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GLOBAL REPUTATION FOR GUEST WORKERS

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Global Reputation for Guest Workers

Moran Sadeh[™]

ABSTRACT

This paper proposes a reputation mechanism that simultaneously addresses two central challenges in temporary migration programs – information and compliance. With this reputation mechanism, guest workers' behavior and performance in each host country – including obedience to local laws and timely exit – are recorded and scored in a global repository. Acquired positive reputation in one country can then be used for further admission options among multiple participating host countries over a longer period of time. The shift to a repeat game framework takes place on the global level without compromising the interest of host governments in the transience of its guest workers. By utilizing accumulated information the reputation mechanism improves screening and enforcement processes and allows the implementation of less punitive domestic programs. The power of reputation can also be utilized to monitor employers' behavior, thus incentivizing self-regulation by employers and enhancing migrants' welfare.

1. INTRODUCTION

Governments around the world adopt guest worker programs that invite low-skilled temporary migrant workers to fill gaps in their labor markets. These programs usually limit the duration of the workers' stay and prohibit long-term residency (Chang 2002; Wickramasekara 2011; Perri 2012).¹ The built-in transience guarantees that each guest worker is a one-shot, non-repeat player. It enables a host country to expand its labor force

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¹ Some host countries are more open to repeat play in labor migration and implement it through circular migration as will be discussed later in this paper, *infra* Section 3.4.2. Other countries are stricter about temporality. For example, the migration model in the Gulf countries is generally a classic strict temporary model, based on fixed-term contracts, but it also contains some portion (about a quarter) of repeat migrants. Other countries, like Israel and Singapore, also apply the strict temporary regime with some exceptions of repeat entry but with no formal repeat migration pattern (Wickramasekara 2015, p. 151).

while restricting the employment of migrant workers to certain sectors or occupations, and avoiding an increase in the number of foreign permanent residents. Transience also reduces the impact of migration on the ethnic composition of the host society and on the political and economic status of its citizens. Therefore, the temporary nature may increase the political feasibility of work migration programs.

The one-shot relationships brought about by migrant worker programs shape the dynamics of a host country's screening and enforcement processes in several ways that will be more broadly discussed below in Section 2. In a nutshell, the one-shot structure forces heavy reliance on pre-admission screening, which suffers from information asymmetry problem (Cox and Posner 2007, Brown 2008). It also splits enforcement efforts between the post-entry work-stay and exit stages thus creating conflicts between different enforcement strategies. In addition, the one-shot structure reduces the utility of fines and other monetary incentives due to the meager resources of low-skilled migrants who are having a limited time framework and opportunities to increase them over the migration term. Finally, the one-shot framework affects migrants' welfare by creating a 'hold-up' situation for workers, who highly invest in a one-shot, one-state (and usually one-employer) opportunity. Any serious reform plan for current guest worker programs would have to address these major issues.

The key to reform is to turn migrants into repeat players with relevant and transparent experience record (thus mitigating the information problem) and with incentives to comply with the host country's rules. The challenge is to provide guest workers with the prospect of continued residency and employment without sacrificing the host country's interest in transience. This Article develops a novel mechanism to resolve these two conflicting goals – longevity for workers and transience for host countries. The mechanism converts an apparent one-shot interaction into a repeat game by adding an element of reputation.

The value of repeat play is already recognized and exploited in migrant worker programs, although in a rather limited fashion. First, host and source countries enter bilateral long-term agreements on the flow of migrants (which may remain one-timers), and the countries have interest in, and incentive arising from, maintaining good reputation (Brown 2008). Second, host countries provide recurring admission under managed circular migration programs (Wickramasekara 2011). The two approaches provide some of the screening and enforcement benefits that a reputation system can generate but in a limited way and at a significant cost.

This Article proposes a repeat play mechanism that allows compliant and productive guest workers to acquire further admission options not only over a longer period of time, but *also among multiple host countries*. Good behavior and timely exit at one country would bolster the chance of the migrant worker to be rehired anywhere among the host countries participating in the repository. Thus, each country could continue to maintain its policy of temporariness, and yet each can rely on the experience reported by other countries to implement more efficient and well-tailored screening. The long term horizon also allows hosts to improve their enforcement strategy through the power of reputation. Interestingly, the labor migration market has already partially responded to this profound

institutional demand to improve screening and enforcement strategies through the dual power of reputation - providing information while producing incentives to comply (see *infra* Part 3.3).

Immigration, particularly of low-skilled labor, lags behind trade and investment in terms of global coordination (Gordon 2010; Martin 2015). This Article makes the case for multilateral coordination with respect to low-skill migrant workers by explaining how such coordination benefits host countries. An intended consequence of this approach is an improvement in the position of guest workers. The reputation would reduce the information asymmetry and with it the need for supporting screening mechanisms, such as informal recruitment industry, that tend to be offensive towards migrants. At the same time, by creating incentives for compliance the reputation mechanism reduces the need for legal enforcement through more punitive and restraining mechanisms and sanctions.

There are some complications, though, that would be discussed and weighed. The global reputation enhances portability, to be sure, but the migrants' dependency upon ranking and reputation for future portability and mobility seems to intensify the power of employers over them, especially at the beginning of the global path. A counter-ranking system that establishes 'host employer score' to supply migrants with better information and promote self-regulation by employers would therefore be considered.

The article proceeds in two parts. Section 2 discusses the dynamics of a host country's screening and enforcement processes in a one-shot relationships. Section 3 sets out the idea of a global reputation mechanism as a means to turn temporary guests into repeat players thus enhancing efficiency of screening and enforcement for host countries while also improving the position of guest workers in these programs vis-à-vis host employers and governments. Finally, Section 3 also identifies the repeat play dynamics in current guest worker programs and their deficiencies comparing to the global approach.

2. THE SHORTCOMINGS OF TEMPORARY LABOR MIGRATION PROGRAMS

2.1. Screening

Host countries prefer reliable, productive, healthy, and law-abiding migrant workers, who will leave the country when their visas expire. Countries must either find a way to identify, or screen for, these qualities before admitting the workers, or admit workers and only then discover and deport the non-compliant subset (Cox and Posner 2007, p. 825-830). Ex ante screening is not easy for the host country. A migrant is asymmetrically well-informed about her own behavior and propensities and employers and host countries find information-gathering costly. For the most part they are in the dark about migrants' characteristics and history (Brown 2011). The key challenge for a host state is therefore to obtain adequate and reliable information in order to sort candidates for admission (Posner 2013, p. 310).

Ex post screening could be more accurate but less timely in guest worker programs. There is little opportunity to reward and penalize behavior by in-country migrant workers, inasmuch as they will soon depart. In addition, if screening is entirely ex post, the host state accepts applicants without screening (or let them come illegally) and then

deports those who are discovered to be noncompliant with its rules. The remaining migrants stay until they choose to leave or their visas expire – unless they overstay and count on weak enforcement by the host state (Cox and Posner 2007). Ex post screening can thus sustain a temporary guest worker program only if the host state invests sufficiently in enforcing its rules. Such an investment tends to be costly.

A state may therefore have no choice but to invest in sorting, or encouraging others to sort, potential migrants. One tool for this task is the substantial payment a migrant must make and the debt they thus owe for visa, travel, and other fees (Carr 2009; Yasserli 2009; Gordon 2014;). Indeed, the pervasive and controversial use of recruitment fees and loans in guest worker programs is a logical response to the information asymmetry issue, as these tools can promote ex ante screening through self-selection, or selection by more knowledgeable intermediaries.² Good quality workers are more likely to incur fees because they face a lower idiosyncratic risk of being fired or deported, and they self-select.

The loan-financed fees system comes with varied and substantial costs. Fees burden guest workers, and contribute to the imbalance of power between them and their employers, some of whom exploit migrants rather shamefully (Holley 2000; Schmitt 2007, *Close to Slavery* 2013).³ Fees may also encourage recruiters to ‘import’ more workers than a host country’s labor market can support (Gordon, 2014). In addition, as far as the indirect outsourcing from host countries to private recruiters exceeds the pure privatization of governmental authorities to include actions implicitly beyond those that the state is allowed to take (considering the informal and unregulated nature of the recruitment-lending process) this may be also troubling. From an institutional perspective, the intermediary may charge a high interest rate and this in turn may encourage migrant workers to seek profitable but illegal employment in the host country. Similarly, if each visa application comes with high fees, a migrant will have reason to overstay the visa period in order to avoid exit and re-application. In short, high fees promote ex ante screening but burden subsequent enforcement especially towards the exit point.

2.2. Enforcement

Due to the fundamental problem of information asymmetry, host countries are forced to find substitutes for screening in the form of informal fees, as well as to replace part of the screening efforts with enforcement strategies. Unfortunately, enforcement strategies in a one-shot structure are also quite limited and costly. This section explores these enforcement caveats.

² In a separate paper, *Self-Selection in Work Migration* (work in progress), I analyze more thoroughly the idea of the de-facto function of recruitment fees as a self-selection mechanism in guest worker programs and the informal reliance of host countries on these private and unregulated fees for their own institutional benefits.

³ See more about the negative effects of fees on migrants’ welfare infra part 2.3.

As the migrant's allotted time in the host country ticks away, the migrant's motivation to comply with the host country's laws deteriorates as does the deterrence effect of the central sanction in immigration law – deportation (Schiff 2004; Brown 2011). The closer the migrant gets to the point of exit, the weaker the effectiveness of the deportation sanction. When departure time arrives, the migrant complies voluntarily, with self-departure, or complies involuntarily (forced-departure), or remains illegally in the host country. With no additional sanctions, this third choice may be perfectly rational (Slobodan and Vinogradova, 2015).

Voluntary compliance could be encouraged with monetary sanctions against migrants. But fines are ineffective in the case of judgment-proof actors, and many low-skill migrant workers have no savings from which to pay fines (Yadlin 2006, p. 33). Moreover, overstaying migrants who violated the exit requirement are elusive, further reducing the odds of collecting fines. In addition, the transient character of their stay means that the state cannot get more bite with its fines by collecting them out of a violator's future earnings.

Theoretically the fining problem could be combated by requiring a deposit in the form of a bond that must be posted by each entering migrant. If the bond is forfeited in the event of noncompliance or in order to pay any outstanding fine, and the bond is otherwise refunded upon exit, monetary sanctions become viable, and the host country's enforcement problems are greatly reduced (Brown 2011). But here again, as with fees, the main problem is that migrant candidates are often too poor to finance the bond at the time of admission and formal loans at this stage seem to be an unrealistic solution (Posner 2013, p.312). This problem can be solved by posting the bond incrementally over time, out of the migrant's earnings in the host country (Schiff 2004; Martin 2007; Chang 2008; Peri 2012). The bond is then less effective at the beginning, but here deportation is a bigger threat. As the deportation threat loses force, the bond grows and does more work.⁴

Nevertheless, even such 'ex post bond' is limited by migrants' meager resources and low earnings. The expected benefit from overstaying for long-term periods will often exceed the bond, discounted by the probability of enforcement. This bond also creates an extra incentive to take an illegal job in order to hide earnings and to avoid the larger

⁴ See more about this complementary dynamic between the two sanctions – deportation and accumulating bonds – in Sadeh, *supra* note 2. Initially, as small sums accumulate, the ex post bond provides only a weak incentive for compliance. As the value of the bond increases, however, so does the incentives it provides. The ex post bond does little at the beginning of the legal work period, but in this stage the worker already has good reason to comply as he or she has many months of high earnings ahead, so that the threat of deportation is effective. As this threat weakens, the ex post bond increases in importance and supplies the necessary, substitute motivation.

bond. Finally, note that the bond cannot simply be used to pay fines for noncompliance during the stay period. Noncompliance must trigger a forfeiture of all or part of the bond as well as deportation (or the re-posting of a high bond), or the incentive to exit in timely fashion will be reduced. The difficulty is in the split – if the bond is partially confiscated, its marginal deterrence is diminished for both stay and exit behaviors.

2.3. Migrants' Welfare

In light of the shortcomings of current enforcement mechanisms, host countries tend to complement them with additional ‘pushing out’ and somewhat offensive mechanisms (Motomura 2013). Most guest worker programs today limit in some way or another migrants’ ability to enter or stay with their families (Wickramasekara 2015, p. 151). Some host countries developed strict ‘no family’ policies that explicitly prohibit family life for guest workers while in their territory, starting at the point of admission, when guest workers are not allowed to enter the country with their immediate relatives, and throughout the course of their stay.⁵ In the classic temporary migration systems the separations from the family can last consecutively throughout the duration of the whole contract due to the risks and the financial burdens embedded in the trips back home to visit the family (Wickramasekara 2015, p. 151-152). From an institutional perspective, if migrants are admitted without families, they have stronger incentives to leave in order to reunite with their families. The family back home functions as a collateral, a tool to assure the migrants’ exit.⁶

In addition, often a migrant worker’s visa is non-portable (Hahamovitch 2003, Wickramasekara 2015, p. 152).⁷ The worker is tied to the contractually agreed-upon employer in the host country, and the employer is in a position to exploit the worker (Mundlak 2003, p. 440-443; Ontiveros 2006, p. 938). The worker hesitates to complain

⁵ In Israel, for example, guest workers are not allowed to bring or reunite with family members or establish, or become involved with, new familial relations during their stay (See, for example, article D.3 to the Administrative Procedure no.5.3.0002, ‘Procedure Regarding the Employment of a Foreign Caregiver’ (in Hebrew), Population and Immigration Authority, updated January 30, 2017, available at https://www.gov.il/BlobFolder/policy/foreign_worker_employment_procedure/he/5.3.0002_0.pdf. The United Arab Emirates also apply severe restrictions on family reunification of guest workers (Williams 2009). Even in countries that theoretically allow families to join their guest workers, like the U.S, other terms of the programs, especially the seasonal-circular ones, de-facto prevent it.

⁶ These ex post incentives may influence the preferred type for screening. Host countries may prefer to recruit migrants who already have established families, as long as those families are not allowed to join them. Spain, for example, developed a circular migration program with Morocco based on rules that only mothers under the age of 40 with dependent children may participate – but leave the kids behind. They received a guarantee of return to those who comply with the rules. The return rates became very high following the launch of these rules while before they were enacted the program suffered from low returns back to home countries (Wickramasekara, 2011).

⁷ Non-portability is thought necessary to prevent workers from moving to other industries or to the host country’s larger labor market and to facilitate the tracking of migrant workers, who might be more tempted to overstay if their whereabouts are unknown. These assumptions are complicated and call for further research and challenge.

about violations because the worker cannot move to another employer. This creates a ‘hold-up’ situation. Migrants invest high sums (usually in the form of recruitment fees) and put all their stakes on a one-time migration opportunity in which they are tied to only one state and within it to only one employer.⁸

The abuses of non-portability can be reduced if it is relatively easy for the worker to leave a job and exit the country as required, but then find employment in another country’s migrant worker program. Put differently, increasing the return for the initial investment (fees) and making it effective for more host countries and therefore less specific, can reduce some of the hold-up pressure. The global circular approach, which I now present, can be also understood as improving workers’ options in the face of illegal or abusive employment practices and as mitigating the hold-up problem.

3. GLOBAL REPUTATION

Section 2 explained how the temporary nature of guest worker programs organizes the incentives around screening and enforcement dynamics at the pre-admission as well as post-admission stages. It demonstrated the shortcomings in screening and enforcement, as well as the potential for abusive relationships. This Part puts forward a plan for developing a global reputation interest, while preserving temporariness through circular, multi-country migration. The strategy is to allow compliant and productive guest workers to acquire further admission options *horizontally* across host countries and *vertically* over time based on their reputation. Workers are able to invest in their own (long-term) careers while obeying the host countries’ preference for temporariness. And host countries incur lower enforcement costs by using reputation sanctions and enjoying better information and screening. The advantages of repeat play will be enjoyed because the prize of repeat admission will be offered – but it will be offered by successive rather than single states.

Reputation, generally, plays a dual role. It provides valuable information by reflecting cumulative evaluations of past behavior while creating incentives for future compliance to support positive reputation (Garoupa and Ginsburg 2010, p. 229). Electronic markets that suffer from significant information asymmetries between buyers and sellers have been successfully implementing feedback and ranking systems counting on that dual role; the reputation reveals sellers’ types and assist buyers in selecting those with high-

⁸ In the parlance of contract law, the employer enjoys "hold up" power over the worker. The investment is a sunk cost that is lost to the migrant if the migrant leaves specific employer and country. In some contractual settings the problem with hold-ups is that one party will underinvest, so as not to be put in a compromising position. See Posner, 2011. Here, however, the investor-worker must fully sink costs in order to be admitted to the host country. There is no underinvestment by the worker, and the hold-up power of the employer is complete because the worker’s investment is not portable.

reputation while motivating investment of efforts by the sellers to improve in later stages (Dellarocas, 2005, Shun 2013).⁹

The suggested reputation model in this article strives to generate similar benefits in the immigration context, as I explain in the following sections. A guest score could be based on host countries' reports about objective data, including health, age, source country, past experience, number of years in the global system, violations of local law, failures to exit in accord with visa conditions, and so forth. Scores might also be a function of employers' experiences with the guest; employers will have better information about their workers' health, skills, motivation, performance etc. than will the host country's immigration authorities, but here there is more opportunity for misbehavior as will be further discussed in section 3.3 below.

3.1. Screening

In the suggested global reputation model, one state's ex post screening and information gathering becomes another's ex ante screening material. Over time, each host state in the global approach will find itself with a mixed pool of candidates in which some are repeat players coming from other host states, accompanied by ex post information gathered there, and some are first-time applicants whose admission must be based on ex ante screening. The ex post information gathered through the globally coordinated approach is more reliable than what one host state alone can develop – given its preference for temporariness – because it is a product of accumulated experiences rather than circumstantial and less reliable indicators.

As in a well-functioning credit market, good types build their reputations over time and gain advantages in securing good jobs, perhaps at higher pay, just as good scored borrowers get loans at lower interest rates. Global coordination facilitates the accumulation of information through reputation and reduces the need to accumulate resources in order to self-select through high fees. Therefore, under the global approach, the fraction of migrant workers that represents new admissions with fee payments can be expected to decrease. Essentially, guest (reputation) scores will displace fees as a means of distinguishing good from bad applicants. Fees will probably remain, however, for new applicants' admissions. These fees may be higher or lower than at present; they may rise because of the enhanced value of admissions, but they might also fall because enforcement costs may indirectly affect the rate of admission and recruitment fees.

⁹ A seller's reputation is considered a proxy for ex-ante pre-transaction qualities and therefore has significant effects on central aspects of the overall transactions such as on prices, volume and completion rates (Zhang, Gong and Houser 2016, p.122). Similarly, a company's reputation is a proxy for future quality and success based on its past performances and therefore reputational sanctions play a central role in creating deterrence for corporates' managers and directors (Shapira 2015).

3.2. Enforcement

Reputation can serve a role in enforcement as well as in initial screening. In the global model migrants have a greater incentive to be law-abiding and efficient workers in each host state's jurisdiction and, most significantly, exit in timely fashion. Guest workers will know that misbehavior lowers their scores and reduces future opportunities. In that way, reputation in itself functions as a type of bond. It creates incentives for compliance and reduces the need for legal enforcement through more punitive and restraining mechanisms and sanctions.¹⁰

Reputation, nevertheless, cannot entirely displace sanctions, otherwise a guest would simply overstay in a host country instead of making efforts to establish good reputation and move from one host to the next. In addition, while the global approach encourages compliance with the visa's terms by threatening reduced access to future job opportunities, the system faces the familiar end-period problem, especially when each worker has asymmetric and private information about the end-point of her career. Though in lower capacity, additional enforcement mechanisms are likely to be required.

The suggested global model may enhance the power of monetary mechanisms and by that, as well, improve the efficacy of the enforcement process. We observed earlier that in order to avoid pushing temporary workers to illegal activities, a monetary bond mechanism requires either a sizeable earnings flow from which to deduct fines and the like, or a long period of work during which the bond can grow. Familiar state-level guest worker programs are inhospitable to both requirements. But once a bond is conceived as transferable from one host state to another, it can accumulate value and mature into a powerful incentive mechanism – sufficient to guarantee good behavior and timely exit in the worker's final period.

Host states may also employ a corresponding carrot by offering exit rewards for timely departure and high guest scores.¹¹ Each state insists on temporariness, so a reward serves to encourage timely exit and migration to another host state. The coordinating states work together to maintain the best workers in the global repository. Moreover, rewards could accrue in a centralized account, payable to a worker, along with any refundable bond, when she announces that her global career has ended and that she will not request admission to other host states. The accumulated fund could easily be large enough to

¹⁰ For a general review on how reputation may substitute legal sanctions for deterrence and compliance see Teraji 2013. See also Shapira 2015 for the role of reputational sanctions in corporate governance. Shapira somewhat disputes the common assumption that reputational sanctions universally substitute legal sanctions in corporate law. The reputational power, argues Shapira, relies upon the information generated through the legal procedures.

¹¹ Constant and Zimmermann (2011) raise the idea of rewarding circulating migrants for honoring the return migration code in the back-and-forth circulation model.

discourage defections (overstays), and large enough to help guest workers re-establish themselves in their home countries after a peripatetic career.¹²

3.3. Migrants' Welfare

The discussion in Section 2.3 observed that although fees might serve a useful screening function, the common informal high fees in guest worker programs increase an employer's hold on a guest worker. In the global model, on the other hand, the prospect of vertical continuity further increases workers' options and reduces any hold-up power held by employers. In addition, recruitment fees are expected to gradually dissolve as the migrant proceeds in the global path. Good workers and employers will benefit and enjoy reduced costs overtime as reputation is being formed, while bad workers and abusive employers will be worse off, or altogether deterred.

Nevertheless, guest workers now have long-term stakes in the global program and their stakes rely on their reputation - for workers just entering the global system, the first few jobs generate their reputational capital. Since this reputation relies on employers' (as well as host countries') scores, the employers of newly admitted workers have new and intensified power over them.¹³ Employers might act strategically and exploit a guest worker's need for a positive report by renegeing on terms of the original employment contract. In addition, each employer has a diminishing incentive to act fairly as the worker's term of service advances. Late in this term the worker cannot stay on the job, even if employer and employee wish, because of the preference for temporariness at the state level reflected in the term of the worker's visa.

If employers' reports are deemed important for computing the guest score, then something else is needed to encourage the employers also to act as repeat players. The obvious strategy is to count on employers' continuing reliance on foreign workers.¹⁴ Exiting guest workers could provide information about their employers, so that there is a "host employer score" as well as a guest score. It is like passengers ranking Uber drivers

¹² If a migrant fails to exit as required, the bond-reward can be confiscated and divided among the several host countries. Alternatively, it can go to the coordinating body that administers the global program if it also invests in enforcement on behalf of all host countries. The forfeited fund should not all go to the last host, whose rules were broken, because that state might intentionally under-enforce or subtly encourage default. If one state offers to make an exception to its temporariness principle, by inviting the retiring workers to remain as a permanent resident, then allowing the host to accept the bond-reward fund as payment may be considered.

¹³ Similarly, in the electronic markets new to the system and less familiar sellers are generally more vulnerable, since any negative feedback they get will have a strong weight and impact on their score and on the motivation of buyers to take the risk and count on their still low-ranked score. Therefore at the beginning of the process, sellers may choose to receive lower or negative profits in order to gain good reputation, (See Zhang, Gong and Houser 2016, p. 121-122).

¹⁴ In the suggested global model workers and employers have short-lived relationships but at the same time both of them have long-lived investment on the global level. This symmetry could improve the balance between the generally unbalanced groups.

even as the drivers rank the passengers or, closer to home, professors and students evaluating one another for the benefit of other students and professors (or employers) in the future. Such a counter ranking system can support simultaneously three different important goals. First, it may provide migrant workers, who are unfamiliar with the new host countries and employer types, with valuable and relevant information. At the same it may provide low-cost information for the host governments for enforcement purposes against employers and, as with workers, the need to maintain positive reputation in itself constrains employers and provides incentives for self-regulation.

Interestingly, the global labor migration market has already partially responded to this dual information-enforcement demand. The International Trade Union Confederation (ITUC) Global Rights Index ranks the best and worst countries for migrant workers to be employed in. The ranking is based on a mixture of the legal rights afforded to migrant workers by the host country and migrant workers' input regarding their experiences (Burrow 2015). On a local scale, the website 'Contratados'¹⁵ invites Mexican migrant workers to rate their employers and recruiters similar to Yelp or TripAdvisor (Tang 2015). 'Amino!' ('The Yelp for Farm Workers'), is another new app that seeks to serve both migrant farmworkers and farm owners in Michigan. It plans to provide valuable information to workers while allowing for farm owners to advertise job openings, thus cutting out third party recruiters (Pareders 2016).¹⁶

In the case of guest workers, where enforcement of labor law is notoriously weak (Griffith 2009), this bilateral ranking scheme might be especially useful. In current programs, an abused migrant worker is in a poor position to file a complaint and litigate, and is also unlikely to serve as an effective whistleblower (Yadlin 2006). Non-portability raises the risk of complaining as an employer can resort to blacklisting or other retaliation against the complainer (Fussell 2011). Current attempts to rank employers for official enforcement purposes rely mostly on governmental investigation and resources.¹⁷ It is no wonder, therefore, that the U.S. Department of Labor has expressed interest in using 'Contratados's reviews to target inspections and enforcement efforts (Melendez 2014).

¹⁵ Created by the Center for Migrant Rights, a non-profit advocacy group based in Mexico City, with the express purpose of trying to aid migrant workers. The site currently focuses on Mexican workers travelling to the United States; but has plans to expand (Melendez 2014).

¹⁶ Vietnam has developed a system to rank recruitment agencies. This ranking is done by the International Labour Organization by comparing agency actions to the Viet Nam Association of Manpower Supply's (VAMAS's) Code of Conduct as well as to worker commentary. The declared goal is to increase recruiters' accountability and compliance with Vietnamese laws and international standards and to keep migrant workers safe as they travel abroad to find work (ILO Press Release, 2015).

¹⁷ For example, the UK's visa sponsorship program dictates grading measurements. Only a company with an "A" rating is able to continuously issue sponsorship visas. An A rating is achieved through a fee and compliance with sponsor duties. Dropping more than twice from the A rating in a year may result in license cancelation. See UK Visa Sponsorship for Employers in GOV.UK website. <https://www.gov.uk/uk-visa-sponsorship-employers/your-licence-rating>.

The global reputation model advanced here addresses these institutional needs. The same platform established for information gathering about workers could be used in order to learn about and constrain employers. Exiting workers could be asked or required to reply to a questionnaire that covers their experiences with each employer encountered during the expiring visa term, thus securing their candid response and bypass the risk of retaliation.¹⁸

Over time, low-scoring employers will be less appealing to new workers, and governments, who currently refrain from investing in monitoring employers' behavior, might devote more of their investigation and labor law or occupational safety enforcement resources to these employers. Serious violators could be barred from contributing to or receiving information from the coordinating agency, much as repeat offenders among workers could be barred from working in other host countries. The global approach promises a reduction in screening and enforcement costs, but it also offers gains to compliant workers and employers – and implicit penalties, or deterrents, for law-breaking employers as well as workers.

Yet, despite the significant advantages, there are some additional caveats that need to be addressed. First, it is doubtful whether the counter-ranking mechanism would provide a strong enough balance vis-à-vis the more powerful ranking employers. One way to address these concerns is by reducing the weight of employers' feeds at the beginning of the road for each worker and calculating data coming from objective characteristics and from host states' reports as more valuable. The weight of employers' feedback would gradually increase as the worker advances in the global system and her reputation score becomes more robust. Second, powerful interest groups of employers in some countries might fiercely resist the idea of their being counter-ranked and prevent it from being an applicable policy feature. Finally, both employers and workers might score higher than their true estimations for fear of being negatively marked. Nevertheless, this concern could be addressed by keeping both ranking systems anonymous, similar to the Uber strategy. The identity of the rankers should probably be available to the coordinator body that can monitor suspicious ranking performances.

The switching costs generated by the global reputation model is another relevant concern for migrants' welfare that needs to be addressed. Switching between different countries, cultures, languages and legal systems is hard. When rotating between different

¹⁸ The problem of retaliation was substantial in asymmetric scoring systems such as eBay. When buyers left a negative rating some sellers chose to retaliate by posting negative feedbacks as well and then changing the feedbacks by using eBay's revoking policy (Shun, Guodong and Viswanathan 2014). Facing these problems different scholars suggested different ways to address the retaliation problem. One suggestion was that eBay would simultaneously reveal both sellers and buyers' scores. The global reputation model is tailored according to these lines; both workers and employers provide their feedback only after departure and without being aware for their partner's score before giving their own. Eventually eBay adopted a different strategy and prevented sellers from providing negative or neutral feedbacks to buyers altogether (*id.*, p. 1042-1043).

hosts the advantage of repeat game is diminished as the information and experience the migrant gained in the former hosts can help her only partially in the next host and the accumulation of ‘migration specific capital’ is quite limited (Constant and Zimmermann, 2011). Switching costs are even higher when dependents are involved. The global circular model that requires constant switching between host countries makes it harder for families to join the workers or for the migrant workers to spend time with their left-behind families. As we already observed, this issue is already highly problematic in current temporary as well as circular models and generates significant social costs for migrants and their families (Wickramasekara 2015, p. 171). The design of a new global reputation model provides an opportunity to take those switching costs and relational constraints seriously and invest creative efforts reduce them.

3.4. Alternative Repeat Play Models

Under the prevailing approaches and guest worker programs, it is easy to already identify the potential uses of reputation. Reputation can work within the home country or sending community, and within circular migration in bilateral patterns – whether these are seasonal (one year or less), temporary (generally one to five years) and long term.

3.4.1. Bilateral agreements with temporary programs

A bilateral agreement – arranged between a host and source country – can be useful even where the host admits only non-repeat, single-opportunity guest workers. As previously observed by Brown (2008) even where guest workers are non-repeaters, their home country and identifiable community have reason to act as repeat players (*Id*, p. 2,480-81). The sending group, as opposed to any individual worker, has an interest in the collective reputation of present and future workers. Through social sanctions or other means, it can encourage compliance by its members who are one-time guests in the host state. This works better when there are strong ties between the expatriate and home communities. In addition, the home country (or smaller community) is likely perform efficient ex ante screening in order to send the ‘right’ candidates to the host country.¹⁹

The bilateral pattern theoretically allows states to displace private recruiters and migrant brokers, and to perform the screening and enforcement functions at the state level. It is therefore strongly supported by international organizations that are distrustful of non-state actors, in part because it is hard to hold these parties accountable.²⁰ However, it is easy to overestimate the informational advantage of foreign government officials or even community leaders. Put differently, the basic information asymmetry

¹⁹ Brown (2008, p. 2515-2518) advocates for the active involvement of community leaders, whom she identifies as ‘intermediaries in trust,’ as able to assess and reveal details about such things as familial obligations and criminal records and influence their community members.

²⁰ The International Organization for Migration (IOM) and the International Labour Organization (ILO) often take an active role as intermediary between a host and source country in order to bring about a signed agreement and to monitor implementation (Constant, Nottmeyer and Zimmermann 2013, p. 68).

remains also in the managed bilateral model, and workers are yet the best assessors of their own inclination to comply with visas and other rules. If so, we return to the idea that privately assessed fees may still have an important role in screening scheme that works through self-selection. In addition, once the host country contains a large number of migrants from a given source country, the migrants are likely to welcome newcomers and not necessarily to condemn those who illegally overstay visas.²¹ In these settings, the power of communities in the home country to exert influence over these people, in order to improve the reputation of aspiring guest workers, is likely limited.

3.4.2. Circular Migration

Reputation may also play an important role when there is circular migration, or back and forth movements of the same migrant workers between a source and host country. In recent years there has been increasing interest in this approach as a means of realizing a ‘triple win’.²²

A seasonal program is popular within many host countries; in some cases it operates within a temporary approach (with severe limits on the overall stay of the migrant worker), and in others the seasonal segments occur within a long-term (if unstated) relationship between worker and host country.²³ Such a program allows migrants to circulate and maintain ties with their home-countries and spend more time with their families, while securing legal if episodic work in the host country. From an institutional perspective, the close ties migrants maintain with their sending communities likely promote good behavior, but the primary benefit for the host state derives from the repetitive structure. A guest worker who runs afoul of any laws loses the right to return for the remaining terms permitted by the visa. A secondary benefit is the use of ex post information for screening. However, while seasonal programs with re-entry may control a worker’s behavior during stay, it does nothing to incentivize the final departure. In this regard it is no better than a straightforward temporary program, lasting for three or five years with no exit and re-entry points.

²¹ The experience in the Bracero Programs indicated that the presence of substantial Spanish-speaking communities in the US facilitated the overstaying of bracero (Basok 2000, p. 228).

²²For host countries circular migration brings a constant flow of labor without the involved costs of permanent settlement. For sending countries it mitigates the problem of ‘brain drain’ and promotes development through a steady flow of remittances and return of skills. And for the migrants it creates long term opportunities of earning higher wages outside their home countries possibly also skills acquisition with the ability to freely and legally go back and forth. Such a circular model is also good for employers, who enjoy lower hiring, adjustment and training costs when the same group of people returns to work (Wickramasekara 2011, p. 21-38; Wickramasekara 2015, p. 150; Constant, Nottmeyer and Zimmermann 2013, p. 58-60).

²³ For example, the American H-2 programs for low-skilled workers are generally limited to one year (or less) for each segment of (seasonal) work, and also limited to a maximum of three years overall. It is thus a temporary program with seasonal circularity but with options to reapply for additional temporary periods. §101(a)(15)(H)(ii)(a) for H-2A and 8 C.F.R. §214.2(h)(6)(ii)(B) for H-2B. The Canadian model of seasonal agriculture migration is based on a long-term seasonal segments framework. See Wickramasekara 2015, p. 158-159.

Long-term circular programs are also multi-stage creatures. This design serves both screening and enforcement purposes and host countries can customize the length of extension and the number of permitted re-admissions according to their needs. It encourages exit, because there is an anticipated benefit of successful re-entry and the prospect of re-entry also encourages good behavior during the previous stay. Meanwhile the host country and the employers obtain valuable information on migrants' behavior and skills before readmitting them.

Nevertheless, there are drawbacks to this approach as well. First, it significantly compromises transience. Countries that are most concerned about demographic balance and socio-economic burdens usually favor the purer, temporary approach (Tseng and Wang 2013). Second, it relegates workers to a second-class status in the host society, even though they may work and live there for long terms (Wickramasekara 2015, p. 158-159).²⁴ Finally, there is a problem of implementation of the reputation mechanism in current circular programs. Repeat visits tend to lead to a larger role for private recruiters and the accompanied fees for each new entry, instead of building up on the experience and reputation of the workers. Note that Fees undermine the deterrent power of the repeat game element. If each re-admission involves fees, a migrant will have reason to overstay the visa period in order to avoid those fees. In many of these programs non-portability is also in the picture, so that re-entering workers remain bound to their employers and obedient (Wickramasekara 2011, p. 34-36, Wickramasekara 2015, p. 158). As long as a migrant is tied to a recruiter's fees and to a single employer and circularity takes place in the same host country, the opportunity for abuse is high. Circular approaches do little in the way of screening and enforcement unless they harness the power of reputation. A reciprocal ranking system, similar to the one suggested in this paper could assist in that task but it could work more efficiently if workers and employers would remain one-shot players in this circular arena to avoid coordination, pressure or blacklisting. That could be achieved if each time workers come back to the host country they switch between employers. Such a one-shot dynamic, nevertheless, would offset some of the benefits of the bilateral circular model.

A global approach has more to offer the eco-system of guest worker programs. The greater the reputation interest and the information-sharing among host countries the less the need for screening and the lower the enforcement costs. The global model may require coordination by an international body, such as the IOM, which already plays a significant intermediation role in bilateral agreements for guest worker programs. Alternatively, the coordination mechanism could be developed in the private sector, where a firm might expect to profit from fees paid by participating workers and host

²⁴ Constant and Zimmermann (2011, p. 513) recommend that long-term circular programs improve their treatment of returning migrant workers and adjust to international standards including "giving minimum work contract standards, providing the means to preserve pension rights, facilitating the free circulation of remittances, and enabling the reunion of family members." Notice that under such terms the circular model becomes much closer to permanent migration rather than temporary one.

countries. A natural candidate would be a firm already serving the guest worker market by facilitating transactions of remittances from the workers to their families in home countries through ‘electronic wallets’.²⁵ With the necessary adjustments, each customer’s ‘electronic wallet’ could expand to include ranking and counter-ranking information. Similarly, the ‘electronic wallet’ could be linked to a bond-reward fund, of the kind discussed in Section 3.2.

4. CONCLUSION

The fundamental problem of migrant worker law is that host countries cannot easily identify reliable guests. The hosts must increase enforcement and deportation, or rely on recruiters for screening. This Article has suggested a mechanism for aggregating the experience-based information of host countries. It allows host countries to offer guest workers the prospect of continued residency and employment without sacrificing each host country’s interest in the transience of its guests. Workers who comply with their visa terms and later exit when their temporary visas expire may enter other participating countries. The multilateral, though non-repetitive, circulation, offers a reward for migrants who develop a positive reputation. Thus it simultaneously provides valuable information while producing incentives for compliance. It contemplates visa extensions or renewals that can be used in participating host countries where the migrant has not yet worked, and thus not exhausted the term permitted by the temporariness constraint. These long-term prospects enhance worker welfare even as they lower host countries’ screening and enforcement costs.

The global reputation model, therefore, produces several appropriate winners. Host countries can economize on screening and enforcement costs, which may also lead them to expand the scope of the temporary programs while reducing the use of punitive and restraining strategies to achieve their goals. More reliable migrant workers can use their reputations to secure higher wages and long-term circular global careers and enjoy more decent and liberal programs. And high-scored fair-minded employers can expect to be benefited by taking part in the program and enjoy higher quality migrant workers. The smaller set of losers might include migrant workers who are unreliable or who have been forced by personal circumstances to overstay visas. Some source countries are worse off if a resulting brain drain and reduction in returning skills are more costly than incoming remittances. Recruiters are probably the main losing parties, suffering from the reduction in the overall fees inasmuch reputation would substitute fees in repeat admission. Exploitative employers are another subset of losers. Such a win-lose balance, promoted by the global reputation model, well supports the goal of maximizing global welfare.

²⁵ In Israel, a new startup company called Neema has been established in 2015 to serve the local guest worker market by facilitating money transactions between guest workers and their families overseas for much lower rates than the rates being charged by formal banks. This business strategy provides the guest worker, who in most cases does not have any bank account, with an ‘electronic wallet’ and services such as electronic transactions overseas, debit cards and low-cost cellular plans (Gilad 2016, Ziv 2016).

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