Immigration Canada, 2007.

¹⁹⁹ Interview with an official from the Philippine Consulate, Toronto, 2007.

²⁰⁰ Citizenship and Immigration Canada, *Canada Immigration Newsletter*, February 2008, Citizenship and Immigration Canada, <http://www.cicnews.com/2008/02/canada-strengthens-immigration-ties-philippines-02640.html> (accessed June 1, 2008).

which some provincial governments are considering.²⁰¹ Only as these temporary foreign worker programs have expanded through evolution at the provincial level has the federal government been compelled to consider possible policy changes to the LCP. It should not come as a surprise, however, that the core elements of the program remain in tact. Many of these issues (i.e., those relating to the *4Rs*) will remain outstanding so long as there is no formalized process encouraging information exchange, consultation, and capacity building between the two governments.

²⁰¹ “Caregiver Rules Not New or Novel,” *Atin Ito* 33, no. 4 (April 2008), <http://www.atinitonews.com/phpnews1/news.php?action=fullnews&id=17970> (accessed June 1, 2008).

CHAPTER SEVEN

BOUNDARIES UNDONE: WHAT OF THEM FOR UNDERSTANDING THE DEVELOPMENT OF A MIGRATION SYSTEM?

When I first started this project, the Seasonal Agricultural Workers Program and Live-in Caregiver Program were unique as part of a broader regulatory framework in managed migration. These two Canadian programs shared characteristics with the guestworker program of the 1960s and 70s in Europe; their mandate as temporary foreign worker programs have created the same revolving door effect and outsider status that guestworker programs were guilty of propagating in Europe. This legacy in Canadian immigration was set long before the implementation of these two programs, the SAWP and the LCP. They have their historical ties to a nearly century-old immigration regulatory platform built upon measuring suitable immigrant applicants for their economic contributions as workers. Both farmworkers and live-in caregivers have been two groups historically targeted by the Canadian immigration system.

The SAWP and LCP do, however, break from the model of these earlier traditional guestworker programs in one important way. These two Canadian programs owe the better part of their success to an implementation approach based on migration management. This particular component in policy and program development makes these two programs unique among other examples of foreign worker programs. Each in their own way, all three governments have tried to take maximum advantage of the kinds of opportunities that only migration management seems to be able to generate for them. Migration management brokered between these three governments has helped, in varying degrees, to facilitate coordination in administrative capacity-sharing and cooperation in areas like information exchange and program implementation (e.g., monitoring and enforcement). By doing so, migration management builds on existing national regulatory frameworks in migration policy to ensure the uninterrupted, continuous flow of workers and their remitted earnings. The migration systems which have developed between Canada and the two sending countries is maintained by these regulatory ties.

For all their similarities, the SAWP and the LCP differ at the very core of their institutional design as temporary foreign worker programs. Over the same period of time that the SAWP has been admitting increasing numbers of visa applicants, the LCP has contracted in overall program size based on initial visa data. Furthermore, despite regulatory inclusions permitting applications for permanent residence, the LCP lacks the requisite compliance monitoring

mechanisms that the SAWP has built into it. Despite the seasonal nature of the work and its low wages, the SAWP maintains some semblance of enforcement that protects workers that the LCP simply does not have. Graduated wage increases, housing inspections, grievance procedures, and a state-sanctioned employment contract are some examples of compliance monitoring mechanisms found in the SAWP that are generally lacking in the LCP. The recognition of a Memorandum of Understanding between SAWP signatories builds into the program an element of formal collaboration that is lacking in the LCP. Accordingly, then, this thesis has taken as its primary objective the task of explaining variations in program development between the two migration systems.

First, this thesis has demonstrated that key differences in program development can be attributed to the formulation of geopolitical and economic interests that each government holds for temporary labour migration. In the example of the Seasonal Agricultural Workers Program (SAWP), the development of a foreign worker program between governments exemplifies converging interests to see cooperation work for both of them. Their respective motivations for supporting the creation of a permanent circuit of agricultural workers are more congruent than they are divergent in overall objectives and policy approach. Both governments have articulated a policy position that supports the regulation of labour migration flows for short-term employment purposes. The Live-in Caregiver Program (LCP) shows how differences in government interests can translate into differences in policy objectives for programming. Because their interests diverge on some of the most important programming features, the Canadian and Philippine governments have differed in how they conceptualize the guiding principles and objectives for a temporary foreign worker program between them. The two governments have articulated different policy positions; most importantly, these positions reflect differences in their definition of care work with respect to whether the labour is skilled or not. The Canadian government has continued to hedge on this issue, whereas the Philippine government has pushed ahead to train increasing numbers of caregivers as part of a skilled labour force. These differences in government priorities influence the institutional design that programming takes to control and regulate the transnational movement of this particular group of workers. As a result, the LCP's institutional design has evolved so as to fit within a much broader immigration and emigration policy framework that effectively removes from the negotiating table any discussion about the nature of care work.

Differences in national interests and in the principal policy priorities held by each government have yielded important variations in programming design. We see variation between the two programs in the number of workers who are admitted into the country to work, both annually and cumulatively speaking. We also see variation between programs in how residence and labour rights are allocated to each group of workers. The Mexican and Canadian governments have used the SAWP as a temporary employment fix. The LCP suffers its

identity crisis as a program that is both a temporary foreign worker program and an immigration program because the two governments have different interests for regulating this particular cross-border migration circuit comprised of live-in caregivers.

Second, this thesis has shown that key differences in program development can be attributed to the negotiating approach that governments have taken to secure a regulatory framework between them. In the preceding chapters, I have referred to these approaches as either unilateral or bilateral regulatory actions used by governments to achieve migration management. The Seasonal Agricultural Workers and Live-in Caregiver Programs exemplify a regulatory framework of managed migration. Programming differences having to do with administrative capacity-sharing, however, are attributable to negotiating approaches that have governments either acting individually or working collaboratively. The LCP is an example of unilateral action taken independently by the Canadian and Philippine governments to achieve migration management, whereas the SAWP typifies a bilateral negotiating approach brokered between the Canadian and Mexican governments. The SAWP and LCP function differently because (1) Canada has defined their scope of regulation differently; (2) the two sending governments have defined their own interests in relationship to this scope differently; and (3) the approaches that each government takes to achieve the concrete objectives of managed migration which are captured in program scope differ.

This thesis has used the theme of variation in programming, as in a case study comparing the SAWP and the LCP as foreign worker programs, to measure the response of governments to economic globalization. Today's foreign worker program is every bit the type of policy response we have come to expect from governments in their attempts to manage both the opportunities and pressures posed by economic globalization. Using the case study of the foreign worker program, this thesis has demonstrated that each of the three governments has acted strategically to influence the shape that cross-border movement takes within a migration system. From a Canadian perspective, increased economic competitiveness in the global market for fruits, vegetables, and horticultural products makes the foreign worker indispensable to the health of Canadian (i.e., national) agriculture in these particular sectors.

By contrast, the LCP's path of development has been shaped by Canada's continued resistance to the influx of foreign-trained care professionals. This resistance is in part shaped by a broader policy discourse around the nationalist project of Canadian social welfare. This broader discourse may encourage its own form of protectionism from the penetration of international competition associated with economic globalization. Whereas the concept of economic competitiveness has been channelled to grow the Canadian FVH sector, economic competitiveness in the form of international trade in services has been approached with caution because of its potential long-term impact on the Canadian care model.

How the Canadian government has chosen to court foreign labour is a chief indicator of the impact of economic globalization on national policy development. But temporary foreign worker programs themselves are revealing of governments' strategic use of migration policy to interact with globalizing pressures on their own terms. Both sending governments, Mexico and the Philippines, have used the regulatory framework of temporary labour migration to tap into the economic windfall that comes from remitted foreign earnings and to position their workers within an emerging global labour force. Only through a comparison of program development in migration policy does this argument become clear: It is the conceptual frame of the migration system which has facilitated the work of comparing migration policies as they are practiced by both sending and receiving governments.

*The Conceptual Footprint of the Migration System:
Its Operational and Comparative Value*

The concept of a migration system opens up a line of inquiry in political science that has gone untapped thus far. Since first introduced by James Fawcett, a sociologist, in the early 1980s, the concept has remained virtually untouched, especially amongst political scientists. With interest now in migration management as a viable policy option for regulating the cross-border movement of foreign workers, the concept of the migration system has renewed relevance for application to migration studies in political science. I suggest that the concept of the migration system can provide methodological clarity to the study of the regulatory framework of managed migration that has gone unexplored to date.

By definition, migration management speaks of the potential for collaborative enterprise negotiated between receiving and sending countries. From an administrative perspective, migration management functions at its optimal range of efficiency when (1) the costs associated with displacement as experienced by migrant workers and the communities that are linked to either end of these flows are minimized and (2) the benefits which accumulate from the regulated control of these flows are maximized. Knowing where the fulcrum point for successful program development exists can be found by employing the conceptual frame of the migration system. It alone brings sharper focus to the idea that a systematic set of relationships can develop and evolve between countries and their communities based on any number of factors. These include, as this thesis has demonstrated, the role of the temporary foreign worker program to achieve managed migration.

As a methodological tool for inquiry, the concept of the migration system is significant to political scientists in the subfields of international/global political economy and public policy for two reasons. First, it opens a conceptual window for understanding the operationalization of relations between receiving and sending governments based on their individual national interests in migration

management. It introduces relational dynamics into our thinking where linearity within the confines of a uni-dimensional plane (i.e., through the lens of the nation-state only) has too long dominated. By recognizing that there are systemic factors at work, the concept of a migration system can be employed quite effectively to examine the character of relations between two or more countries as sending and receiving governments attempt to negotiate with each other through the prism of these systemic factors. These factors can include familial networks, employment recruitment services, and history of regulatory practices in migration policy. Similarly, the differences in the programs may indicate how corporate priorities might influence governments. The farm workers program permits large farmers working under contract to agri-food multinational firms to obtain skilled labour at a minimum cost and thus to secure a niche in the global economy. Where corporate interests are less transnational in orientation as when it comes to domestic caregiving, the receiving government seems willing to take on a less intrusive and involved role. In short, the focus here on the regulatory framework of managed migration alerted me not only to the national interests that each government holds for regulated cross-border movement, but also to the different approaches deployed by each government to anchor a permanence (i.e., cooperation) to their relations. Future research can build on these preliminary findings to track patterns of regulatory action as developed and practiced among governments within the conditioned relations of a migration system.

Second, the concept of the migration system lends itself to the standardization of comparative analysis by jurisdiction, sector, corporate involvement or groups of migrant workers. The research findings in this thesis have shown that groups of migrant workers, corporations in specific economic sectors, and governments are all being affected by contributing market conditions, like intensified competition, which are related to globalization. How each may be affected is a question best answered by using a most similar/different comparative approach. The methodological value of the concept itself lies with this ability to hold constant certain factors while looking for variation in others. Especially when examining two or more jurisdictions, as this thesis has done, the migration system concept proves instructive for demonstrating that the patterning of cross-border labour migration flows varies by negotiating approach (i.e., unilateral versus bilateral versus multilateral) as much as it does by program type. Whether this case study holds up to the tests for achieving generalizability is a question that can be taken up in future research.

*Future Research Directions:
The Conceptual Footprint Tested across Jurisdictions*

Research in the policy area of temporary labour migration regulation needs to account for the influence of International/Global Political Economy factors that are shaping how and why governments choose to develop and

implement temporary foreign worker programs. To date, the conceptual framework and methodology has narrowly defined these factors, leaving state regulation of migration in general, and the controlled movement of workers in particular, outside the scope of inquiry for political scientists in the subfield of IPE or GPE. The single most recognized factor in the literature is the power asymmetries between the social forces representing sending and receiving governments, labour, and capital. The research has focused almost exclusively on how they act on each other in opposition, that is to say one taking advantage of the other one. This limited focus has effectively stopped inquiry from expanding and evolving in pace with the very times it wants to study and better understand.

These earlier research findings show that differences exist between groups of foreign workers in their experiences with citizenship, residence, and workers' rights. These differences can be attributed to power asymmetries between governments and between capital and labour. The extant literature has demonstrated how labour migration flows have been shaped by the dominant destination country in the relationship between sending and receiving governments. The research, however, cannot stop here. Policy developments in migration management as a regulatory framework now require renewed inquiries into state-to-state negotiations to broker cooperation in regulating labour migration flows and to understand the degree of agency of sending governments.

This thesis has contributed to the extant literature on international labour migration in two ways. A description of the dissertation's findings has already been summarized in the preceding section of this conclusion. For the purpose of discussing future research directions, however, there is an important synthesis to be drawn in this section which considers contributions to the development of migration studies in the field of political science and the subfields of international/global political economy and comparative public policy. Using a case study approach of the Canadian federal regulatory framework specific to the movement of temporary foreign workers, the thesis was able to compare differences between programs. Program objectives, administrative and operational procedures, and program deliverables all reveal significant differences even though the two programs fall within the immigration statutory and regulatory scope for controlling the cross-border movement of workers into Canada and their access to the internal labour market. Any comparative review of these Canadian temporary foreign worker programs has simply not been done. The significance of these programming differences lies with the application of citizenship and labour rights practices for these workers.

Similarly, using a global political economy approach, the thesis was able to compare relationships between the Canadian government and its primary partner governments, Mexico and the Philippines. The comparison reveals significant differences between migration systems based on the program objectives, or even national interests, that each government articulates for the regulation of cross-border labour migration. A study of the interaction between global economic forces and the approaches taken by governments to administer

and manage temporary foreign worker programs is lacking in the existing literature on international labour migration. What we need at this point is synthesis which recognizes that (1) changing economic conditions influence migration flows and that (2) governments channel these flows as a strategy responding to these economic conditions. This research is one of the first of its kind to compare two migration systems using a methodology that operationalizes both sending and receiving governments' strategies for regulating cross-border movement between them. By operationalizing a concept that has been overlooked by IPE/GPE literature, that is, the migration system, my thesis has (re)-introduced the variable of interests and power where it has not been introduced before. The processes and practices of regulating transnational labour migration have been too long off the radar of IPE/GPE scholarship, not to mention comparative public policy. Future studies should continue this focus on power and interests as practiced by, and between, governments in their pursuit of using the regulation of cross-border labour migration as a technology to interact with the global economy.

My future research proposes to replicate the methodology employed in this thesis by using the conceptual framework of the migration system to examine other temporary foreign worker programs. This conceptual framework operationalizes a relationship between types of migration systems developed between countries and approaches taken by governments to regulate cross-border labour migration flows between them. Nowhere in the extant literature has this relationship been explored to any great length. The two migration systems which Canada has historically supported with Mexico and the Philippines are built upon a legacy of institutionalizing a permanent flow of temporary workers. Their approach to managed migration (as a form of collaborative regulation between governments) appears to be one devised primarily to maximize the economic utility of an emerging technology of work based on the migrant group's relationship to, or insertion in, the hierarchical order of the global economy. For reasons having to do with the global expansion of an international market in fruits, vegetables, and horticultural products, Canada has pursued a bilateral approach to regulating the seasonal migration of farmworkers from Mexico. For reasons having to do with a protectionist attitude towards the internationalization of trade in services, Canada has pursued a singularly unilateral approach to regulating the cross-border movement of care workers from the Philippines. Equally significant is the strategy of labour exportation practiced by the sending governments of Mexico and the Philippines. Additional research needs to be undertaken that compares the migration policies of other sending governments in relationship to those of receiving governments.

Future case studies should compare the development of other migration systems, especially those which have been built upon the regulatory framework of the foreign worker program. Examples include the evolution of the Canadian-Caribbean relationship through the extension of the Seasonal Agricultural Workers Program, as well as the Canadian-Guatemalan relationship through the

development of the Low-Skilled Workers Program targeting farmworkers. Both case studies promise to highlight how and why governments willingly choose to cooperate with each other as a strategy for regulating short-term labour migration flows. Cooperation in the form of migration management has strong undercurrents of ever-shifting power dynamics. As my thesis has demonstrated, the national interest to pursue labour migration regulation is shaped by a careful calculus determining the 'economic footprint' of each migrant group to the nation-state's project for a global economy. Any consequence that emerges from this narrowly-defined approach to labour migration regulation has to be viewed in terms of their short- and long-term effects on the institution of citizenship, both of the national-state and worker type. Research has tended to focus on these outcomes, at the exclusion of understanding the cause behind the effect. The research project as proposed here fills this void and, in doing so, holds great promise for dialogue between the subfields of comparative public policy and international/global political economy.

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