

Special Issue

Migrant Legality and Employment in Europe

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Employment and Migrant Deservingness

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REVERSING THE EMPLOYMENT QUESTION

The past 15 years have seen a growing number of studies investigating how migrants' legal status affects their employment.¹ Typically, this literature tends to view legal restrictions, conditions and opportunities as parts of a wider political opportunity structure circumscribing migrants' agency and their ability to secure gainful employment (Moulier-Boutang, 1999; Jounin, 2008; Anderson, 2009; Kraler, 2010). But the reverse question – the effects of employment on residential legality – has hardly been broached.²

This thematic cluster focuses on the role of employment for the legal status of non-nationals in Europe and the many ways in which work has come to determine migrant citizenship. We refer to citizenship in a broad sense, covering access to various types of formal legal status as well as normative struggles over what constitutes 'good citizenship' that can affect migrants' likelihood to obtain, maintain, renew, improve, or lose their legal status (Anderson, 2013).

What kinds of work are considered legitimate for legal entry into different European countries? How are skilled and unskilled migrations constructed as distinct categories and treated differently? How does recruitment take place, both before and after entry? Which actors define migrant entitlement to legal status? How does the wide array of residence permits granted by host countries interact with economic insecurity in determining the capacity of migrant workers to maintain and renew their papers? How do migrants handle the precariousness of their residence permits, often involving repeated transitions in and out of illegality? What are the consequences for industrial relations in sectors that employ legal and illegal migrants?

Understanding the role of employment in migrants' legality involves examining how policies construct different categories and levels of membership on the basis of work. The building up of frameworks, categories and discourses derives not only from policy documents and formal law: we need to examine the conditions of policy formation, the principles and knowledge that precede and follow policies, the practices they consist of and the ways in which these practices are carried out. Our point of departure is that the study of formal policy frameworks must be accompanied by empirical investigation of political processes and administrative practices. Thus our primary interest is not why policies fail or why their outcomes differ from the intended ones – the so-called policy-gap

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(Cornelius and Tsuda, 2004: 4-15). Instead, we seek to understand the realities that arise through the combined effects of law on the books and law in action (Calavita, 1989; 2011).

In order to understand how recent definitions of migrant deservingness have implicated employment, we must look at the agents involved. They include actors responsible for policies establishing a connection between migrant work and citizenship, and the employers, unions and states that compete over the definition of migrant legal deservingness and legitimate labour mobility (Penninx and Roosblad, 2001; Watts, 2002; Castles, 2006; Ruhs and Anderson, 2010; Menz and Calavides, 2010; Barron et al., 2011; Chauvin and Garcés-Masareñas, 2012). The agency of migrants is likewise crucial: although they ordinarily have little power to change the political-administrative opportunity structure, they have often been able to navigate this structure by shaping and framing their skills and work in ways that formally fit bureaucratic expectations.

The prominence of employment within migration policy has made potential policy conflicts more salient. While economic policies have tended to weaken employment protections, diminishing the centrality of long-term contracts and increasing precariousness on the labour market, more restrictive migration policies have pushed ‘standard employment’ to the fore by introducing minimum contract durations and wage levels to qualify for entry or renewal, or by rejecting precarious contract-holding applicants to legalization (Barron et al., 2009). The fact that higher labour standards are imposed on migrants than on citizens seems paradoxical in light of one of the main functions of labour migration in the classic Marxist literature (Castles and Kosack, 1973): to usher in lower labour standards. This tension between perceived economic needs and actual migration policy can also be seen in entry policies that only focus on a small number of highly skilled professions.

MIGRANT EMPLOYMENT, NEOLIBERALISM AND CIVIC DESERVINGNESS

Migrant employment must be analysed within the conflicting contexts of long-term neoliberal economic policy and resurgent European nationalisms, in three respects. First, analyses of the contradictions of the “neoliberal nation-state” have traditionally focused on tensions between the opening of borders for goods and services and their closure to people (Pellerin, 1999; Sparke, 2006). Second, more recent studies have shown that neoliberal policies on the labour market – including the facilitation of complex subcontracting structures that evade labour law – have made it increasingly difficult for the same states to efficiently enforce national and civic boundaries on their own labour markets (Broeders and Engbersen, 2007). The responsibilities of employers are difficult to establish; sanctions against them remain mild.

Third, and more centrally here, as a “workfarist” regime, neoliberalism casts employment in general – and migrant employment in particular – as a civic obligation, one that distinguishes between the deserving and undeserving residents of a country (Gray, 2004; Lødemel and Trickey, 2001; Sparke, 2006: 153f; Peck, 2001; Krinsky, 2008). In contrast, restrictive and nationalist immigration politics have led governments to present employment as a civic *privilege* based on pre-existing membership and to bar migrants from accessing legal employment (Morris, 2002). Articles in this thematic cluster examine the various ways in which this tension has been handled – on what occasions and for which groups migrant employment is made a civic privilege, and on what occasions and for which groups it is made a civic duty.

These questions must be posed within the dual context of the “virtualization” and “culturalization” of citizenship. The former refers to migrants’ civic worth increasingly being questioned by dominant policy frames in European countries (Schinkel, 2010), rendering citizenship more precarious and reversible, potential rather than actual, and ever more contingent on the performance of cultural, social, and economic “virtue”. The latter refers to the gradual redefinition of citizenship in cultural terms and to its requirements of ‘cultural integration’ (Duyvendak et al., 2010). With the focus on cultural, ideological and religious allegiances, we might have expected work to remain marginal in

calculations of civic deservingness. But as gainful employment, self-sufficiency, and the performance of reliability within precarious labour markets are defined as key civic duties within workfare regimes, they have increasingly come to be framed as cultural requirements as well. They figure prominently in the literature as indicators of successful migrant integration, whether it concerns the skilled or unskilled, the first or second generation, regular or irregular migrants.

Contributions to this thematic cluster address these and similar questions by examining the effects of employment on entry, regularization, renewal and family reunification from a variety of disciplinary approaches. The first two contributions explore the construction of boundaries between work and non-work and its impact on migrant legality. Sarah van Walsum examines how migrant care-giving and domestic work based on extended transnational family relations is constructed in Dutch and European law, and its implications for female migrants' ability to obtain and maintain legal status. In her article on domestic workers, Helen Schwenken explores the complex relationship between legality of employment and residence status, and observes that despite recognition of the usefulness of their work and their legal deservingness, domestic workers continue to suffer illegitimate employment. However, mobilizing legal consciousness studies she also shows her informants have been able to refer to cross-border examples and global labour standards in their efforts to claim rights.

The next article focuses on employment mobility. Taking a historical approach, Piotr Plewa analyses how admitting seasonal foreign workers affected migrant legality in the post-1945 and post-1990 seasonal foreign worker admissions to Switzerland, France and Spain. His article attempts to identify the many ways in which seasonal worker advocates and opponents have redefined seasonal migration policy in line with their perception of whether and how seasonal workers should be integrated or made to rotate. In the last article, Sébastien Chauvin, Blanca Garcés-Mascreñas and Albert Kraler examine employment conditions within regularization programmes, not only in official employment-based legalization but in programmes officially based on other criteria. One of the themes in this article is how stringent employment requirements tend to turn labour precariousness into legal precariousness, often involving repeated transitions in and out of illegality.

Overall, articles in this special cluster reveal a broader conundrum at the core of migration policy in liberal times: when employment becomes a source of rights and legality, policy makers may emphasize work as key to the definition of migrant deservingness, while simultaneously striving to limit migrants' employment opportunities as a way to circumscribe their fuller access to civil rights.

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NOTES

1. See Castaldo (2010) for an overview of quantitative studies on the impact of legal status on employment and Kraler (2006) for a broader review of studies on the legal status of immigrants. Most existing studies have focused on the cases of irregular migrants. See, among others, Ambrosini, 2012; Bommes and Sciortino, 2011; Çinar, Gächter and Waldrauch, 2000; De Genova, 2005; Kupiszewska and Mattila, 2008; MacKay et al., 2009; OECD, 2000; *Population, Space and Place*, 2009; Jounin, 2008; Morice and Potot, 2010; Rey-

- neri, 2001; and Reneyri and Fullin, 2010. Few scholarly works explicitly theorize the notion of “legal status” in broader terms beyond the question of undocumented migration (For Europe see Morris, 2002; Ruhs and Anderson, 2010; Cvajner and Sciortino, 2010; for the USA, see Menjivar 2006; and for Canada, Goldring and Landolt, 2013).
2. Samers (2003) touches on this topic by looking at the complex concerns over employment that govern the regulation of undocumented migration, while the ASPLAN research team has investigated the politics of work-based legalization in the recent past in France (Barron et al., 2009, 2011).

REFERENCES

- Ambrosini, M.
2012 “Surviving underground: Irregular migrants, Italian families, invisible welfare”, *International Journal of Social Welfare*, 21: 361–371.
- Anderson, B.
2009 “What’s in a name? Immigration controls and subjectivities: The case of au pairs and domestic worker visa holders in the UK”, *Subjectivity*, 29: 407–424.
2013 *Us and Them? The dangerous politics of immigration controls*. Oxford University Press, Oxford.
- Anderson, B., and M. Ruhs (Eds)
2010 “Researching Illegality in Labour Migration: Concepts, Ethics and Policy Nexus”, *Population, Space and Place*, 16(3): 227–239.
- Barron, P., A. Bory, S. Chauvin, N.A. Fall, N. Jounin, and L. Tourette
2009 “Travailleurs Sans Papiers: La Précarité Interdite”, *Les Mondes Du Travail*, 7: 63–74.
- Barron, P., A. Bory, S. Chauvin, N. Jounin, and L. Tourette
2011 *On bosse ici, on reste ici! La grève des sans-papiers: une aventure inédite*. La Découverte, Paris.
- Bommes, M., and G. Sciortino
2011 *Irregular migration in Europe: empirical research and structural implications*. Amsterdam University Press, Amsterdam.
- Broeders, D., and G. Engbersen
2007 “The Fight Against Illegal Migration Identification Policies and Immigrants’ Counterstrategies”, *American Behavioral Scientist*, 50(12): 1592–1609.
- Calavita, K.
1989 “Recent Works on Immigration Policymaking: a Review Essay and Agenda for the Future”, *Law and Society Review*, 23 (5): 799–820.
2011 *Invitation to Law and Society: An introduction to the Study of Real Law*. University of Chicago Press, Chicago.
- Castaldo, A.
2010 Thematic Study on Data on the Legal Status of Immigrants in the EU. PROMINSTAT Working Paper 7. http://ec.europa.eu/ewsi/en/resources/detail.cfm?ID_ITEMS=17581 (accessed 21 June 2013).
- Castles, S., and G. Kosack
1973 *Immigrant Workers and Class Structure in Western Europe*. Oxford University Press, London.
- Castles, S.
2006 “Guestworkers in Europe: a Resurrection?”, *International Migration Review*, 40(4): 741–766.
- Chauvin, S., and B. Garcés-Masareñas
2012 “Beyond Informal Citizenship: the New Moral Economy of Migrant Illegality”, *International Political Sociology*, 6(3): 241–259.
- Çinar, D., A. Gächter, and H. Waldrauch (Eds)
2000 “Irregular. Migration: Dynamics, Impact, Policy Options”, *Eurosocial Reports*, Vol. 67. European Centre for Social Welfare Policy and Research, Vienna.
- Cvajner, M., and G. Sciortino
2010 “Theorizing Irregular Migration: The Control of Spatial Mobility in Differentiated Societies”, *European Journal of Social Theory*, 13(3): 389–404.

- Cornelius, W.A., and T. Tsuda
2004 "Controlling Immigration: the Limits of Government Intervention", in W.A. Cornelius et al., *Controlling Immigration. A Global Perspective*, Stanford University Press, Stanford:
- De Genova, N.
2005 *Working the Boundaries: Race, Space and 'Illegality' in Mexican Chicago*. Duke University Press, Durham.
- Duyvendak, J.W, M. Hurenkamp, and E. Tonkens
2010 "Culturalization of Citizenship in the Netherlands", A.C. d'Appollonia and S. Reich, eds. *Managing Ethnic Diversity After 9/11. Integration, Security, and Civil Liberties in Transatlantic Perspective*, Rutgers University Press, London: 233–252.
- Goldring, L., and P. Landolt (Eds)
2013 *Producing and Negotiating Non-Citizenship: Precarious Legal Status in Canada*. University of Toronto Press, Toronto.
- Gray, A.
2004 *Unsocial Europe: Social Protection or Flexploitation?*. Pluto Press, Ann Arbor.
- Jounin, N.
2008 *Chantier interdit au public: enquête parmi les travailleurs du bâtiment*. La Découverte, Paris.
- Kraler, A.
2006 "The legal status of immigrants and their access to nationality", In R. Bauböck (Ed.), *Migration and citizenship. Legal status, rights, and political participation*, University of Amsterdam Press, Amsterdam: 33–65
2010 *Civic Stratification, Gender and Family Migration Policies in Europe*. Final Report. Revised and updated public version. Vienna: BMWF/ICMPD. <http://research.icmpd.org/1445.html> (accessed 21 June 2013).
- Krinsky, J.
2008 *Free Labour: Workfare and the Contested Language of Neoliberalism*. University of Chicago Press, Chicago.
- MacKay, S., E. Markova, A. Paraskevopoulou, and T. Wright
2009 *The relationship between migration status and employment outcomes. Undocumented Workers Transitions (UWT), Final Report*. London: Working Lives Research Institute, Available online at <http://www.undocumentedmigrants.eu/londonmet/fms/MRSite/Research/UWT/UWT%20FINAL%20REPORT%20Revised%2021%20November%202009mw.pdf> (accessed 21 June 2013).
- Menjívar, C.
2006 "Liminal Legality: Salvadoran and Guatemalan Immigrants' Lives in the United States", *American Journal of Sociology*, 111(4): 999–1037.
- Menz, G., and A. Caviedes (Eds)
2010 *Labour Migration in Europe*. Palgrave Macmillan, Basingstoke.
- Morice, A., and S. Potot
2010 *De l'ouvrier immigré au travailleur sans papier: les étrangers dans la modernisation du salariat*. Karthala, Paris.
- Morris, L.
2002 *Managing Migration. Civic Stratification and Migrants' Rights*. Routledge, London.
- Moulier-Boutang, Y.
1998 *De l'esclavage au salariat. Economie historique du salariat bridé*. Presses Universitaires de France, Paris.
- OECD
2000 *Combating the Illegal Employment of Foreign Workers*. OECD, Paris.
- Peck, J.
2001 *Workfare States*. Guilford Press, New York.
- Penninx, R., and J. Roosblad
2001 *Trade Unions, Immigration, and Immigrants in Europe, 1060–1993: A Comparative Study of the Attitudes and Actions of Trade Unions in Seven West European Countries*. Bergham Books, New York.
- Reyneri, E.
2001 "Migrants' Involvement in Irregular Employment in the Mediterranean Countries of the European Union" *International Migration Paper 41*, Geneva: International Labour Organization; www.ilo.org/public/english/protection/migrant/download/imp/imp41.pdf (accessed 21 June 2013).

- Reyneri, E., and G. Fullin
2011 “Labour Market Penalties of New Immigrants in New and Old Receiving West European Countries”, *International Migration*, 49(1): 31–57.
- Ruhs, M., and B. Anderson
2010a “Semi-compliance and illegality in migrant labour markets: an analysis of migrants, employers and the state in the UK”, *Population, space and place*, 16(3): 195–211.
- Ruhs, M., and B. Anderson (Eds)
2010a *Who needs migrant workers? Labour shortages, immigration and public policy*. Oxford University Press, Oxford.
- Samers, M.
2003 “Invisible capitalism: political economy and the regulation of undocumented Immigration in France”, *Economy and Society*, 32(4): 555–583.
- Schinkel, W.
2010 “The Virtualization of Citizenship”, *Critical Sociology*, 36(2): 265–283.
- Sparke, M.B.
2006 “A neoliberal nexus: Economy, security and the biopolitics of citizenship on the border”, *Political Geography*, 25(2): 151–180.
- Watts, J.
2002 *Immigration Policy and the Challenges of Globalization*. Unions and Employers in Unlikely Alliance, Cornell University Press, Ithaca and London.