The ethical case for guest workers

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Peter Mares

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A new book argues that it is morally defensible to restrict migrants’ rights in order to give them access to the benefits of increased migration, writes Peter Mares

Martin Ruhs argues that we must work within the constraints of what is, rather than what ought to be. Nathan Rein/Flickr

The Price of Rights: Regulating International Labour Migration
By Martin Ruhs | Princeton University Press | US$35

WHEN the UN General Assembly held its second high-level dialogue on migration and development in early October, the focus was on the benefits of “freer and safe movement of people across borders” within “an inclusive globalisation process.” The final declaration recognised the “important contribution” migration can make to realising the UN’s Millennium Development Goals, and an eight-point agenda for action encouraged member states to ratify and implement treaties and conventions that expand and protect migrants’ rights.

What’s not clear is whether the meeting discussed the potential conflict between those two goals – between increasing migration and expanding migrants’ rights. It’s an uncomfortable thought, but it’s quite possible that a willingness to sacrifice certain rights – or put them on hold – could increase the economic gains from labour migration for the host country, the source country and the migrant workers.

It’s no theoretical matter. Implicitly, the question is answered in the affirmative every day by millions of migrant labourers toiling around the globe. From Bangladeshi construction workers in the Gulf States to Philippine maids in Singapore, from Pacific Islanders picking fruit in Australian orchards to undocumented Mexicans washing dishes in North American diners: to some degree, temporary migrant workers in the low-skilled industries of developed countries have traded rights for opportunities.

The compromise is much greater in some situations than in others, as is evident from the Guardian’s recent exposé of the appalling treatment of migrant workers building stadiums for the 2022 World Cup in Qatar. But with the exception of individuals who are trafficked or completely duped, there is usually some degree of choice in a migrant’s decision to travel to another country for employment.

As Martin Ruhs from Oxford University’s Centre on Migration, Policy and Society puts it in this challenging new book, migrant workers are “acutely aware of and engaging with the trade off” between their rights and their access to a job in another country. The difference between wages in their homeland and in the host country is great enough for them to tolerate “restrictions of some of their rights in exchange for the opportunity to migrate and work abroad.” And even in nations where migrant workers’ rights are severely limited – the Gulf States, for instance, or Saudi Arabia and Singapore – workers are not only willing to accept the conditions, but also to pay “substantial recruitment fees and other costs… in order to improve their incomes as well as raise the living standards of their families.”

It’s not as if migrant workers don’t know what awaits them. As Ruhs writes, migration decisions are “critically influenced” by communication networks between the home country and the host country, and many workers employed under harsh regimes are repeat migrants, returning to the same country for a second, third or fourth
time. Their decisions are certainly “constrained by larger structural forces, including global economic inequalities,” but within the realm of choice available to them, these migrants nevertheless exhibit a degree of agency.

In an ideal world, of course, these trade-offs wouldn’t be needed. If migrant workers could earn the same wages under the same conditions at home as abroad, they would have little reason to cross borders to seek employment. If host nations put temporary foreign workers on an equal legal footing with their own citizens, then migrants would not need to trade away any rights when they moved to another country. But Ruhs argues that we must work within the constraints of what is, rather than what ought to be.

To guide his thinking, Ruhs draws on the capabilities approach developed by Nobel prize-winning economist Amartya Sen and philosopher Martha Nussbaum, which focuses on creating conditions that enable people “to lead the kind of lives we have reason to value.” This approach offers a direct challenge to the conventional economic wisdom that treats income as an adequate measure of well-being. But it also sits in tension with a strict rights-based approach to justice that focuses on defending a set of universal, inalienable and indivisible entitlements attached to each individual on the basis of our common humanity.

Ruhs says the human-rights approach to migration can have a blind spot: it focuses exclusively on “protecting and promoting the rights of existing migrants... without considering the interests of the large number of potential future migrants, who are still in their countries of origin and seeking to access the labour markets of higher-income countries.”

Ruhs prefers the capabilities approach because it acknowledges the potential for conflict between “different dimensions of development (or different components of capability).” At times, it may be necessary to prioritise some capabilities over others – to prioritise the capability to travel to a foreign country to work, for example, over the capability to switch freely between different jobs when you get there. In other words, a migrant may decide, rationally, that it is better to be exploited abroad than to be unemployed at home. The capabilities approach puts significant emphasis on agency and choice and opens up a debate about trade-offs, a debate Ruhs says can be hindered by “rights fetishism” – an insistence that rights are the only measure of human development and always trump other considerations.

AT THE core of Ruhs’s argument are three hypotheses about labour migration to high-income countries, each of which he defends using evidence from a range of countries.

The first hypothesis is that the higher the skill level sought by a labour migration program, the more open it will be. In other words, high-skilled migrants will face fewer restrictions on entry (such as numerical caps or quotas) because they are likely to add greater value to the host economy, pay more tax and draw less on government services than low-skilled migrants are. Governments may also perceive high-skilled migrants as better able to integrate with the host country and less likely to engage in crime.

Ruhs’s second hypothesis, related to the first, is that the higher the skill level of migrant workers, the more rights they will be granted by the host state. Or, to put the reverse case, the lower the skill level of migrant workers, the more their rights will be circumscribed. In order to attract relatively scarce high-skilled migrants, a host state must offer more generous conditions. Low-skilled workers, meanwhile, can easily be recruited, even when wage and working conditions are poor and rights limited.

We can see this second hypothesis in operation in Australia. The rights enjoyed by skilled workers on temporary 457 visas are more extensive than those afforded to Pacific Islanders working in horticulture under the Seasonal Workers Program. Around the world, skilled workers are far more likely than unskilled workers to be offered the benefits of permanent residency. The distinction is often inherent in bureaucratic language: Singapore wants to attract and integrate foreign talent while regulating the temporary entry of foreign workers; Hong Kong makes a distinction between quality migrant admission and imported workers.

The third hypothesis – and the most crucial to Ruhs’s overall argument – is that there is a negative relationship between openness and rights. In other words, the more expansive the rights and entitlements extended to migrants by a host country, the more restrictive will be its rules of admission. Countries that severely curtail
rights, by contrast, will admit many more migrants, particularly low-skilled migrants on temporary visas. The Gulf States, Saudi Arabia and Singapore illustrate his point: each severely curtails rights for low-skilled migrants but offers them large-scale temporary labour programs. Unskilled migrant labourers in Australia, by contrast, primarily enter the country on visa issued for another purpose (such as study or holiday); while the migration program has a substantial humanitarian component, the only formal migration program for unskilled workers is the tiny Seasonal Workers Scheme.

The tension between rights and opportunities is also evident in the fate of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, or CMW. Among other things, the convention seeks to guarantee migrant workers and their family members “liberty of movement” and “freedom to choose their residence” in the host state, and the right to “enjoy equality of treatment with nationals” in access to education and vocational training, housing, social services and health services. It also has a strong bias towards family reunion, requiring signatory countries to “take appropriate measures to ensure the protection of the unity of the families of migrant workers.” Adopted by the UN General Assembly in 1990, the convention is the least-ratified and least-implemented of any major human rights treaty. Fewer than fifty countries have signed up, and almost all are predominantly countries that supply migrants rather than receive them.

Why has the convention fared so poorly? Because, says Ruhs, rights come at a cost:

In particular, many immigration countries consider the comprehensive set of rights stipulated in the CMW as being in conflict with their policies for regulating immigration, especially of low- and medium-skilled migrants, through Temporary Migration Programs that restrict some of the rights of migrants such as the rights to free choice of employment, equal access to social welfare benefits, and family reunification.

Ruhs argues that migrants’ rights and immigration policies are inextricably linked and cannot be considered in isolation from one another. “The design of any labour immigration policy,” he writes, “involves simultaneous decisions on how to regulate the number and skills of migrant workers to be admitted as well as the rights to be granted to migrants after admission.” Because rights and access cannot be separated, it is unrealistic to insist that high-income states simultaneously expand labour migration programs and give full expression to migrants’ rights as outlined in the convention.

The corollary of Ruhs’s argument is that if we want to increase human development at a global level then we must work with the realities of the system. We must be willing to trade rights for openness, particularly for low-skilled workers from less developed countries. In Ruhs’s view, a strong case exists for expanding temporary labour migration programs “that selectively restrict migrant rights, but at the same time provide many more workers with access to the labour markets of higher-income countries.” The alternative – a “clean hands approach” that rejects guest worker programs and insists that host countries grant all migrants a full suite of rights – will simply result in exclusion.

Given that the ratio of wages between high-income and low-income countries can be as high as fifteen-to-one for work that is essentially the same, exclusion would deny migrant workers huge potential benefits. Background research for the UNDP’s 2009 Human Development report, Overcoming Barriers: Human Mobility and Development, found that if the number of migrants moving from low- and middle-income countries to high-income countries increased by 5 per cent, global real income would rise by close to US$1 trillion (a much larger gain than could be achieved by liberalising global trade). The residents of host states would capture close to a fifth of these economic benefits, with the bulk of gains flowing to the migrants themselves and to compatriots in their homeland (particularly through remittances, which are already worth more than twice as much as global aid flows). While such modelling is necessarily imprecise, the UNDP argues that the gains from increased migration flow overwhelmingly to families in poor countries because their higher incomes translate into better education, improved healthcare and other benefits that significantly improve their quality of life.

WHAT would Ruhs’s approach mean in practice? If the aim is to maximise access to high-income labour
markets for migrants from low-income countries, which migrant rights might be legitimately suspended and for how long?

Ruhs is not advocating an anything-goes approach. He is certainly not endorsing draconian restrictions on migrant workers of the kind that exist in the Gulf States or Singapore. For a start, he argues that temporary migrants should be paid at the same rate and be subject to the same workplace rules and conditions as local workers, not least to protect the wages and entitlements of locals. He also says some kind of labour-market testing should be carried out before migrant labour is imported to address perceived shortages. If employers’ claims that they can’t find workers locally are not subjected to scrutiny, labour immigration policies “often become special interest policies that give significant influence to recruitment agencies and the ‘migration industry.’”

Nor should fundamental civil and political rights – freedom of thought and expression, freedom of religious belief and worship or freedom of association – be restricted, argues Ruhs. In relation to civil and political rights, the crucial exception is the right to vote in national elections or run for national office, which is not a universal property of humanity but derives from a relationship to a particular nation.

Ruhs says restrictions on the economic and social rights of temporary migrant workers are justified only where it can be shown that those rights create net costs for the host country. In such cases, there is a legitimate trade-off between rights and openness. In practice he says, three rights will be at issue: the economic right to mobility within the labour market and the social rights to family reunion and to government services and benefits (which are usually restricted to permanent residents).

Ruhs accepts some limits on mobility within the labour market on the basis that temporary migration programs are generally intended to address specific shortages in particular industries or regions. If migrants have a free choice of employment then they may thwart this intention by switching to jobs that are better paid or better located. Given that a worker who cannot change jobs is at increased risk of exploitation, however, Ruhs is alive to the risk of tying a migrant to one employer. His solution is to offer limited freedom: to restrict migrants to specific sectors or occupations but not specific employers.

In relation to the right of migrant workers to bring family members with them, Ruhs favours policies that allow family reunion only when a migrant has sufficient resources to support his or her dependents. He justifies this position with the argument that the “costs arising from family members’ likely use of welfare benefits and public services” are a legitimate policy consideration for host nations. In practice, he suggests setting an income threshold below which family reunion is not permitted, acknowledging that this will result in many “low-skilled (and thus low-paid) guest workers” living apart from their partners and children for long periods.

When it comes to access to welfare and government services, Ruhs distinguishes between “contributory” and “means-tested” entitlements. In an Australian context, this would give temporary migrant workers access to Medicare (which 457 visa-holders, for example, do not currently enjoy) and free education for their children (which 457 visa-holders are entitled to in some states but not in others). It might mean that they gain access to unemployment benefits after a certain qualifying period, but it would not entitle them to family payments or social housing.

The caveat to Ruhs’s justifiable restrictions is that they are time limited. Because the passage of time “increases the strength of migrants’ moral claims to equality of rights,” temporary migrants should either be granted permanent residence or required to return home when their visa expires. He rejects the option of repeatedly renewing temporary work permits, as happens in Australia today, arguing that if restrictions on migrants’ social and economic rights are not time-limited then we risk creating a group of “second-class residents” – residents who are not only at risk of being permanently temporary, but are also at risk of being permanently excluded from the political community of the nation and permanently denied the benefits and rights of citizenship.

What should this time limit be? Ruhs considers four years to be a “reasonable” period, though he offers little justification for choosing this number beyond gut feeling:
Anything less than three years seems to me “too short” to ensure that the policy generates the intended benefits for receiving countries as well as migrants and their countries of origin, while restrictions that last longer than five years seem to come close to “long term” or “permanent exclusion” from equal citizenship rights…”

Interestingly, Ruhs’s preferred four years is equivalent to the maximum duration of an Australian 457 visa. And while many temporary migrants on 457 visas do become permanent residents of Australia, it would be a significant policy change to limit the visa to a single four-year term.

We may argue with the detail of Ruhs’s prescriptions for expanding labour migration schemes for low-skilled workers, but the substance of his ethical argument is not easily dismissed. If the spread of guest worker programs unsettles us, then, he says, we should be much more disturbed by the alternative. To shut down labour migration – even in the name of protecting migrants’ rights – is to deny opportunity to potential migrant workers, and to condemn them to living in the state of poverty they seek to overcome.