

A State of Dependency: The Political Economy of Labor Migration in Malaysia

A dissertation

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Abbreviations

BA	Barisan Alternatif
BN	Barisan Nasional
BNP2TKI	National Agency for Placement and Protection of Indonesian Migrant Workers
CEFW	Committee on the Employment of Foreign Workers
CPRMW	Comprehensive Policy on the Recruitment of Migrant Workers
DOI	Department of Immigration
FLD	Foreign labor dependent
GCC	Gulf Cooperation Council
MCA	Malaysian Chinese Association
MIC	Malaysian Indian Congress
MTUC	Malaysian Trades Union Congress
NDP	National Development Plan
NEP	New Economic Policy
NUPW	National Union of Plantation Workers
PATI	<i>pendatang asign tanpa izin</i> or illegal immigrant
RELA	People's Volunteer Corp
TEP	Temporary Employment Pass
UMNO	United Malays National Organisation

Chapter One

The Politics, Culture, and Political Economy of Foreign Labor Dependency

“We have a love-hate relationship with foreign workers. Malaysians complain endlessly about the increasing presence of foreigners and by that, we mean unskilled foreign workers. But we are also the first to raise the white flag shortly after a freeze is imposed on these workers.”

The Star

9 October 2016

Introduction

On 17 February 2016, Malaysian Human Resources Minister Datuk Seri Richard Riot signed a memorandum of understanding with Bangladesh agreeing to admit 1.5 million workers over the next three years adding to the existing 600,000 Bangladeshis already in the country (Koi Kye Lee 2016). In the days leading up to the signing, Deputy Prime Minister and Home Minister Datuk Seri Dr Ahmad Zahid Hamidi praised and defended the deal saying that the government was simply meeting “the demands of the industry and business groups” (Kaos Jr 2016). Almost immediately, various sections of the Malaysian public began to decry the government’s actions arguing that the country already had “too many” migrant workers. On 18 February 2016, the morning after the deal was signed, the Human Resources Minister held a news conference and attempted to calm the public by clarifying that Malaysia will only recruit Bangladeshi workers if the need arises. Hours later, the Deputy Prime Minister announced that Malaysia was suspending the recruitment of *all* foreign workers – not just those from Bangladesh – and instead encouraged employers to hire local workers.

This almost comical fluctuation in policy stance is emblematic of a longstanding pattern of lax labor migration policies punctuated by moments of heightened state intervention in an attempt to regain control of the border. Observers of Malaysia’s guestworker program have quite rightly called its policies “ad-hoc” (Loh et al. 2019) as well as “flawed and subject to frequent revisions” (Devadason and Meng 2013). This

pattern can be traced back to Malaysia's very first attempt to regulate labor inflow. In 1984, Malaysia and Indonesia signed a bilateral agreement in an attempt to control the ongoing movement of labor between the two countries. The agreement, which established conditions for authorized labor migration, was largely ignored by migrant workers and employers alike. By the end of the decade, faced with a rising number of undocumented migrants and growing discontent from the Malaysian public, the state introduced an amnesty program followed by a heavy crackdown of undocumented labor. The following decades did not veer far from this original pattern. In the 1990s, more sectors began to pressure the state for access to foreign workers. To satisfy the demands of business elites while quelling popular concerns over the swelling number of undocumented migrants, the government temporarily banned the recruitment of foreign workers to allow itself time to increase its border control capacity. Despite its efforts to build new detention centers, hire more immigration officials, and permitting (then quickly forbidding) the usage of employment agencies, it was unable to clamp down on undocumented migration and again implemented an amnesty program. At the turn of the century, the state returned to bilateralism as a way to resolve its dependency on Indonesian labor. In addition to signing new bilateral agreements with countries with little to no migration history to Malaysia, the state sought to streamline the process of hiring foreign workers by legalizing outsourcing companies. Contrary to the stated intentions of these policies, the number of both documented and undocumented workers rose through the 2000s. At the end of the first decade of the new millennium – just as it did in the late 1980s – the government issued yet another amnesty program followed by a crackdown.

The purpose of this study is to explain these wild policy swings. It asks: What explains the volatile nature of Malaysia's labor migration policy? Why have these violent swings between permissive and restrictive posturing come to define the country's labor migration policies? I answer these questions by analyzing specific historical moments when the Malaysian state backtracks on new policies regulating labor in/outflow and the conditions that led to these policy reversals. At each of these moments, I foreground Malaysia's foreign labor dependency (FLD) as an analytical lens to examine the power dynamics between foreign labor, as well as those who employ and supply these workers, and the state. In brief, I argue that these wild policy swings are emblematic of a foreign

labor dependent state, a unique subset of labor receiving countries. Unlike other labor importing states, the policymaking process in foreign labor dependent states like Malaysia is plagued by a dilemma: both the restriction and the enabling of foreign labor can create discontent within the populace. Confronted by pressures to simultaneously open and close its borders to labor inflow, labor migration policies in foreign labor dependent countries have taken on a pattern of cycling through long periods of lenient border control and moments of heightened state intervention, typically in the form of an amnesty program or a deportation campaign.

Malaysia represents a larger set of countries across the Global South that have relied on the import of foreign labor in its developmental journey.¹ Although the pattern of labor migration policy might not evolve in such a predictable sequence as they do in Malaysia, these cases are united by a common pattern of poor policy implementation broken up by moments of intense state involvement. The Costa Rican agriculture and construction sectors, for example, rely heavily on Nicaraguan labor. Yet, it regulates the inflow of labor through vastly underutilized bilateral agreements with intermittent episodes of regularization (Voorend, Alvarado, and Oviedo 2021). Other cases resemble the Malaysian pattern much more closely. Migrant workers in Thailand, for example, are concentrated in labor intensive sectors (e.g., food production and were responsible for approximately 4.3-6.6% of the country's GDP in 2010 (ILO 2021). Going even beyond Malaysia, Thai amnesty programs are such a recurring feature of its labor migration policies that they have become a reliable way for migrant workers – particularly those from neighboring countries – to more cheaply gain documentation (Bylander 2019).

Perhaps the most famous example of foreign labor dependency in the Global South are the Gulf States.² Since the oil boom in the 1970s, the number migrant workers in the Gulf, coming from across Asia and sub-Saharan Africa, has steadily risen. Currently, the Gulf is home to 35 million foreign migrants outnumbering local citizens in every country in the region (UNPD 2019). Foreign workers provide an essential pool of labor for the Gulf states and are critical to the economic development of the region. In addition to skilled and

¹ The findings of this study are limited to Peninsular Malaysia. East Malaysia – the states of Sabah and Sarawak – has its own distinct immigration history and has a degree of autonomy in its immigration policies.

² The Gulf Cooperation Council (GCC) includes Saudi Arabia, Kuwait, Bahrain, Qatar, the UAE, and Oman.

professional workers, unskilled workers are employed in positions such as domestic work, transportation, and construction (Aarthi and Sahu 2021). While Gulf countries are certainly not a monolith, they are united by a deep history with labor migration and its usage of the *kafala* to regulate its immense foreign population (Malit Jr and Al Youha 2013). Not dissimilar to the Malaysian Temporary Employment Pass (TEP), through the *kafala* system the state grants private individuals and companies sponsorship permits to employ foreign workers; the sponsor – the *kafeel* – is responsible for the migrant workers travel expenses, housing, and ensuring that they exit in a timely manner (Robinson 2021). Like the TEP, the *kafala* is embedded in a larger set of anti-integration policies (e.g., the prevention of family reunification) aimed at preventing migrant workers from making the Gulf their permanent home (Okruhlik 2010; Thiollet 2016). Despite these efforts, and even with the added advantage of not sharing a border with source countries, Gulf states must routinely reset its guestworker programs by offering an amnesty period followed by heavy deportations (Shah 2006).

In comparison to this broader subset of cases, Malaysia represents a typical example of a foreign labor dependent state within the Global South. An inductive study of this typical example, I argue, can offer us insights into previously overlooked dynamics of policy evolution in other foreign labor dependent states (Rueschemeyer 2003; George and Bennett 2005; Gerring 2007). Foreign workers make up 20-30 percent of the total Malaysian labor force and dominate key sectors including manufacturing, construction, agriculture, services, and domestic work; together, these sectors make up more than 35 percent of the Malaysian GDP in 2014 (Harkins 2016). Like other cases in the Global South, the infusion of foreign labor to these sectors enabled Malaysia to play “catch up” in the global market hinting at the potential for labor migration policies to be influenced by broader politics of developmentalism. Moreover, the historical depth of foreign labor usage in these sectors have created a labor market where foreign workers are no longer a supplemental but an integrated part of the labor force. While this has allowed the Malaysian state to maintain its status as a source of “cheap labor” to foreign investors, the large presence of foreign workers carries political costs as voters cry out that the country has “too many” foreign workers who are damaging the social fabric of the nation. Although the tension between the economic gains and political costs of foreign labor inflow is present

in all destination countries, the integral role of foreign labor in Malaysia creates a political economy of mobility allowing actors – like foreign workers and employment agencies supplying these workers – who do not feature prominently in the broader political science literature to unsettle attempts to control labor inflow.

Although labor migration management is based on a complex assemblage of policies and practices that extend beyond issues of the border control (e.g., public health, national security, housing, etc.), this study is focused on migration control policies, or “the rules and procedures governing the selection and admission of foreign citizens” (Meyers 2000, 1246). These policies regulate the in/out flow of labor by specifying who may enter (e.g., nationality, gender, skill-level), how they enter (e.g., documentation needed), and conditions of their stay (e.g., how long, in which sector, conditions of expulsion). This narrow focus on migration control policies gives me the analytical leverage to build a theory of labor migration policy evolution that considers the political, cultural, and economic facets of labor migration. In doing so, I endeavor to add depth to the ongoing debate on the politics of labor migration policy evolution which has largely been focused on the state and its relationship with interest groups (Kelley and Trebilcock 1998; Joppke 1998; 1999; Money 1999), capital (Castells 1975; Freeman 2011), and the pressures of globalization (Meyers 2002; Lavenex 2006). I do this by including insights from migration studies scholarship which argue that we cannot view labor migration as a purely economic phenomenon but one imbued with sociological and cultural significance (Massey and España 1987; Boyd 1989; Portes 1995; Castles 2002). Looking to the socio-cultural impact of migration enable me to consider alternative pathways for less discussed actors in the political science literature, such as migrant workers, to affect policy evolution.

This chapter proceeds as follows: I begin by reviewing the current debates on how and why labor migration policies evolve in destination countries. Next, I lay out my argument for why foreign labor dependency as an analytical lens helps us to better understand how the politics of developmentalism and the integral role of foreign workers in the Malaysian labor market restrict the state’s ability to heed popular cries and restrict labor inflow. I then briefly discuss the methodological logic of this study and conclude by outlining the proceeding chapters.

Contending Arguments: Why do labor migration policies evolve?

Dominant theories of labor migration policy evolution in political science are often centered on the state and the way it copes with pressures to open or close its borders to labor inflows. One strand of this literature treats the state as a neutral arena where various domestic interest groups struggle to advance their position regarding border control (Birrell 1984; Martín-Pérez and Moreno-Fuentes 2012; Triandafyllidou 2014; Cerna 2016; Gsir, Lafleur, and Stanek 2016). This struggle is primarily between two camps. On the one side are firms seeking to employ foreign workers who will push for policies that will enlarge the labor market and create a reserve army of disenfranchised (and therefore more docile) workers (Freeman 1995; Money 1999; Menz 2009; Facchini, Mayda, and Mishra 2011; Peters 2015; 2017). On the other are citizens – particularly racially or ethnically dominant voters – who prefer strong border control policies that defend against migrant workers who might degrade the economic and cultural foundations of the nation (De Genova 2004; Joppke 2007; Chavez 2013). The conflict between these two groups is heightened during moments of national duress, such as economic or security crises, leading to anti-immigrant voting behavior (Lahav 2004; Hainmueller and Hiscox 2010; Careja and Emmenegger 2012; Kolbe and Crepaz 2016) and efforts by interest groups who use institutional means (e.g., lobbying) to influence policy (Karapin 1999; Koopmans 2005; Dancygier 2010). Based on this interest-group model, the primary cause of labor migration policy evolution is the balance of power between voters and firms. In other words, swings in labor migration policies occur when there is a shift in power between these two groups of actors.

Statists, in contrast, argue that the state is not a neutral arena for the struggle over labor migration policies but an autonomous entity with its own interests and institutional cultures in how it manages labor inflow (Guiraudon 2000; Hawthorne 2005; Kicingler 2009; de Haas, Natter, and Vezzoli 2018; Paul 2016; Thielemann and Hobolth 2016; Mourão Permoser 2017; Chebel d'Appollonia 2019; J. J. G. Lee 2019; Oishi 2021). Statist arguments begin from the premise that the inflow of labor carries political costs for the host country because it transforms the *demos* of the country (Hollifield 2004) which, in turn, has the potential to threaten the social contract between state and its citizens by placing pressures on the welfare state (e.g. Geddes 2003) or creating tension between new immigrants and the dominant racial/ethnic groups (Bloom, Arikan, and Courtemanche

2015; Adamson, Triadafilopoulos, and Zolberg 2011). At the same time, to be perceived as a legitimate state in a liberal global order, destination countries cannot use illiberal practices (e.g., violating human rights) to restrict labor inflow (Joppke 1998). This theory argues that the pattern of Malaysia's labor migration policies is a reflection of the state's (in)ability to strike a balance between the economic pressures of participating in a globalized economy and the pressures to protect its own security. In other words, Malaysia's labor migration policies swing wildly due to an incompetent state unable to find a way to balance between global economic pressures to open its borders against internal pressures to restrict labor inflow.

An alternative iteration of the statist literature considers how this legitimacy is maintained through strategically under-implementing border control policies (de Haas, Natter, and Vezzoli 2018; Schenk 2018). This line of thinking borrows from studies on illegality (De Genova 2002; Andersson 2014) to argue that by consistently pursuing aggressive but unattainable border control policies, the state is able to reap the economic benefits of having an undocumented, and therefore docile, labor force while still maintaining its legitimacy to the various interest groups who want to restrict labor inflow. The Malaysian state, therefore, will turn to a restrictive immigration stance when it needs to maintain its appearance as a strong state capable of defending its borders – like during times of economic duress – without the intention of upholding such restrictive policies in the long term.

In contrast, the Marxians locate the determinant factor of labor migration policy evolution in the nature of the global political economy and how the state operates within this system. Specifically, this literature contends that the overall structure of the singular capitalist world economy shapes the interests of capital and subsequently the state (Castles 1973; Portes 1978; Sassen-Koob 1983). These explanations begin from the observation that foreign labor has distinct qualities (vis a vis local labor) that makes this population the ultimate solution for maintaining a level of productivity necessary to compete on the global market (Gorz 1970; Nikolinakos 1975; Burawoy 1976; Sassen-Koob 1981).³ Specifically, the deportability of foreign labor ensures that it remains a pacified labor force enabling to

³ In most circumstances, this is because the host country is able to partially externalize the costs of maintaining a foreign labor population (e.g. social benefits) to sending country thus reducing the costs of labor (Burawoy 1976; Castles 2003; Geddes 2003).

the state to quickly enlarge or reduce its labor force depending on market conditions (Hardt and Negri 2001; De Genova 2002; Mezzadra and Neilson 2013). As such, the evolution of labor migration policies follows a business cycle where the state will open its borders when facing labor shortages and pursue deportation during times of economic downturn.

These explanations are correct to highlight the distinctiveness of foreign labor and the unique role it plays in the global labor market. Foreign workers, even those whose entrance and stay are sanctioned by the state, are defined by their deportability (De Genova 2002; Mezzadra and Neilson 2013). It is this deportability that makes foreign labor the ultimate solution for states needing to cope with the erratic nature of the global market. During times of growth states can pad their labor supply by allowing in more foreign workers who will help keep wages low (Sassen-Koob 1981) or upgrade the skills of local workers (Bauder 2006). And during moments of political or economic crises the state is able to deport these workers to relieve pressures on the national economy (Peters 2017), ameliorate local-migrant tensions (Dancygier 2010), and demonstrate strength (C. B. N. Chin 2000).

These explanations, however, do not fully capture the patterns present in Malaysia. Although it is true that Malaysia enacted restrictive and coercive border closure policies during moments of crises, the country's overall patterns of openings and closures do not always map onto its cycles of stability and crisis.⁴ In the prosperous years leading up to the Asian Financial Crisis, for example, Malaysia imposed numerous hiring freezes aimed at different labor-importing sectors (C. B. N. Chin 2000). Similarly, the state began relaxing freezes for specific sectors even before the country fully recovered from the crisis (Ford 2006). In other words, although Malaysian labor migration policies do open and close in rhythm with the global market, the spectacle of these moments belie the constant swinging pendulum of the Malaysian border control regime. In brief, the difference between moments of crisis and stability is a matter of degree and not type; Malaysia's labor migration policies are defined by their consistent inconsistencies.

⁴ For example, during the 1997 Asian Financial Crisis Malaysia froze the inflow of foreign labor in nearly all sectors and launched a massive deportation program to "solve" the country's "illegal immigrant" problem. When its economy began to recover in the early 2000s, Malaysia signed new bilateral agreements with sending countries.

Limitations of Dominant Explanations: The Malaysian Case

Dominant explanations in political science struggle to make sense of these constant policy swings for two reasons: *First, these explanations are primarily derived from studies of immigration to advanced economies and liberal democracies, which experience a distinct set of political and economic pressures compared to developing and/or illiberal democracies.* The empirical origins of these explanations have led them to sideline the role of developmentalism and its influence on the politics of migration management. Guestworker programs in advanced liberal democracies were a product of postwar rebuilding efforts and had begun to decline in popularity in the 1970s as an increasing number of these workers became permanent residents leading to a “social crisis” (Castles 1986). In the same era, labor migration to developing countries was just beginning. For these countries, the development of a guestworker program was entwined with playing “catch up” in the global stage with economies that had not been built to be an equal participant with rich countries. The differences in how and why states develop their guestworker program matter for understanding the emergence of these wild policy swings because they highlight the way these programs function as part of a larger economic project for labor importing states. For developing economies like Malaysia, the infusion of labor is a matter of surviving on the global market, and this influenced its political-economic calculus when creating and implementing border control policies. In addition to economic growth, the politics developmentalism also shapes how Malaysians imagine themselves and their nation on the global stage. Becoming a destination country, for example, fits within a broader narrative of Malaysia of a leader Asian developmentalism. Such narratives enable the state to legitimize the need for a guestworker program.

In addition, the empirical origins of these theories do not allow them to properly analyze how the politics of policymaking unfold in an autocratic setting. Regime type matters for the process of policy evolution because it determines who can influence the state and how they do so. During its push for rapid industrialization, the Malaysian state limited civil society organizations including labor unions and racial groups who would advocate for the restriction of labor inflow (M. L. Weiss 2006).⁵ Since the inception of

⁵ Labor unions have been historically weak in Malaya/Malaysia. Since the Emergency, an anti-communist campaign that began at the tail-end of WWII, many have argued that labor had been severely weakened in Malaysia. The only

Malaysia's guestworker program, unionists have cast doubt on the business community's cries of labor shortages and expressed concerns that the import of foreign workers would depress local wages (e.g., *The Star* 1984). Throughout the 1980s and 1990s, the Malaysian Trades Union Congress (MTUC) made multiple attempts to push back against Malaysia's ever expanding guestworker program, arguing that better wages and working conditions would make these jobs attractive again to local workers. These efforts made minimal impact on the policymaking decision during the era as the state continued to permit more workers – both in terms of numbers and national diversity – to enter the country and to work in a growing variety of sectors (e.g., Lee Boon Siew 1986; Ahirudin Attan 1989; Ahirudin Attan 1991; *Business Times* 1991b). Similar restrictions were placed on pro-migrant rights groups who pushed for the adoption of labor migration policies that were more aligned with political liberalism (Piper 2006). An oft-cited example of the Malaysian state's harsh treatment of migrant rights activists is the case of Irene Fernandez who in the mid-1990s gained international attention when she was tried and convicted of "maliciously publishing false news" for her organization's publications detailing abuses of migrant workers in Malaysian detention centers (Amnesty International 2003).

Second, missing from these dominant explanations are migrant workers themselves. The absence of migrant workers in dominant political science literature is based on the unstated assumption that, due to their citizenship status, temporary migrant workers do not have access to the capital and institutional means to affect policy. Based on this assumption, explanations for policy evolution either omit migrant workers entirely or study their ability to build coalition with those who do have the institutional capacity to affect state policy. For example, there have been studies examining how migrant workers build coalitions with co-patriots who have citizenship status or with local civil society organizations to utilize collective action strategies (e.g., protests, outreach campaigns, strikes, etc.) to challenge restrictive border control policies and push for more protective measures (Iskander 2007; Chimienti 2011; Milkman 2013; Eggert and Pilati 2014). Again, this focus on overt collective action reveals what is left out due to the empirical origins these theories. Such overt acts of collective action are not possible in all circumstances

major labor organization to survive the campaign, the MTUC, was made further toothless under Prime Minister Mahathir's drive to suppress labor in favor of industrialization efforts during the NEP (Andaya 2017).

such as in autocratic settings with limited civil society and in destination countries that offer no pathway to citizenship or other permanent status, including Malaysia.⁶ Consequently, foreign workers wishing to protect themselves or to change their circumstances must pursue avenues that cannot rely on the presence and power of enfranchised co-patriots or civil society organizations (Piper 2006). Studies of political agency, however, have shown that even in the most constrained situations people find ways to advocate for themselves (Scott 2008). As such, this assumption is problematic for understanding the erratic changes in Malaysian labor migration policies because it closes the possibility of studying other potential factors – such as through everyday acts of resistance – that could influence policy outcomes in a country heavily reliant on their labor.

Argument: Foreign Labor Dependency as Context

This study argues that the wild swings in Malaysia's labor migration policies are due to the unique political and economic context created by its dependency on foreign labor. A country is considered to be foreign labor dependent if foreign workers make up a critical proportion of its labor force. In this study, I treat foreign labor dependency as a continuous rather than a binary concept; economies in which foreign labor make up more than 10 percent of the labor force should be viewed as somewhat reliant on foreign labor and those with more than 20 percent should be viewed as highly reliant on foreign labor. Rather than treating the development of foreign labor dependency as a byproduct of a state's inability to control labor migration in/outflow (Piore 1979), I employ it as an analytical lens to consider the power relation between the Malaysian state and the generations of foreign workers who uphold its economy. Based on this analytical lens, this dissertation demonstrates that the critical importance of foreign labor to Malaysia's postcolonial economic development produces a policy cycle with long periods of lenient border control and moments of acute state intervention has emerged as the state is simultaneously pressured to open and close its borders to labor inflow.

⁶ Although the Malaysian constitution provides a pathway to naturalization, it has become increasingly difficult for migrant workers – even Indonesians who already speak Malay – to access this route (Author's fieldnotes, May 2017).

Malaysian Political Economy and Foreign Labor Dependency

Studying the development of Malaysia's guestworker program requires that we first understand the legacies of British colonialism. The British Malayan economy was centered on the exports of two primary goods, tin and rubber. To ensure these industries had the necessary labor supply to meet growing global demands, the British encouraged and facilitated migration from India, Ceylon, and China (Andaya 2017). To create a docile and productive population, British population management and economic policies discouraged the development of interethnic relations by pushing ethnic Chinese and Indian laborers towards export industries while relegating ethnic Malays to the role of subsistence producers helping to feed the colony's growing population (Ong 2010). Although Chinese Malaysians were permitted and even incentivized to pursue entrepreneurial ventures, they (and Indian Malaysians) were excluded from government positions; instead, Malay aristocrats made up the lower rungs of the civil service in the colony (Kuhonta 2020). Over time, these policies created a divided country where ethnic Malays controlled the country's political institutions while Malaysian Chinese excelled in the economic sphere.

At the time of independence in 1957, Malaya inherited an economy still dependent on primary exports and a society marred by economic disparity that fell along ethnic lines (Andaya 2017).⁷ In the following decade, rising unemployment, extreme poverty among Malay farmers, and a weak Malay business class – vis a vis Chinese Malayan business community – were the most pressing socio-economic concerns for the United Malays National Organisation-dominated government (Kuhonta 2020). These interethnic tensions rose during the second half of the 1960s. The boiling point came in 1969 when protests following the national elections quickly deteriorated into interethnic violence that resulted in the death of hundreds (mostly ethnic Chinese) in Kuala Lumpur (Soong 2008). The violence pushed United Malays National Organisation (UMNO) to realize that more structural socio-economic reforms – particularly for ethnic Malays – were needed to quell interethnic distrust and build a sense of national unity (Kuhonta 2020).

In response, UMNO sought to use the New Economic Policy (NEP) as a tool for “equitable growth” founded on rapid industrialization and the socio-economic elevation of

⁷ The country was first called Malaya when it gained independence in 1957. It later changed its name to Malaysia in 1963 when what is now East Malaysia – the states of Sabah and Sarawak – joined the federation.

ethnic Malays. The policy addressed Malay poverty and interethnic disparities by utilizing affirmative action programs to increase education attainment among ethnic Malays and using ties to the party to develop a new generation of Malay entrepreneurs and businesses. In addition, the NEP envisioned the transformation of Malaysia into a manufacturing powerhouse fueled by Malay labor and the revamping of Malaysian infrastructure. Over the course of the next decade, the legitimacy of UMNO's became increasingly entwined with its ability to steer Malaysia towards reaching the goals of the NEP (Gomez and Jomo 1999; Case 2010).

It was these structural changes to the Malaysian economy and society that created the conditions for foreign labor inflow. As ethnic Malays began to abandon the palm oil estates along the east coast for manufacturing jobs in the Klang Valley, complaints of labor shortages began to rise from the estates and on construction sites. Similarly, as labor force participation among middle-class women increased, so did the need for domestic labor. These labor demands were met by workers from neighboring Indonesia particularly from the islands of Sumatra and Java where there was a pre-established labor migration corridor dating back to colonial times.⁸ As the number of workers began to increase, however, various sectors of society began to complain about the impact undocumented Indonesian workers were having on the country's economy and interethnic relations. In order to continue reaping the benefits of the surplus of cheap labor while also placating these concerns, the government legalized labor migration establishing its modern guestworker program in the mid-1980s as a way for the state to control the inflow of labor (C. B. Chin 1998; Kanapathy 2001; Kaur 2014).

Over the next decades, foreign labor became an integral part of Malaysia's industrialization journey. During the NEP, foreign workers were primarily in agriculture, construction, and domestic services sectors. The presence of foreign workers on the rubber and palm oil plantations provided the necessary labor to replace ethnic Malays who departed for better paying manufacturing jobs (Kaur 2014). Similarly, foreign domestic workers enabled more middle class women to rejoin the labor force (C. B. Chin 1997;

⁸ The flow of labor between what is now the Malaysian Peninsula and the Indonesian archipelago emerged with the *hajj* routes as many Javanese and Sumatran stopped on the peninsula to work before continuing on their pilgrimage (Amrith 2011). In the early 20th century, British and Dutch colonists established a labor program whereby Sumatrans and Javanese were recruited to British Malaya and integrated into society as "immigrant Malays" (Ernst Spaan 1994; Ong 2010).

1998). The integral nature of foreign labor the Malaysian economy grew in the 1990s as the country embarked on a journey to achieve middle income status by 2020 by transforming Malaysia in the Silicon Valley of Asia (C. B. N. Chin 2000). At around the same time, rising competition from neighboring countries promising international firms “cheap labor” pressed the state to act in order to maintain its competitive edge (Gomez and Jomo 1999). In response to these pressures, the government allowed foreign workers into manufacturing and service sectors. Not only did this promise the sectors a more supplicant labor force but enabled the state to focus its attention on developing the needed informational technology skills to achieve these new goals (C. B. N. Chin 2000; Rasiah 2010).

Malaysia’s reliance on foreign labor created a bifurcated labor market based on citizenship status. Labor migration scholars have long noted that foreign workers tend to be concentrated in so-called 3D sectors – sectors that are perceived as dirty, dangerous, and demeaning – that make up the secondary labor market (e.g. Piore 1979; B. Anderson 2000; Yeoh 2006; Friberg and Midtbøen 2018; 2019).⁹ The concentration of foreign workers in these low-prestige sectors is due to the vulnerability associated with their lack of citizenship (e.g. limited freedom of association, deportability, disenfranchisement, etc.) making them a more attractive workforce to employers who are interested in keeping labor costs low in these arduous sectors (Burawoy 1976; Sassen-Koob 1981). As an FLD country, Malaysia’s foreign workers are not only concentrated in but are the dominant labor force in these sectors. Despite the lack of prestige in these sectors, they form the foundation of the Malaysian economy.

During this same time, Malaysia became increasing autocratic. Although Malaysia has never been a liberal democracy, its authoritarian features became even more prominent under the leadership of Prime Minister Mahathir Mohammad. Soon after arriving in office in 1981, Prime Minister Mahathir began consolidating power in the executive at the same time diminishing the power of the judiciary. This consolidation helped to further entrench

⁹ The secondary labor market characterized by low wages, labor market instability, high turnovers, and few opportunities for advancement (Reich, Gordon, and Edwards 1973).

UMNO's hegemony within the ruling coalition, Barisan Nasional (BN)¹⁰ (R. S Milne and Mauzy 1999; Gomez and Jomo 1999). Under his leadership, the government used the media to suppress the opposition and legitimize its rule. This legitimacy was often made by referencing the violence that erupted in 1969 and the threat of political instability in the event of an economic slowdown (Gomez and Jomo 1999; Soong 2008). The government also suppressed civil society and labor unions, two groups that were interested in restricting employers' easy access to expendable and exploitable workforce (M. L. Weiss 2006). This suppression, alongside the lack of pathway to citizenship for migrant workers that would create an enfranchised population of co-ethnics, hampered possibilities for collective action among migrant workers.

It was also during the NEP that the strong links between UMNO and business community developed giving employers access to the government to promote their interest in matters of labor migration policies. The NEP relied on increased state intervention and public sector expenditure as a way to develop a Malay business class. The increased closeness of business and government together with the growth of UMNO under the NEP created a patronage network whereby "some party leaders who found it politically expedient to use the expanded state machinery and the party's access to economic resources to patronise groups and individuals in return for support within the party" (Gomez and Jomo 1999, 25). Not only did these links allow employers an easy institutional pathway to lobby the government for greater access to foreign workers, it hampered the implementation of labor migration policies that would have created roadblocks for businesses to access foreign workers (J. T. Anderson 2020).

Accepting Unwanted Workers

The marriage of government and business interests in an increasing autocratic context did not mean the state was immune to pressures from the populace crying out against the presence of "too many" migrant workers. The frustration with such high numbers of irregular workers cut across Malaysia's ethnic groups. For non-*bumiputera*, the presence of Indonesians – who were predominantly Muslim and Malay speakers – raised concerns

¹⁰ Barisan Nasional is a political coalition consisting mainly of three parties presenting the three ethnic groups in Malaysia: UMNO, representing ethnic Malays, the Malaysian Chinese Association (MCA), and the Malaysian Indian Congress (MIC).

that they might eventually be folded into UMNO's voting bloc thus unsettling the country's delicate ethnic balance.¹¹ It was this same cultural similarity that made Indonesians too close for comfort for ethnic Malays who became increasingly fearful that these foreign-born workers would attempt to access state resources and become a burden on society. On a more general level, there has always been a belief that impoverished and desperate *pati* (*pendatang asigh tanpa izin* or illegal immigrant) will inevitably be driven engage in criminal behavior such as theft and prostitution (Kassim 1997). There were also concerns over how migrant workers were "invading" spaces belonging to Malaysian nationals. Newspapers often told stories of crafty migrant workers who stepped into jobs not meant for them (e.g., night market) (Syed Azhar 1993), squatting or taking over large swaths of land in the country (Leong 1993), or "tricking" young girls into marriage¹². In the post-9/11 era, these concerns took on a "security" turn in its language where the "problems" of migrant workers (e.g., carrying communicable diseases or immoral values) were treated a security risk to the well-being of the nation (Arifianto 2009a).

A discourse of "unwanted" migrant workers performing unwanted jobs helped Malaysians accept the presence of this workforce. This discourse aided this acceptance by normalizing the dominance of foreign workers over local workers in low-paying sectors. It is true that there are legal mechanisms in place that restrict foreign workers to these sectors and depreciate the cost of their labor by reinforcing the distinction between foreign and citizen labor (see Table 1.1). In addition to these legal-institutional restrictions, there is a recognition within the labor migration literature that an important mechanism for dividing the laboring population into distinct segments of the labor market is the value a certain job connotes to a particular society (Constable 1997; B. Anderson 2000; Robyn Magalit Rodriguez 2010; Friberg and Midtbøen 2018; 2019). The perception that certain jobs are "demeaning" and therefore unwanted by local workers has little to do with the actual task itself but the way it is constructed in the national consciousness.¹³ In brief, the marriage of

¹¹ Bumiputera – sometimes shorted to bumi – means "sons of the soil" and refers ethnic Malays and other ethnic groups; it excludes Chinese and Indian Malaysians.

¹² Interview with Thenappan, Klang Valley, January 2019

¹³ Perhaps the most powerful example to demonstrate the problematic nature of this narrative is the portrayal of domestic service as "dirty" and "demeaning." Scholars have long noted that domestic labor is typically undertaken by women and specifically women who are marginalized on account of race, class, and/or citizenship status (B. Anderson 2000; Parreñas 2001; Tronto 2013). The paid domestic workers, although they perform the same gendered tasks as the

the “unwanted jobs” with the “unwanted workers” in the national consciousness help to ensure that migrant and local workers “perform distinct roles in the labor market” (Bauder 2006, 20).

In turn, this discourse perpetuated Malaysia’s bifurcated labor market by emboldening a laboring culture that saw migrant workers as the best fit for jobs in the secondary labor market. Gendered and racialized hiring practices are commonplace in any labor market (e.g. Coe and Kelly 2002; Caraway 2005; 2007; Rodriguez 2010; Friberg and Midtbøen 2018; 2019). In an FLD context like Malaysia, however, there is a mutually reinforcing relationship between these practices and the bifurcated nature of the labor market. The practice of exclusively hiring foreign workers for specific sectors is based in part on racialized attributes assigned to their national identity (e.g., certain nationals are more hardworking than others) or their non-citizenship identity (e.g., foreign workers are more hardworking than Malaysians). Over time, this everyday practice of hiring migrant workers for “unwanted jobs” based on their perceived “fit” is not only informed by but also reinforces the bifurcated structure of a labor market in which “unwanted” foreign workers dominated “unwanted jobs”.

This is because the notion of the “unwanted job” functions as a discourse which disciplines the actions of employers and workers in a way that makes them accept a particular organization of labor as good and normal (Foucault 2012). Unlike laws or policies regulating migration which work through coercive powers, whereby discernably powerful actors like the state and employers use incentives and punishments to change the behavior of migrant persons, discourse works through the everyday life practices that produce the boundaries to our imagination for what is politically possible and probable (e.g. Swidler 1986; Wedeen 2002; Caraway 2005; Guevarra 2009). As the discourse of the unwanted jobs necessitating unwanted workers become internalized at various levels of Malaysian society – the state, the nation, the business community – it allows the discourse to further proliferate reinforcing itself as – to quote a labor contractor I interviewed – “just the way it is.” Over time, the mutually reinforcing relationship between the actual bifurcation of the labor market and this discursive and imaginative divide between the

mother, daughter, or sister, are constructed differently. Once they are labelled “nanny” or “servant”, their labor becomes a part of the market and are transformed into labor that is “dirty” and “demeaning.”

“local” and the “migrant” sectors shapes the culture of labor in Malaysia. In other words, once foreign workers occupy these sectors, the national discourse portraying these jobs as dirty, demeaning, and unwanted *produces* and *reproduces* the divide between the local and the migrant sectors thus making the notion of a so-called “migrant job” an “obvious” part of economic life. As certain sectors become synonymous with certain ethnic groups in the nation’s imagination, employers become accustomed with hiring foreign workers to fill those jobs and therefore are unwilling or unable to hire from the local labor force. This discursive divide between the “migrant” and “local” jobs allows migrant workers to dominate these sectors making themselves indispensable to the national labor market.

In this political economic context, the reduction of foreign labor inflow has both economic and political consequences. In its push for rapid industrialization, Malaysia, not unlike other labor-importing states in the Global South, saw the inflow of labor as a stopgap measure to meet the labor demands of a growing economy (e.g., Malecki and Ewers 2007; Bal 2016). This infusion of a highly controlled labor force was critical to UMNO’s plans for moving Malaysia into a higher global income standing. Sectors in which migrant workers were permitted to work, for example, often matched with the sectors that were being left behind by Malaysian citizens as the state pushed for “human capital development”.¹⁴ As such, despite protests from both the state and the general public that foreign workers were a public nuisance, the politics of policymaking in Malaysian cannot ignore the potential political and economic implications of failing to meet the country’s ambitious developmental goals. The infusion of extra labor into these sectors allowed the state to invest in human capital development needed to build the necessary skill sets to upgrade the nation’s economy (Bauder 2006). Without this additional labor force to propel the country’s development goals, the UMNO-led government risked damaging its legitimacy which is tied up with its ability to guide the country towards an equitable development.

¹⁴ For example, when labor migration was first legalized in the mid-1980s, UMNO’s focus was to move Malaysia away from a primary resource exporting economy towards becoming a key destination for manufacturing. It is unsurprising then, that the first sectors permitted to hire foreign workers were plantations and domestic services. These two sectors mapped onto ongoing state-led efforts to encourage ethnic Malays to leave estate work for manufacturing sector as well as encouraging more women to leave the home for the formal labor market (C. B. Chin 1998). Similarly, when UMNO laid plans to transition Malaysia away from a labor-intensive to a knowledge-based economy in the 1990s, foreign workers were permitted to enter the left-behind labor-intensive jobs in manufacturing and some services sectors (e.g., restaurants and petrol stations) (see Chapter 3).

The Overlooked Actors: Foreign Workers and the Migration Industry

In an FLD context, there are two sets of actors often ignored in the political science literature whose interests, strategies, and actions affect the regulation of labor migration policies: *First*, despite heavy restrictions working against them, migrant workers were not passive objects of state coercion but sought out ways to protect themselves. Given the autocratic nature of Malaysia during the time, disenfranchised migrant workers were in too vulnerable of a position to use collective action strategies to advance their own interest. As such, this study builds on the political agency scholarship in migration studies which argues that a more complete understanding of migrant agency needs to go beyond institutional forms of politics and into the everyday life (Strange, Squire, and Lundberg 2017). Rather than examining how migrant workers overcome their powerlessness to pressure the state to change, this study considers the unique ways migrant workers – individuals defined by their non-citizenship status, the cheapness of their labor, and their permanent deportability – affect the state’s decision-making calculus in terms of border control policies. I do this by exploring how migrant workers can utilize *evasion* – whereby migrant workers opt out of state-controlled migration channels – to protect themselves against the violence inherent in border control policies which, in turn, forces the state to react through policy change.

To understand how evasion works as an everyday form of resistance, we need to take a step back and consider the violence embedded within the Malaysian guestworker program. Like other labor-importing states, the Malaysian state has a vested interest in ensuring that foreign workers are limited in terms of their temporality and mobility while in the country (Surak 2013a; J. T. Anderson and Franck 2019a). The formal rules of entry and stay for migrant workers in Malaysia are set by the state, and by virtue UMNO. According to the logic of guestworker programs, restricting foreign workers’ temporality and mobility allows the host state to construct and treat foreign workers as a supplemental labor force flowing only into in-need sectors and departing the country during moments of economic downturn (Bach 1978). In brief, it ensures that there is coordination between labor supply and demands. Moreover, these formal rules help to reinforce the cultural distinction between local and foreigners and to prevent foreign workers from benefiting from collective goods such as social programs (C. B. N. Chin 2000). These goals are accomplished by temporally limiting foreign workers’ access to the Malaysian labor

market and tying that access to an employer; this means that a foreign worker is no longer legally permitted to work upon termination of their contract (see Table 1.1).

The primary instrument Malaysia uses to restrict its foreign workers' mobility and temporality is the Temporary Employment Pass (TEP) which specifies the time period a foreign worker is allowed in the country and the name of their employer (see Table 1.2). As a form of labor control, any work not specified by the TEP, such as working beyond the time limit or work at a different worksite, renders the foreign worker "illegal" according to Malaysia's binary approach to the concept.¹⁵ The TEP also controls labor demand by requiring employers to provide evidence of labor shortage and previous attempts to hire local workers. In turn, this allows the state to maintain a steady and controlled inflow of labor by determining which sectors employ foreign workers and how many are employed in each sector. The TEP also helps Malaysia to placate anti-migrant sentiments by keeping foreign workers out of sectors where they might compete with locals for in-demand jobs and assuring Malaysians that foreign workers will depart before they can change the social fabric of the nation (Hahamovitch 2003).

For FLD states, however, the politics of labor control is also determined by the cumulative history of labor supply. Malaysia's long history as a labor-importing state has enabled foreign workers to forge transnational networks that connect host and destination countries as well as among co-patriots in the destination country (Choldin 1973; Baubock 2003; Østergaard-Nielsen 2003; Yeoh and Huang 2010; Lacroix 2014; Rother 2017; Strange, Squire, and Lundberg 2017). Although Malaysia's guestworker program does not provide a pathway to permanent residency, transnational communities still emerge because the establishment of any migration corridor brings with it a social infrastructure that further perpetuates mass movement by reducing the costs (e.g., financial start-up, institutional knowledge of migration process, social capital upon arrival, etc.) of international migration (Massey 1987).¹⁶ As such, the development of a migrant community within the host society, scholars argue, is inevitable despite any state's attempt to control the temporality

¹⁵ The TEP has its legal basis in the Employment (Restriction) Act 1968 and the Immigration Act 1959. The former prohibits and penalizes work performed without a valid pre-approved permit and the former prohibits entry/stay in Malaysian in the performance of the prohibited work (see Table 1.1).

¹⁶ A migrant network is "a web of social ties that links potential migrants in sending communities to people and institutions in receiving [sic] areas" (Massey and España 1987, 733).

of migrant workers further strengthening this transnational migrant network (Massey 1987; Surak 2013a; Tseng and Wang 2013). Over time, these networks become a part of each new wave of migrant workers' survival strategy through the transmission of knowledge and care needed to live and work in the specific context of the destination country (Sanders, Nee, and Sernau 2002; Bloch, Sigona, and Zetter 2011) and through the process allows them to transform the social and economic structures in the host society (Rao 2014; Pugh 2018).

In Malaysia, these social networks have a strong influence over migrant workers' decisions along their journey (Choldin 1973; Fawcett 1989; Kyle 2000) and their well-being upon arrival (Wilson and Portes 1980; Light et al. 1994; Gilbertson 1995; Sanders and Nee 1996; Hagan 1998; Portes, Guarnizo, and Haller 2002). For example, prior movers can sway potential emigrants' decision regarding if and to where they should migrate by providing them with the necessary knowledge (e.g., what documents are needed, which recruiter can be trusted, etc.) and financial resources to make the move. Prior movers can also impact migratory decisions with the promise of protection, care, and assistance upon arrival. In brief, having access to a close-knit social network can reduce certain risks associated with labor migration (e.g., no access to a welfare state, labor abuse, xenophobic abuse, etc.).¹⁷ On a broader level, these networks can influence patterns of labor migration by driving new streams of migrant workers towards specific sectors and even worksites that have been pre-vetted by previous movers.

Most importantly, these networks provide resources and care to migrant workers that exist beyond the control of the state. The lack of state-control over these networks is important for the study of border control policy evolution because it provides a pathway for migrant workers to disrupt state efforts regulating their temporality and mobility. Regarding the former, while the individual migrant worker might be temporally limited by her TEP, through participating in and building upon her network of co-patriots she is able to leave behind a footprint that lives and thrives in Malaysia well beyond her exit. In the aggregate, each successive generation of migrant workers improves upon previous generations' ability to circumvent coercive state tactics, including border control

¹⁷ This is not to say that there are no cases of abuse or exploitation within networks of co-patriots. Many recruiters who falsely promise high wages, for example, were themselves prior movers. The existence of these acts, however, does not negate the care that does flow through these networks and its importance influencing migratory decisions.

mechanisms. Regarding the latter, the existence of such social networks creates an alternative mechanism of determining labor mobility patterns that is built around the preferences of migrant workers rather than that of the state. More explicitly, rather than entering sectors as determined by the *demands* of the state, the *supply* of labor flows into sectors where previous generations of migrant workers have an established hold. This availability of “cheap” labor enables foreign workers to influence the hiring decisions of employers regardless of state border policies in terms of who can or cannot hire foreign workers.

Second, employment agencies are a central figure in the Malaysian labor migration management infrastructure. The significance of employment agencies, combined with the integral role of foreign workers in the national labor market, have created a political economy of labor migration enabling these actors to impact the evolution of border control policies. Earlier generation of scholarship on these intermediaries was primarily focused on the role of illicit actors, such as smugglers or traffickers (Krissman 2005; Spener 2004; 2009; Kyle and Koslowski 2011).¹⁸ More recent scholarship, however, has shifted focus to investigate what Hernandez-Leon calls the migration industry – the “ensemble of entrepreneurs, businesses, and service...motivated by the pursuit of financial gain” (Hernández-León 2008, 154) – that has become an integral component of how states manage labor migration (Lindquist 2010; Ernst Spaan and Hillmann 2013).¹⁹ Broadly speaking there are two general approaches to the concept of the migration industry. The first treats the migration industry as a meso-level concept mediating between migrant-based social networks and state/international-level institutions (e.g., Salt and Stein 2002; Krissman 2005; Kyle and Dale 2011; Sørensen and Gammeltoft-Hansen 2013). In other words, this camp considers how the migration industry negotiates increasingly restrictive migration policies to enable cross-border labor flows. Another approach focuses on how these intermediaries “channel” migration by examining how their actions and activities (e.g., recruitment, document processing, training, etc.) not only make cross-border mobility

¹⁸ See (McKeown 2012) for a history of how and why migration studies have traditionally ignored these private actors instead focusing primarily on the state and migrant networks as the primary determinants of migratory patterns.

¹⁹ This change in approach was a response to a rise in non-state intervention into migration processes not only by informal agencies but also by state-sanctioned businesses, sub-contractors, and charities (Cranston, Schapendonk, and Spaan 2018).

possible but shapes patterns of migration by influencing migrant worker's decisions (e.g., destination country) and employers' preferences (e.g., preferred nationality) (Lindquist 2010; Groutsis, van den Broek, and Harvey 2015; McCollum and Findlay 2015; 2018).

This study deploys the latter approach to explore the role of employment agencies and their influence on border control in Malaysia's guestworker program. There is a growing consensus among scholars that delegation of border authority to such actors extends rather than contracts the power of the state with regards to the regulation of cross-border mobility (e.g. Lahav 1998; Spener 2009; Surak 2013b). The literature contends that the delegation of state authority to employment agencies ensures that facilitation of cross-border labor movement without the state needing to play an active role (Menz 2011; Lemberg-Pedersen 2013). Utilizing employment agencies allows a resource-conscious state to increase state efficiency by outsourcing these duties and responsibilities to a set of actors who have specialized knowledge of labor im/emigration bureaucracies and have established business networks in labor sending countries. In addition, outsourcing these responsibilities allows the state to escape criticisms when problems arise (e.g., labor abuses) by placing blame on employment agencies. An analysis of employment agencies and their relationship with the state is important for the study of border control policies because it reminds us to take the political economy of labor *migration* as a serious component in the politics of migration management. In other words, it focuses on migrant workers' identity as *migrants* and the political economy of mobility that ensures their presence in Malaysia. Unlike the state or Malaysian employers, who see migrant workers for their productive potentials, recruitment agencies are incentivized to move people across border regardless of their laboring prospects upon arrival.

Specifically, by considering the role of employment agencies as part of Malaysia's migration infrastructure, I demonstrate that Malaysian employment agencies, alongside their counterparts in the sending country, shape the country's migration patterns and experiences (Cranston 2016). For migrant workers, employment agencies in sending countries shape migration patterns by helping push potential emigrants towards Malaysia as a destination country through practices like setting costs and offering guidance and support to first-time movers (Ernst Spaan 1994; Krissman 2005; Hernández-León 2008; Lindquist 2012; Ernst Spaan and van Naerssen 2018). The migration industry also shapes

migrant workers' laboring experience upon arrival in Malaysia. While it is largely recognized that migrant workers experience precarious laboring conditions in the destination country, *how* and *to what degree* they are vulnerable to exploitative behavior are not the same across migration corridors which are controlled by different sets of employment agencies. This is because the migratory journey is what transforms the individual into a migrant subject (Collins 2018) and to understand how their precarity is created we also need to understand the institutional and economic frameworks that brought them to Malaysia as migrant workers (Wee, Goh, and Yeoh 2019). For example, employment agencies often undertake the document processing on behalf of potential emigrants and set the cost of migration. As such, although employment agencies are meant to make the migratory process more efficient and regular, the practices of these agencies and the power they have can help in the production of falsified paperwork and create incentives for migrant workers to overstay to repay their initial debt (Juliawan 2010; Hoang 2017; 2020; Deshingkar 2019).

On the Malaysian side of the border, the services provided by employment agencies structure hiring practices. Specifically, employment agencies play an influential role in structuring a migrant workers' employment conditions by shaping what employers perceive to be their ideal worker. Scholarship on labor emigration have provided rich empirical stories of how labor brokers and agencies affect the way the state, employers, and migrant workers themselves understand what makes a "good" and "desirable" migrant worker (Constable 1997; Rudnyckij 2004; Guevarra 2009; Chang 2018; Wee, Goh, and Yeoh 2019). This can range from specific skill sets (e.g., Filipina domestic workers are preferred because they have English language skills) to the development of certain personality or qualities that would make the ideal laboring subjects (e.g., the docile Asian woman, the non-troublemaker, etc.). In addition to the way employment agencies on both sides of the border control the business of document processing, the creation of these images of the ideal migrant workers through trainings and seminars for migrant workers as well as advertisements for employers affect migratory and laboring conditions upon arrival.

The Evolution of Labor Migration Policies in the Context of Dependency

Malaysia's dependency on foreign labor creates the conditions for the wild swings in its labor migration policies. This is because foreign labor dependency changes the *political*

calculations for states in developing and implementing labor migration policies. As noted above, unlike non-FLD countries, foreign workers are an integral – and not merely supplemental – part of its labor force. Economically, the integration of foreign labor into the Malaysian workforce have made it a critical ingredient in its goal of rapid economic growth. The Malaysian state, able to relegate these low-paying sectors to a temporary non-citizen workforce, could now focus its resources towards developing the skills of its labor force to meet the demands of emerging sectors (e.g., information technology) that are meant to propel the country upward on the global stage. The importance of foreign labor to Malaysia’s developmental goals leaves the state sensitive to pressures from the market, from employers, and even from migrant communities to re-open its borders almost immediately after putting in place temporary freezes.

Malaysia’s reliance on foreign workers to fuel its industrialization campaign creates a political context where the state is vulnerable to the accumulative actions of migrant workers. In this context, acts of *evasion* can, over time, affect the evolution of border control policies. Directly, acts of evasion overwhelm state bureaucracies charged with upholding border control policies. The presence of extensive migrant networks built over generations reduces the risks for individual migrant workers to pursue actions that goes against border control policies that restrict their temporality and mobility. Overstaying their TEPs or working an extra job not listed on the TEP, for example, are not as risky for migrant workers who have a protective network which can lead them to safer worksites where in-need employers do not care about their immigration status. Although these actions still carried risks of arrest, detention, and deportation, working within a protective social network helped migrant workers identify worksites that are less prone to immigration raids, how to act to avoid detection, and could access the knowledge of prior movers on what to do if someone was to be arrested. Or, to put it differently, it reduces the incentives of migrant workers to follow border control regulations in fear of state sanctions.

Indirectly, this extralegal labor mobility pushes businesses, who are concerned by the long-term effects of a seemingly uncontrolled border, to call for state intervention. This is because, like the state, employers who put up the expenses to acquire foreign workers (legally or otherwise) want to control the mobility of their workers as a way to control labor productivity without needing to continually renew their labor force (Burawoy 1976).

Despite the depiction of foreign workers as a “cheap” alternative to local labor, the acquisition of these workers is by no means costless. As noted above, Malaysian employers rely on actors in the migration industry to perform the task of recruiting and transporting foreign workers. Each time employers bring in a new set of foreign workers, they risk a loss of productivity either due to restarting basic training or having acquired workers without the necessary abilities. In addition, employers fear that once that have invested the resources to acquire and train these workers, they would “abscond” in search of a better paying job.²⁰ As such, the preference of Malaysian employers is to control the mobility of the skilled workers they already have acquired – that is, ensure they do not move to a different worksite – and not be forced to continually bring in more workers. The TEP, in theory, allows employers to do this. In practice, however, foreign workers with access to a protective network are less in need of the protections of the TEP against deportations and at liberty to search for jobs with better pay or better working conditions. In sum, either directly or indirectly, the FLD context allowed the relatively weak migrant workers to push the state, whose dependency on the presence and contributions of migrant workers that leaves it vulnerable to the reverberations of migrants’ decisions made via their social networks, to respond either by amending the policy or by pursuing more coercive tactics (e.g., deportations).²¹

Additionally, although all labor importing states must remain attentive to and be responsive to anti-immigrant pressures from voters, which forces the state to temporarily halt or slow down the inflow of labor, the political costs of an economic slowdown without this labor force will push its doors open again. Unlike non-FLD contexts, foreign workers are not hidden away from public view on isolated plantations or behind factory walls but instead have become a part of how Malaysians imagine their labor market. As these sectors become equated with foreign workers in the national imagination, it creates of self-reinforcing loop whereby employers prefer to hire foreign workers for these jobs because

²⁰ Author’s fieldnotes, October 2018, November 2018, February 2019.

²¹ While it can be argued that the destination states can simply turn to an alternative labor force, this is a costly maneuver. In an FLD context, certain foreign labor populations (e.g., Indonesian workers in Malaysia or Arab workers in the Gulf States) have made themselves structurally engrained in the labor force and a part of everyday life on worksites. On Malaysian construction sites, for example, switching to a new foreign labor source also requires establishing a new cohort of *kepala* (foremen) who have the language and building skills to oversee new workers. While this is certainly possible, it cannot be done quickly and without generating costs.

they are the best “fit” simply by virtue of their nationality or ethnicity. This legitimization of foreign workers’ overwhelming presence in certain sectors, over time, helped to reinforce the bifurcated labor market.

It is the normalization of the bifurcated labor market and the hiring practices associated with it, I argue, that hamper the implementation of border control policies that use sanctions to ensure that foreign workers remain a supplemental part of the labor force. The incentive structures of these policies (e.g., punishing employers for hiring outside legal means) underestimate the discourse of the “unwanted jobs” that made bifurcation an enduring characteristic of Malaysia’s labor market. Although foreign workers might still be treated as an unwanted other, this unquestioning belief that foreign workers are the right “fit” for such jobs allows for foreign workers to become a part of the Malaysian nation and how Malaysians experience everyday life in their country. More explicitly, the incentive structures of these policies are too weak to unravel a laboring culture that sees persistent employment of foreign workers in specific jobs as a normal part of everyday life. The strength of this laboring culture, combined with the patronage network allowing Malaysian capital access to the ruling party, weakens border policies and forcing the state to readjust its control mechanisms.

Lastly, owing to the structural position of foreign workers in the Malaysian labor market, the employment agencies who supply these workers are able to exert influence on the politics of policymaking in ways that are distinct from non-FLD contexts. This is because using for-profit actors to manage migration creates its “own economic structures, costs and benefits, and policy makers their own views on business efficiency” (Salt and Stein 2002, 468). While political science literature has given us a good foundation of *why* the state and firms are invested in maintaining an inflow of temporary workers into these sectors, it often ignores the political economy of *how* firms acquire workers. The interests and practices of employment agencies charged with managing mobility are distinct from firms who employ those workers; the former is driven by increasing mobility while the latter by increasing labor productivity. Because Malaysian employers are highly reliant upon employment agencies to acquire their foreign workers, employment agencies’ pursuit of increasingly labor mobility can reverberate across Malaysia’s migration management infrastructure affecting how the state controls inflow. In other words, the more engrained

the migration industry is within a labor market, the greater its ability to influence the preferences and decision-making process of employers and policymakers.

Specifically, in an FLD country like Malaysia, the activities of the migration industry to increase mobility can work against the goals of the state to control the temporality and mobility of migrant workers (Surak 2018). Destination countries outsource recruitment proceedings to migration industry to increase the regularity of migrant workers. Not only does increasing the regularity of migrant workers help states to control the in/outflow of labor it also helps to the state to project an image of “protecting” migrant workers against the exploitations associated with undocumented labor. Yet, many of the activities of employment agencies (e.g., high recruitment fees leading to debt migration) often incentivize migrant workers to abandon their employer, find additional employment outside their worksite, or overstay their visa; each of these actions means that the migrant worker immediately becomes undocumented (Garcés-Mascareñas 2012). The institutionalized and structural nature of employment agencies in Malaysia, allow for the motivations of these for-profit actors to be baked into the structure of recruitment in destination countries like Malaysia.²² Over time, the state is forced to respond to resolve the “illegal” migration problem.

Methodology, Methods, and Reflections

The findings of this study are rooted in a political ethnography based on nine months of fieldwork (May 2017-June 2019) in Kuala Lumpur and Selangor. Ethnography combines participant observation with an epistemological commitment to understanding how my research participants make sense of their journey to and stay in Malaysia (Schatz 2009). As such, my interactions with research participants (participant observations and interviews) took seriously the emotional and subjective experience of migrant workers and how they interpret their own subjectivity (Allina-Pisano 2009). Moreover, as a *political* ethnography, this study situates migrant workers within specific personal, social, and national historical contexts as well as power relations with states, the global labor market, and Malaysian society (Schatz 2009). In addition to participant observations and

²² For example, recruitment agencies can recruit and even bring migrant workers to Malaysia without an actual employer waiting for them or help process work permits based on fraudulent documents (e.g., fake medical certificate or fake birth certificate) on behalf of the migration worker and often without their knowledge.

interviews, I conducted archival research at *The Star*, an English-language newspaper with connections to the Malaysian Chinese Association²³, and the Malaysian National Archives. I supplemented my primary research with secondary sources covering the evolution of Malaysian migration laws and policies since independence.

As part of my research, I conducted 56 interviews with former immigration officials, embassy workers, employers, civil society members, and migrant workers. My interviews with migrant workers were primarily focused on three migrant communities – Indonesian, Vietnamese, and Filipino – who have distinct immigration histories in Malaysia. Indonesian workers have been a constant fixture in the Malayan/Malaysian labor landscape since colonial times. Following independence, Indonesians were the first nationality to arrive in Malaysia using the informal networks (Kanapathy 2001; Kaur 2014). Indonesians remain the largest group of workers in Malaysia (over 700,000 or 40 percent of Malaysia’s foreign worker population in 2018), work in a variety wide variety of formal and informal sectors, and have created numerous vibrant ethnicity/regional-based community associations (The World Bank 2020). Comparatively, Filipina workers only began arriving *en masse* to Peninsular Malaysia during the NEP using formal mechanisms established through a bilateral agreement (Garcés-Mascareñas 2012). The overall number of Filipina workers in Peninsular Malaysia is relatively small (~60,000) and is dominated by women working in domestic services (The World Bank 2020). In contrast to Indonesians, community organizing in Kuala Lumpur has been historically centered around the church rather than ethnic/regional identities. Lastly, Vietnamese workers are a recent addition to the Malaysian labor market. The Vietnamese began coming to Malaysia in the early 2000s using formal mechanisms (Trần and Crinis 2018). Vietnamese workers also make up a small portion of the total migrant worker population (less than 30,000 in 2018) with most working in the formal sector. And although there are community-building efforts, based primarily on either religious or hometown ties, these efforts are not as formal or well-organized as the other two nationalities (The World Bank 2020).

²³ The Malaysian Chinese Association (MCA) is part of Barisan Nasional, the coalition which controlled Malaysia from independence until its brief collapse in 2018.

Consistent with this study's commitment to an ethnographic sensibility, my interview questions were guided not by an attempt to "dig out" social facts from my research participants (e.g., why do you prefer to hire foreign workers?) but to foreground the processes through which that social fact is produced (e.g., what does "worker loyalty" mean to you?) (R. S. Weiss 1994; Kvale 2009; Goffman 2010). This commitment, I argue, helps me to see border control policies as not just a coercive practice but also a meaning-making process which organizes social life into meaningful categories (e.g., documented versus undocumented). Because this process requires the participation of migrant workers, it makes this a powerful methodological approach to bring migrant agency more centrally into my study of border policy evolution. In particular, it allows me to break down many assumptions about border control policies before bringing them back into my analysis of how these policies evolve. For example, an assumption in the policy world is that documented migration is safer than undocumented migration (Bylander 2019). By foregrounding what categories like "undocumented" mean to migrant workers, I am able to consider how meanings attached to these categories affect the institutions created by border policies meant to uphold these categories.

Similarly, in line with my commitment to an ethnographic sensibility, I paid close attention to how my own presence affected my interviews and interactions with research participants (Allina-Pisano 2009; K. Anderson and Jack 2016; Hale 2016). As a young Asian-presenting woman traveling with a US passport, I often let my interlocutors' interpretation of my identity guide the way I conducted my research. All of my interviews with former immigration officials, for example, were conducted with middle-aged Malaysian men who often emphasized my youth and Asian heritage in the way they spoke to me about their experience. In contrast, civil society members – many of whom have been burned by past cooperation with researchers – tended to focus my identity as PhD student and an American leading them to be more cautious of my intentions. To assuage their concerns, I made volunteering and knowledge-sharing a big part of fieldwork. Similarly, although many migrant workers were eager to share their stories, their answers were often tinged with reminders of my privileged upbringing in the United States. This was particularly true for Vietnamese workers. Although I was born in Viet Nam and speak Vietnamese, I was in no way an "insider". In fact, owing to the combined effect of my

accent and the importance of age in the Vietnamese social hierarchy, reminders of my inability to understand hardship were often made in a more explicit way during interviews with Vietnamese migrant workers.²⁴

Organization and Chapter Outlines

The following chapters unpack the argument that it is necessary to foreground Malaysia's identity as an FLD state to understand the wild swings in its labor migration policies by examining the first three decades of Malaysia's guestworker program (1980-2010). These chapters analyze three different ways the state has approached border control and how the government each time backtracked from its policy approach. The first of these approaches is bilateralism in which mechanisms of border control is established between Malaysia and sending countries with the aim of regulating labor flows on both ends of the migration corridor. Next is unilateralism in which Malaysia attempted to harden its own borders by streamlining its recruitment protocol, strengthening its border control bureaucracy, and establishing more severe penalties for undocumented labor/hiring. Lastly, Malaysia attempted to reduce its dependency on Indonesian labor by diversifying source countries allowing in workers with a shallower history of labor migration to Malaysia.

In each of these case study, I examine a different facet of foreign labor dependency in Malaysia, the political-economic context created by that facet of foreign labor dependency, and how migrant workers navigated this context. In Chapter 2, I examine the everyday politics of dependency through the rise and fall of Malaysia's first attempt to regulate the in/outflow of labor. In the early 1980s, the so-called era of "quiet migration" ended when the number of undocumented Indonesians arriving on Malaysian estates and construction sites began to illicit complaints from Malaysian employers and society who wanted a more controlled entry/exit process. In response to these concerns, Malaysia and Indonesia signed the 1984 Supply of Workers Agreement with Indonesia – more commonly known as the 1984 Medan Agreement – which laid out the procedures for acquiring a two-year Temporary Employment Pass. The heavily underutilized Agreement

²⁴ I speak Vietnamese with a Southern accent making it very clear where my family is from in Viet Nam. Most Vietnamese migrant workers are from Central Viet Nam which has historically been one of the poorest regions in the country. There were multiple occasions during my fieldwork where I was told – either explicitly or implicitly – that as a Southerner I do not understand the experiences of Central Vietnamese.

was abandoned by 1989 in favor of an amnesty program. In my examination of the rise and fall of the Medan Agreement, I argue that Malaysia's identity as a FLD state created a context where *evasion* – in which migrant workers opt out of formal mechanisms controlling entry and stay – contributed to the demise of the Agreement. A consideration of Indonesian migrant workers' decision-making process as they cross the border, evade immigration raids, and runaway from exploitative employment conditions, I show that these individualized acts of survival over time can overwhelmed the state and incentivized business elites to pressure the state to pursue alternative policies to regulate foreign workers.

Chapter 3 examines the laboring culture in Malaysia's bifurcated labor market and its impact on the failure of the 1991 Comprehensive Policy on the Recruitment of Foreign Workers. Upon the completion of the NEP, the Malaysian government saw the 1990s as a decade in which the country would begin making a transition towards becoming a high-income knowledge-based economy. Although foreign workers were vital to meeting the labor demands needed to execute the state's vision of economic growth and expansion, there was a real and growing fear that dependency on cheap foreign labor could bring down the country's efforts of moving away from a labor-intensive economy. In response to these contradictory concerns, the 1991 Policy established a comprehensive set of rules for the recruitment process, incentivized employers to hire local workers, and stepped-up detention and deportation efforts. Yet, like the 1984 Medan Agreement that came before it, the 1991 Policy deteriorated almost as soon as it was announced. I show that in addition to issues inherent in the policy and its implementation, the 1991 Policy failed because it did not take into consideration the bifurcated nature of the Malaysian labor market and the resultant laboring culture creating an environment where the poor enforcement and implementation of the 1991 CPRMW were perceived as legitimate. My analysis pays close attention to how Malaysia's bifurcated labor market is tied to the broader discourse that jobs occupied by foreign workers were unwanted by local workers. The discourse of the "unwanted" jobs was propagated by both the state and the business community to explain to the public why the country must rely on a population of workers who are a source of security and social concerns and to justify hiring practices, respectively. By the mid-1990s, Malaysia began making a shift back to bilateralism.

Chapter 4 examines the effects of Malaysia's political economy of migration on Malaysia's attempt to reduce its irregular migration in the new millennium. In the early 2000s, Malaysia fell under heavy criticism for its mistreatment of foreign workers following on the heels of the country's mass deportation campaign in the wake of the 1997 Asian Financial Crisis. To mollify these concerns, the Malaysian government sought to reduce irregular migration by re-institutionalizing employment agencies into the recruitment proceedings and signing bilateral agreements with new labor source countries with no history of sending works to Malaysia. By 2010, although the number of workers flowing through state-controlled channels increased, so did the overall number of undocumented workers in the country pushing the government to introduce yet another amnesty program. To understand this policy swing, I argue, we must understand Malaysia's political economy of migration and the centrality of employment agencies in this political economy. Owing to the structural importance of employment agencies in facilitating the cross-border movement of labor, employment agencies on both ends of the migration corridor shape the preferences of Malaysian employers and create pathways towards irregularity for migrant workers beyond unsanctioned border-crossing.

In my concluding chapter, I summarize my findings and reflect on the theoretical implications through a brief assessment of how an FLD analytical lens might help us to better understand the policy evolution of two other foreign labor dependent states, the UAE and the US. Lastly, I consider policy implications of this study specifically on the broader push to pursue safe migration through the promotion of regular migration.

Table 1.1: Legal framework regulating foreign labor inflow

Legislation	Description	Relevant Actors
Immigration Act 1959	Provides rules for admission and stay of migrant workers Set sanctions for both undocumented workers and those hiring undocumented workers. Sanctions include fines, prison sentencing, caning, and detention and deportations.	Immigration Department operating under Ministry of Home Affairs Violators are subject to arrest by police or the People's Volunteer Corps (RELA) Immigration Courts oversee deportation process
Employment Act 1955	Set terms of employment and conditions for migrant workers	Administrative responsibilities tasked to Ministry of Human Resources
Additional labor laws: - Occupational Safety and Health Act - Workmen's Compensation Act - Industrial Relations Act and Trade Union Act	Provides equitable treatment between migrant and local workers. Covers issue areas regarding wages, working hours, time off, terminations, non-discrimination, freedom of association, access to complaint mechanisms and other protections	Administrative responsibilities tasked to Ministry of Human Resources Industrial Courts Does not cover domestic workers
Private Employment Agency Act 1981	Set regulatory procedures for recruitment of migrant workers	Licenses for recruitment companies issued by Ministry of Human Resources
Anti-Trafficking in Persons Act 2007/Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act in 2010	Criminalized trafficking for the purposes of labor exploitation 2010 Amendment broadened the definition to trafficking to include all actions involved in acquiring or maintain the labor or services of a person through coercion Established penalties including fines and prison sentencing	Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants Royal Malaysian Police charged with investigating trafficking offenses Immigration Department and Attorney General's office have specialized position to investigate and prosecute offenses

Table 1.2: Policy instruments controlling foreign labor inflow

Mechanism	Description
Temporary Levy	<p>Issued to low-skilled “ contract workers” , defined as those earning less than 3,000 MYR per month.</p> <p>An annual tax on the employment of migrant workers. Shifted back and forth between migrant workers and employers since first imposed in 1992.</p>
Quotas on admission and employment	<p>Employers must prove they posted job vacancy and attempted to hire local workers</p> <p>Sectoral limitations: Manufacturing, construction, agriculture, plantation, services, and domestic services</p> <p>Ratio of migrants to nationals determined by sector</p> <p>Admission restricted by nationalities</p> <p>Gendered restrictions</p> <p>Legal status tied to current employer; migrant workers cannot change job on own volition</p>
Memoranda of understanding	<p>Bilaterally negotiated with sending countries. Terms of memoranda vary from country to country</p> <p>In general, these memoranda set</p> <ul style="list-style-type: none"> - Mechanisms and protocol for protection - Minimum wages - Guidelines establishing roles and responsibilities of agencies, employers, and migrant workers - Standard contracts - Remittances protocols - Labor and protective conditions for domestic workers - Recruitment fees <p>Target of migrant workers to be recruited</p>
Amnesty/Regularization programs	<p>Amnesty and regularization programs attempt to reduce the number of undocumented workers living and working inside Malaysia.</p> <p>Amnesty programs permit foreign nationals leave Malaysia without facing penalty for undocumented entry, stay, and work as detailed under the Immigration and Employment Restriction Acts.</p>
Hiring freezes	<p>Temporary bans on recruiting new workers. These bans can be imposed broadly or on specific industries or</p>

Chapter Two

Everyday Politics of Dependency: Evasion and the 1984 Medan Agreement (1980-1990)

“[The Medan Agreement] is a dead duck before it starts... We considered this thing, and I don’t know what in hell you can do with them, apart from chaining them to the bloody estate, if they’re willing to leave their passports behind them,” exclaimed a grower from Johore.

He continued explaining that rather than hiring through available legal means he will “continue to take his chances with illegal Indonesian workers, of which there is a plentiful supply” since “it is so easy for Indonesians to get across the Strait of Malacca that not many think it’s worth the red tape involved to be approved as a guest worker.” (Berthelsen 1985)

Introduction

The introduction of the New Economic Policy (1971-1990) ushered in a new era of labor migration as more and more Malaysians abandoned rubber and palm oil estates for the country’s new manufacturing centers. In the latter half of the NEP, the once quiet stream of Indonesian workers coming to meet Malaysia’s labor shortages swelled and became a “problem” in the eyes of both the Malaysian public and government (e.g. *The Star* 1981e; Kalimullah Hassan 1981a; Manggi Habir 1984). Responding to this influx of undocumented workers, Malaysia and Indonesia signed the 1984 Supply of Workers Agreement – more commonly known as the Medan Agreement – to regulate the flow of labor between the two countries.²⁵ In the short-term, the Agreement helped estate owners remain competitive on the global market as the country made its transition away from being dependent on primary exports. In the long-term, the Agreement legalized labor migration and marked the official beginning of Malaysia’s modern guestworker program.

It soon became apparent, however, that efforts to recruit workers through the Agreement, as well as the deportation campaigns that accompanied it, were not working.

²⁵ Malaysia entered into similar arrangements with the Philippines (1985) and Bangladesh (1986). This study focuses on Indonesia because these workers made up the vast majority of foreign workers on the peninsula and consequently played an influential role in shaping the broader trajectory of foreign labor governance.

Indonesian workers evaded these regulatory efforts by continuing to migrate to Malaysia using *taikong* – middlemen who brought workers to Malaysia and their worksites. By 1989, mounting pressures from employers pushed the state to abandon the Agreement in favor of an amnesty program that would provide legal status for the country’s large undocumented migrant population. The government’s quick backtracking from the Medan Agreement in favor of an amnesty program accompanied by large-scale national deportation campaign set the tone the Malaysia’s pattern of labor migration policy evolution moving forward – namely, the constant reversal of big policies aimed at increasing regular migration in favor of violent mass deportations.

The purpose of this chapter is to analyze the conditions that led to the reversal of the restrictions set by 1984 Medan Agreement in favor of a legalization campaign. In doing so, I demonstrate that *evasion* – or the decision to opt out of the formal mechanisms of controlling migration – contributed to the downfall of Malaysia’s first attempt at regulating the inflow of labor into the country. Evasion not only challenges the everyday forms of violence experienced by foreign workers, but in an FLD context it can transform the trajectory of a host country’s migration regime. Although as individuals, migrant workers (and especially undocumented migrant workers) have very little power to directly transform the behavior of the Malaysian state, in an FLD context the overwhelming number of foreign workers and the critical role they play in an FLD state’s labor market allows these small acts of resistance to accumulate and pressure the host state to change its behavior. Using a network of co-patriots, undocumented migrant workers are able to evade bordering and employment practices that make their lives precarious. The accumulation of these actions produces two effects that transformed how the Malaysian state governed labor migration: *Directly*, these actions overwhelm state bureaucracies making them ineffective at regulating the in- and outflow of labor. And *indirectly*, these actions produced an unstable labor force, leading business elites to push the state for a policy change.

This chapter proceeds as follows: I begin by laying out my theory of *evasion* as a form of non-collective action, detailing its direct and indirect effects on the evolution of Malaysian labor migration policy in a political context created by FLD. I then provide a brief history of the Malaysian political-economic context during the NEP that led to the adoption of the Medan Agreement. Third, using archival and interview data, I demonstrate

that *evasion* in the context of FLD contributed to the failure of the Agreement and the Malaysian government's policy reversal. I conclude by summarizing my findings.

Argument: Evasion and the Everyday Politics of Dependency

At its most basic level, evasion entails acts whereby migrant workers opt out of formal mechanisms controlling migration and migrant labor – the codified laws and policies that regulate entry (e.g. who can enter, along which port, types of documents required, etc.) and stay (e.g. duration of stay, employment restrictions, restrictions on rights and mobility, etc.).²⁶ As such, evasion is more than just gaining entry to the host nation by crossing the border without state sanctions, it also includes actions foreign workers undertake to remain and thrive in the host nation. Evasion also connotes intention and choice undertaken by the foreign worker. By framing undocumented migration and labor from the perspective of the foreign worker, I am attempting to simultaneously emphasize that migrant workers are not passive in pursuit of their survival but also recognize the structural conditions that made those actions a necessity. In other words, although evasion is an expression of foreign workers' power the term also brings our attention to the heavy constraints working against foreign workers.

This chapter conceptualizes evasion as an everyday form of resistance against the policies and practices regulating migration. This conceptualization takes as James Scott's definition of everyday resistance as a starting point; these acts are "informal, often covert, and concerned largely with immediate, de facto gains" (Scott 2008, 33). This form of resistance is not motivated at lofty notions of "justice" and is not meant to upend what foreign workers perceive to be unfair policies used to control foreign labor. Instead, they are directed at everyday acts of violence that threaten the "survival" of the subject by disrupting these everyday forms of extraction and exploitation (Scott 2008) including policies and practices that differentiate and filter migrant persons and the type of labor they carry which, in turn, make these workers vulnerable. Specifically, the Medan Agreement was designed to limit the inflow of Indonesian workers by ensuring that they are restricted to certain sectors and their presence is temporally limited. It essentially restricted access to

²⁶ These formal mechanisms can either be either directly controlled by the state (e.g., border patrols) or are carried about by an agent of the state (e.g., private labor recruitment centers).

the Malaysian labor market only to those who can afford the high costs of acquiring proper travel and work documents. These measures placed a high burden on foreign workers who saw labor migration as a route to escape dire economic circumstances. These mundane modes of violence are pernicious because, unlike more spectacular forms of anti-immigration violence (e.g., deportation), they have simply become the “woes” of everyday life.

As such, acts of evasion are often perceived by workers as ordinary and necessary. To the Indonesian worker in the 1980s, evasion was simply the acts they must engage in to escape poverty. As an outsider, I often expressed shock at hearing the lengths to which workers would go to in order to avoid state detection, but my interlocutors consistently dismissed my expressions of awe, explaining that this was simply how migration unfolded during that time. Gumelar, for example, casually told me, “As *TKI* [Indonesian foreign worker], we were afraid of the police, so we had to hide in the forest if there was an operation”.²⁷ This attitude was consistent across my conversations with the older generation of workers in the Indonesian community. These evasive tactics, like crossing the border using a *taikong* or sleeping in forests to avoid detection were treated as a normal and necessary part of migrant life.²⁸

Moreover, a turn to everyday forms of struggle highlights the unique power dynamics between migrant workers and the state that distinguishes them from other forms of labor. Unlike overt collective actions, the evasion tactics represented the ongoing struggle between migrants (who seek out labor opportunities) and the state (which seek to limit their access to the Malaysian labor market) and employers and labor brokers (who might increase workers’ precarity for profit). By entering the Malaysian labor market without state sanction for their own survival, foreign workers defy the processes that attempt to “filter” them out. The extent to which migrant persons can challenge exploitative policies and practices depend on their specific position in a social context (Constable 1997; Parreñas 2001; Bal 2016). In other words, the strategies of everyday resistance pursued by an undocumented foreign worker are distinct from an enfranchised worker because they experience the exploitative pressure of capitalism differently. These everyday acts of

²⁷ Interview with Gumelar, Kuala Lumpur, March 2019.

²⁸ Author’s fieldnotes, Spring 2019.

resistance, in the aggregate, can affect the trajectory of state policies (e.g. Scott 2008; Kerkvliet 2005).

While my concept of evasion heavily resembles Scott's conceptualization in its objectives, in that these actions are motivated by de facto gains, it departs from Scott's approach to everyday resistance in *how* it achieves its aims. Specifically, the diffused transnational context in which migrant workers carry out their daily life is vastly different from the close intimacy of the small sedentary Malay village that informed Scott's work. In Scott's village, the various mechanisms of resistance described (e.g. gossip, slander, non-compliance, etc.) worked because of the anonymity afforded by village life; once the action is carried out, the villager melts "back into the 'civilian' population for protective cover" (Scott 2008, 242). Living in a space where they are perceived as foreign, not only based on their citizenship but also marked by their accents and mannerism, Indonesian workers did not have this "protective cover."

Operating in a transnational context, evasion cannot be a wholly individualized act of resistance but requires the existence of a trusted and close-knit network of co-patriots. Documented and undocumented workers alike must live with the daily anxiety that they are deportable; it is this "deportability" that makes their vulnerability distinct from those with juridical citizenship and it is what characterizes foreign workers' distinct place in the labor market as "cheap" and "disposable" workers (De Genova 2002). The knowledge and care of co-patriots are essential for their survival. Prior movers or those sharing hometown ties, for example, can vet potential employers thus becoming a check against abusive employment practices. In addition, foreign workers belonging to the same sub-network of co-patriots, specifically those within the same village, province, or religious group, often provide much needed care – in the form of food or shelter for example – during times of heightened vulnerability. In brief, it is this protective network that transforms these acts of unsanctioned entry and stay into an aggregated reflection of migrant workers' coercive power.

Although *evasion* is not a wholly individualized act of resistance, it lacks the centralized coordination often associated with Mancur Olson's (Olson 1965) *collective action* or even the decentralized coordination of Diana Fu's (Fu 2017) *disguised collective action*. While evasion might be *enacted* through a quasi-collective framework, it is still

motivated by individualized desire to survive everyday acts of violence. This motivation is what sets the Indonesian migrant workers in 1980s Malaysia apart from Fu's decentralized factory activists who receive coaching from organized movements like NGOs and labor unions. In contrast, the motivations of Indonesian migrant workers to evade border control mechanisms came from a very real need to find a pathway to improve their economic conditions. Any assistance they might have had through their network were similarly entwined with these individualized desires for economic improvement. In fact, many of the early movers who helped later migrants leave for Malaysia were as much motivated by helping their fellow villagers find a good job as they were collecting a profit for providing them passage (Spaan 1994).

Evasion under Foreign Labor Dependency

Another critical factor for understanding the transformative power of evasion is the political-economic context in which these acts of evasion take place. Specifically, early 1980s Malaysia saw the beginning of the country's dependency on foreign labor. This growing dependency constrained the state's capacity and its political will to respond aggressively to the country's growing population of foreign workers. In doing so, FLD created the context for non-collective acts of survival to aggregate and shift the trajectory of Malaysia's migration regime.

This growing dependency is important for the study of migrant-state relations for two reasons: *Economically*, two of the key sectors propelling the NEP – plantation and construction – had become highly reliant on foreign labor.²⁹ As the majority of these were undocumented workers, there are no official statistics as to what percentage of these sectors was made up of foreign workers. Piecing together stories of employers from that time, however, suggests a growing reliance on the estates and, to a lesser extent, on construction sites. For example, one estate owner in Johor explained that about 20 percent of estate labor in the state is provided by undocumented Indonesian workers (*New Straits Times* 1981). FLD in these specific sectors meant that foreign workers were not simply a temporary padding to the labor market but formed a part of the foundation of the Malaysian

²⁹ Historically Malaysia's agricultural sectors have relied on foreign workers, first indentured workers from India then free laborers from the Dutch Indies. Similarly, in post-independent Malaysia, the need for workers in these sectors have flowed from similar networks as in colonial times.

development project. As a result of foreign workers' strategic position, changes within the foreign labor market can send ripples across the economy.

Politically, since continued economic growth was an existential concern for the young nation, a dependency on foreign labor in these sectors created the conditions for acts of evasion to go unchecked. The open secret that these two sectors relied on foreign workers gave migrant workers the leverage to produce change that other disenfranchised workers would not have in other contexts. On a most basic level, this is because foreign workers were an overwhelming presence in these key sectors. As such, even individualized actions can have an aggregated effect on the system governing their entry and stay. And, in the reverse, this means that FLD states are in some way more sensitive to actions within migrant worker communities in comparison to non-FLD states. Certain courses of action, such as quickly transitioning away from labor-intensive industries, is a bigger uphill climb for FLD countries like Malaysia.

In the context of foreign labor dependency, evasion can affect the broader trajectory of Malaysia's migration regime through two mechanisms: First, evasion works *directly* by overwhelming state bureaucracies charged with regulating the inflow of labor, specifically the Department of Immigration (DoI). While it is true that acts of *evasion* are diffused and non-deliberate, the fact that irregular migration was the norm and regular migration the exception in early 1980s Malaysia created the conditions for these individualized acts to culminate and elicit a response from the state. It is important to note that the change in behavior is not always in favor of the migrant worker (e.g., the state might respond by increasing the rate of deportation) but it is also equally important to underscore that the pressure to change came from seemingly powerless migrant workers.

Second, evasion works *indirectly* by producing an unstable labor force which, in turn, incentivized business elites to pressure the state to abandon the ineffective Medan Agreement. Although most Indonesian workers accept that, as an undocumented worker, they must accept a certain level of "hardship" as part of the migratory experience, they do not accept abuse. Migrant workers, like all workers, want better jobs often defined by higher wages and better working conditions. Using the knowledge about the conditions of travel, life, and work for Indonesian workers in Malaysia that flow through networks of co-patriots, those with a pre-established network were able to find a specific job that has

been vetted by earlier travelers. For others, who might develop these networks during their stay in Malaysia rather than upon departure, these networks provide workers with the outlet to escape an abusive employer towards better employment.

These actions – selective employment and absconsion – allow migrant workers to challenge and limit the ability of employers to exploit their undocumented status. Scholarship on labor migration has long noted that employers benefit from the flexibility and precarity of undocumented labor (Burawoy 1979). But the foreign labor market is not costless for employers. Employers must pay a recruitment fee to *taikong* to bring in workers from Indonesia. In addition, each wave of new workers requires training which comes with costs in loss of production to employers. Thus, even when working with undocumented workers employers prefer a stable labor force. Confronted with the instability created by absconsion and selective employment, employers mobilized to call for state actions that will re-shift the power back to employers and give them better control over their foreign workers.

History Background: Foreign Labor during the New Economic Policy (1971-1990)

In the background of the Medan Agreement's rise and fall was the political economic changes brought about by the NEP. In this next section, I give a brief history of the watershed policy focusing on its impact on labor migration on Peninsular Malaysia. In doing so, I lay out the material and institutional conditions that made evasion both a possibility and a necessity in 1980s Malaysia. Specifically, I show that although migration outside state-sanctioned channels is a long-standing tradition across the Malacca Strait, until early 1980s the state had very little desire to regulate this migration flow. It was the confluence of the demands of economic development and maintaining racial harmony that led the state clamp down on labor migration which, consequently, made such movements precarious. It is this precarity that made evasion, as a means of resistance and not just simply unsanctioned migration, a necessity for survival.

New Economic Policy and the Era of Quiet Migration

Interethnic relations have always played an influential role in the Malaysian state's political economic calculus, most evident in the NEP.³⁰ Catalyzed by the interethnic violence of 1969, Prime Minister Tun Abdul Razak introduced the NEP as a part of the Second Malaysia Plan in 1971 (Cheah 2002). This plan for massive economic and social restructuring sought to rectify what was seen as severe economic disparities between the country's ethnic groups that were a legacy of colonial British population and economic policies. The NEP's two main goals – eradicating poverty and erasing any association between ethnicity and economic function – were seen as critical in establishing “racial harmony” and fulfilling Barisan Nasional's goals of creating a thriving multi-ethnic Malaysia. The NEP worked towards these goals by allocating funds towards developing trade and industry, enhancing education standards, as well as agricultural and rural development projects to increase outputs and exports. Until the 1984-85 economic recession, the NEP had contained a series of strategies that increased state intervention into the economic sphere as a way to encourage the participation of ethnic Malays in an economy which, as a result of colonial policies, had been dominated by European and Chinese Malaysian actors. To the BN government, maintaining a high rate of economic growth was a matter of existential concern for the young country.

The first decade of the NEP transformed Malaysia's labor market in ways that led to labor shortages in the plantation, construction, and domestic work sectors paving the way for a demand of foreign labor. The development of the manufacturing sectors, service sectors, and numerous special economic zones brought Malaysian workers away from the plantations and towards the country's manufacturing centers that dotted the West Coast

³⁰ In the early 20th century, British colonists became concerned with the economic output of British Malaya (modern day peninsular Malaysia). The rising demand of rubber and tin in the West had pushed colonists to grow the colony's labor market through the immigration of Chinese and Indian workers. Colonial economic and population management policies left a deep impact that framed the political-economic context of 1980s Malaysia. Selective immigration and peasantization together produced great social and economic inequalities between the Malay and non-Malay populations (Gomes 1999; Gomez and Jomo 1999). Efforts to simultaneously create a multi-racial state while still recognizing the “special position” of Malays was put to the test in 1969. A series of contentious debates pertaining to how the new state of Malaysia should imagine itself as a nation – including debates on the national language and the status of non-Malay residence awaiting citizenship – culminated in the 1969 elections, which saw the Alliance (the coalition between United Malays National Organisation (UMNO), Malaysian Chinese Association (MCA), and Malaysian Indian Congress (MIC)) unable to gain a majority in parliament. Immediately following the elections, “ethnic riots” led by UMNO supporters erupted in parts of Peninsular Malaysia. The 1969 violence highlighted the extreme sense of distrust between ethnic groups that was not assuaged by pre-independence compromises (Andaya 2017).

(Kaur 2010). The country's transition from import-substitution to export-oriented industrialization relied on the growth of these sectors which grew at around 11 percent per year during this period (Gomez 1997; Kanapathy 2001). Accompanying these demographics and sectoral changes were large-scale infrastructure and urban development projects creating a construction boom (Narayanan and Lai 2005). The feminization of labor also helped to proliferate the use of domestic labor in Malaysia beyond the ultra-wealthy (C. B. Chin 1998).

Although foreign workers were a silent but critical ingredient in the NEP's first decade of success, the patterns of migration foreign workers followed and how they were received by Malaysian society were remarkably distinct from later decades. In the early 1970s, foreign workers, mostly from Indonesia, began arriving in Peninsular Malaysia to meet the labor shortages on the rubber and palm oil plantations of Johor and Pahang.³¹ In these early years, Indonesian foreign workers came to Malaysia through kinship networks that were established during the colonial era when British colonists recruited agricultural workers from the Dutch Indies (modern day Indonesia) to help feed the colony's growing population. Not only did this early influx of migrant labor – who came in small numbers and stayed predominantly in the rural areas – attract minimal national attention, the Malaysian government and many citizens alike saw temporary Indonesian workers as a preferred substitute to new Chinese and Indian migrants who were too much of a threat to the delicate ethnic relations in the young nation (Kanapathy 2001; Arifianto 2009).³² It is difficult to know the precise number of foreign workers in Malaysia during the era of quiet migration. The inherent difficulties associated with counting undocumented workers – who, by the very nature of the concept, try to avoid state detection – are exacerbated by Malaysia's limited number of enforcement officers who must patrol a long and porous

³¹ Exception is the northwestern state of Perlis where most foreign workers came from neighboring Thailand. But like the southern states of Johor and Pahang, where most foreign workers came from Indonesia, these workers have a cultural and linguistic connection with their destination site.

³² During the 1960s, immigration and racial relations were contentious topics in Malaysian political life. Following the passage of the 1959 Immigration Act, for example, many Chinese and some Indian Malaysians who did not qualify for citizenship were deported. Pro-Malay, and arguable anti-Chinese, policies following independence also made cause many ethnic Chinese Malaysian/Malaysians to leave seeking better opportunities as migrant workers themselves, particularly in Taiwan, Japan, and Australia. As such, for the UMNO-led government and many ethnic Malays in rural communities, a group of immigrants who share many religious, cultural, and linguistic similarities as the dominant population was welcomed.

coastline.³³ By 1980, however, the government estimated there were about 1,800 Indonesians who arrived on the Peninsula during the 1970s. Given the difficulty in tracing undocumented workers, however, this number was disputed (*Asiaweek* 1985).

Ending the Era of Quiet Migration

Patterns of labor migration and foreign labor reception, however, shifted in the early 1980s as the number of Indonesian workers crossing the Malacca Strait increased. Although it remained difficult to accurately grasp how many foreign workers traveled between Indonesia and Malaysia in the early 1980s, the Malaysian Ministry of Human Resources estimated that in the mid-1980s there were approximately 500,000 undocumented migrants in Malaysia. This number changes, however, depending on who provides it. Numbers reported in newspapers at that time ranged anywhere from a low of 100,000 to a high of one million (Todd 1984; S Jayansankaran 1985; *Asiaweek* 1985). Although these numbers might be unreliable, when studied alongside the testimonies of employers it becomes undeniable that foreign workers made up a substantial proportion of Malaysia's total labor force which ranged from 5.12 million to 7.04 million (1980-1990) (Jomo and Hui 2009).

This spike can be attributed to several factors. First, there was a shift toward commercializing the routes through which migrant workers moved. Professional labor brokers have existed since colonial times when European recruiting firms along the Singapore and Javanese ports hired local agents to roam the countryside looking for individuals to travel to British Malaya for work (Spaan 1994). In the post-colonial era, private employment agencies (legal and illicit alike) on both sides of the border that facilitated every part of the migratory process from selection of potential migrant workers, to processing travel documents, transporting workers, and so forth. Although networks of kinship and village-level ties remain important, these networks now operated alongside a system of brokers and middlemen who create a chain from the village in Indonesia to the worksites in Malaysia. This system often begins with a *calo tenaga kerja* (employment broker) who recruits potential workers (Spaan 1994). Their passage is moderated by *taikong laut* (sea middlemen), who bring workers to the peninsula by boat, and *taikong darat* (land middlemen), who have connections with contractors on plantations helping to

³³ Interview with Thenappan, Klang Valley, January 2019.

deliver workers from their landing point to their worksites.³⁴ For some, this last part of the journey ends when they are handed over to a *kepala* – an Indonesian group leader appointed by the contractor – who might have been the person started this process by recruiting a trustworthy workforce from his own hometown (Spaan 1994).

Second, economic conditions within Indonesia and the wage gap between Malaysia and Indonesia during that time encouraged many Indonesians to embark on the journey (Hugo 1993). In early the 1980s, there was a fear within Indonesia that the rate of job creation would not be able to meet the growing labor market, projected to grow 2 million per year (World Bank 1981). Meanwhile, many Indonesians, particularly those who relied on waged labor and agricultural jobs, lived just above the absolute poverty line and lacked the avenues to change their economic circumstances (World Bank 1983; 1990).

Lastly, and perhaps most importantly for this study, Malaysia’s changing economic conditions produced a “need” for foreign labor. The dominant narrative of this era describes how Malaysia’s rapid industrialization not only created a general need for more labor, but also allowed locals to be more selective in the type of jobs they take on leading to dearth of labor in less desirable sectors. There is certainly truth to this when looking at state policies and actions during the NEP.³⁵ The Fourth Malaysia Plan (1981-1985) – saw the development of the manufacturing sector as a key component of national growth in the second half of the NEP and regarded growth in the agricultural sector as important to improving the conditions of *bumiputera* populations. At the same time, Malaysian employers – specifically in the plantation sector and to a lesser extent construction sector – had difficulties finding local workers willing to take on these difficult and low-paying jobs (*Malaysian Business* 1986b).³⁶ With inter-ethnic violence looming in its not-too-distance past, an inability to fill these jobs represented an existential concern for UMNO whose leadership rested on its ability to maintain the country’s economic progress – especially after the mid-1980s recession.

³⁴ Author’s fieldnotes, May 2019.

³⁵ Unionists, however, point to a development of a “culture of growth” where rapid economic growth became a part of the national fervor leading to the “need” for cheap and disposable labor embodied in the undocumented migrant (Interview with Narun, Kuala Lumpur, November 2018).

³⁶ It must be noted that not all agreed that there is a real labor shortage in the estates. The Malaysian Trade Union Congress, for example, argued that the employers have difficulties filling vacancies because of the low pay and poor working conditions on the estates (Azly Yusof 1986).

The “Problem” of Illegal Migration

The increased visibility of undocumented Indonesian workers resulted in Indonesian workers being increasingly viewed as a “problem” in the national consciousness causing both employers and the broader public to call for the federal government to step in to regulate the inflow of labor (e.g. Kalimullah Hassan 1981a). A brief glance at newspapers during time revealed a growing anxiety among Malaysians who associated a rise in Indonesian immigrants with a rise in crimes. An official from Johor explained:

Today, the problem has grown out of hand. There are too many of these immigrants...The ‘irritant’ of 10 years ago is now a problem of such magnitude that only a concerted effort by the government to stop the tide of immigrants can prevent a socio-economic imbalance (Kalimullah Hassan 1981b).

Although it was only a decade earlier that Indonesians’ cultural proximity ethnic Malays made them the ideal workers, this same feature became a concern for enforcement against the “influx of illegal immigrants.” The police in Johor, for example, were reported saying that it was difficult to “detect them [undocumented Indonesians] especially when they look just like any other Malaysian. The main clue is their Indonesian accent. If they are able to hide it they would be able to remain undetected, they added...” (*The Star* 1982b). Even cases where new Indonesian immigrants had relatives in Malaysia were met with suspicion rather than celebrated as assisting with integration and social cohesion:

Malaysian-born friends and relatives further helped by acting as guarantors when it is time to swap their visas for more permanent entry permits, the first step to gaining permanent [sic] residence. The inner city Malay kampungs became favourite points of congregation. The immigrants found that they could blend in inconspicuously in Kampung Baru and Kampung Datuk Keramat. (Suhaini Aznam 1981).

As an anonymous government official described:

We have not arrested anyone unloading these illegal immigrants here [Johor] but information received reveal there are many immigrants sheltering with relatives especially in the Muar and Batu Pahat areas... We believe at least 60 per cent of the estimated 70,000 immigrants in Johore have relatives here. (*The Star* 1981a)

What the tone of these excerpts reveal is a broader concern that these workers were becoming a permanent fixture in Malaysian society.

The call for federal intervention to solve the “Indonesian problem” did not only come from the broader public, but also from employers. While local officials and the

broader populace began to see these new immigrants themselves as a problem, those who employed Indonesian workers were more concerned with their inability to keep those workers once they arrived on their worksite. While the employment of undocumented foreign workers had been an open secret, the early 1980s saw an increase in state activities to combat the inflow of foreign workers through detection, detention, and deportations. One estate owner on Johor explained, “It is known there are illegals here...Nobody is that stupid” (*New Straits Times* 1981). The same owner went on to explain that frequent raids and detention of his workers resulted in him having to constantly pay *taikong* for new workers. Newspapers from the time reported that employers paid to the *taikongs* somewhere between MY\$75-140 (US\$30-56) per foreign worker (*The Star* 1981a; *New Straits Times* 1981). Stories like these were common and in 1981 and plantation owners began petitioning the government to allow them to recruit and hire workers in a way that would ensure that they could reduce turnover and maintain a stable and well-trained workforce (Teoh 1981). Another common story among estate owners was that they were losing employees to the booming construction sector which offered better pay and a more attractive life in urban centers (Manggi Habir 1984). These movements, in which employees are always on the lookout for better paying jobs, also happened within sectors and not just across sectors.³⁷

Without these workers, employers warned, Malaysia would lose economic activity. The United Planters Association, for example, declared that the labor shortage had cost it US\$23 million in 1980 (*The Star* 1981e). These growing concerns were not taken lightly by a government that saw economic progress as the key feature in maintaining Malaysia’s internal stability. In addition, the tightened relationship between the state and the business community during the NEP created the institutional pathways for business elites to exert extreme pressures on the state, even in the face of rising concerns brought about by actual and perceived impact this new immigrant community would have on the nation. A common critique of the political economy of the NEP is the proliferation of cronyism in which firms and businessmen with connections to politicians were given access to rents. This practice was enabled by a patronage network controlled by UMNO in which saw greater state-intervention in the public sectors. The practice grew under the NEP as part of the

³⁷ Author’s fieldnotes, Spring 2019

government's policy to "restructure" society to solve inter-ethnic wealth disparity and expand the size of the country's *bumiputera* entrepreneurs. The NEP's creation of the a new class of Malay capitalists, in turn, helped to fund their political patrons. Over time, this development of money politics blurred the line between corporate and political power (Gomez 1997).

By the early 1980s, in light of these concerns from business community and voters, the Malaysian government wanted to take a more active approach to controlling the in/outflow foreign labor on the peninsula. In deciding how, the state had to balance competing demands of the business community with the broader populace that wanted the state to stem the inflow of migrant persons. Memories of interethnic violence and the threat of that violence posed still weighed heavily on the Barisan Nasional (BN), the ruling coalition. Through its independence movement and into its post-independent years, questions of who gets to belong to the Malaysian nation and how that notion of belonging have been wielded to accumulate electoral power is a constant concern. Following in this historical trajectory, the 1980s the BN was cautious of how this inflow of new immigrants might affect the inter-ethnic balance within the country. This concern for the future of Malaysian ethnic politics is most evident in how the other two branches of the ruling BN, the Malaysian Indian Congress (MIC) and the Malaysian Chinese Association (MCA), viewed the problems that might be caused by a sudden increase Malay-speaking Muslim foreign workers. The MIC began to express concerned that Malay-speaking Indonesians were a cheaper replacement to local Malaysian Indian workers who had traditionally dominated plantation sectors. Unlike the newcomers, local Malaysian Indian workers on the estates had formed one of the most powerful unions in the country (the NUPW); the invitation of workers who by law could not be unionized threatened not only the NUPW's position but also the economic position of Malaysian Indians. Similarly, the MCA questioned whether these new Muslim and Malay-speaking Indonesians could later apply for residency, then citizenship, and would eventually be incorporated into UMNO's voting bloc thus shifting the balance of ethnic relations. If Malaysia truly needed workers, the MCA and MIC argued, then then the government should allow permanent residents (the majority of whom where Malaysian Chinese or Malaysian Indians) to be able to work in Malaysia without the need of a work permit.

The state had also begun to see migration and security as interconnected. When asked about the situation of undocumented workers in Malaysia, Farhan, a former immigration official answered by reflecting on his time as a junior officer during the Vietnamese refugee crisis. Quoting his superior at that time, he told me, “If you drop a bundle of coconuts off the Vietnamese coast, it would only take three days before it ended up here.” He went on to explain to me that the problems of neighboring countries will not remain there, as such, Malaysia must be diligent in patrolling its coast.³⁸ What Farhan’s answer underscores is that to the Malaysian state, the arrival of a new wave of undocumented immigrants from Indonesia was not seen as a distinct phase of its immigration but a continuation. Whether they are Vietnamese refugees or Indonesian migrant workers, they are bureaucratically – and as Farhan’s answer suggests, culturally – viewed in a similar light by the DoI who sees its job as keeping out the “problems” brought in by “illegal immigrants”. For the Indonesians coming during the early 1980s, the “problems” being brought into Malaysia was poverty and everything associated with it, including diseases, desperation, and crime.

The Promise of the Medan Agreement

Responding to concerns of labor shortages and great losses from both the business sectors and local governments, the federal government in 1982 established a committee to develop a systematic method of recruitment and entry for foreign contract workers (*The Star* 1982a). The committee – made up of representatives from the Ministry of Home Affairs, Labour, and Primary Industries – were tasked with determining the extent of the labor shortages in the plantation sector. Although there were some surveys conducted by the Ministry of Labour, the Committee relied heavily on self-reporting from various employer associations (*The Star* 1981d; *The Star* 1981c). As such, the degree to which the plantation industry actually lacked labor – as compared to a reluctance to recruit new workers by improving working standards – should be met with skepticism.

On other side of the border, the Indonesian government wanted to develop a labor emigration program to help alleviate youth unemployment and create a new stream of foreign exchange (Palmer 2016). The development of an Indonesian labor migration

³⁸ Author’s fieldnotes, February 2019.

program began in the 1960s as strategy of economic development in the New Order government. In these earlier decades, had been leaving to find work along the old *haji* sea routes taking them to Malaysia, Singapore, and the Gulf states (Palmer 2016). The oil crisis of the late 1970s, however, pushed the Indonesian government to find ways to control this outflow of labor as a way to collect taxes and remittances; the latter was particularly a concern as the oil crisis meant that the country needed to find an alternative source of foreign exchange revenue (Palmer 2016). Furthermore, as previously stated, at the start of the 1980s, the government was under pressure to address the high rate of poverty in the country, particularly in densely populated areas of rural Java and in the outer islands, as well as a large and rapidly growing labor force (World Bank 1981). For Indonesia, ensuring that workers emigrated through legal channels meant that the state would be able to collect exit taxes and tax remittances.

The outcome of these efforts was the 1984 Medan Agreement, a bilateral agreement between Malaysia and Indonesia to facilitate the movement of workers between the two countries. As a form of labor migration governance, bilateral agreements allow countries of emigration and immigration to control labor flow on either ends of the corridor to ensure that workers travel through state-controlled channels. For Malaysia, the core purpose of the Agreement was to ensure that workers came in through formal channels so their whereabouts, employment, and time spent inside the country could be monitored. Before workers were issued an employment pass, they had to demonstrate that they were healthy, had no criminal history, and be interviewed by Malaysian authorities. This reflects the Malaysian state's broader concern with keeping out certain "problems" associated with neighboring nations. Those who passed would be allowed to work in Malaysia on a two-year contract.

Beyond these basic security concerns, the Agreement sought to give Malaysia greater control over its labor market by ensuring that foreign workers would be employed only in labor-scarce sectors and would leave the country when their labor was no longer needed. This sense of control is important for Malaysia because of the country's immigration history and its need for control over the country's economic progress during the NEP. State control over the labor market helped to ensure that growth of the labor market was directed at specific sectors that matched the directions outlined by the

Malaysian Plans and the NEP. At the very least, the appearance of control placated any concerns that such workers would eventually gain access to Malaysian citizenship and become a part of the Malaysian electorate.

Evasion in Practice: The Fall of the Medan Agreement

In practice, evasion unfolds in three overlapping phases: *First*, migrant workers cross the border without the sanction of both home and destination countries as a way of bypassing the high costs of traveling through the formal channels. These expenses include official costs (e.g., getting medical screenings, paying labor agents, obtaining proper travel documents, etc.) but also other informal costs (e.g., *uang rokok* or bribes). *Second*, they must continue to evade Malaysian immigration officials within Malaysian borders. Like evading poor employment practices, this requires a network of co-patriots particularly early movers who have permanent residency or citizenship in Malaysia. With the help of other Indonesians, with or without permanent residency status, migrant workers develop tactics to avoid detection, to avoid detention if detected, and to return to Malaysia if deportation becomes a threat. And *third*, after their arrival in Malaysia, workers must work to evade poor and abusive employment practices such as unsanitary working conditions in the *kongsi* or unpaid wages. Evasion at this third phase requires migrant workers to develop and deploy a network of co-patriots who share knowledge of Malaysian laboring conditions.

Phase 1: Evading the Border

My understanding of evasion as an everyday form of resistance rests on a conceptualization of the border not just simply as a line that separates two nation-states but as a regulatory practice to control migration (e.g. Balibar 2002; Perera 2007). As a *regulatory* practice, the border is an expression of the state's coercive power, relying on violence to achieve its aim. As a *regulatory practice*, the goal which this violence serves reflects the broader global economic order that requires limiting the mobility of some while accelerating the mobility of others (Mezzadra and Neilson 2013). The Medan Agreement was an expression of this regulatory practice as it limits the mobility of those deemed undesirable (based on their health, age, skills, etc.) and in doing so "filters out" these individuals. The aim of the

Medan Agreement is to restrict entrance to the Malaysian labor market only to those who are deemed healthy and can afford the pay for the journey and acquire proper travel and work documents. Filtering out those individuals deemed undesirable also entails filtering out their problems and issues. This includes not just those with infectious diseases but also those with health issues that might make them unsuitable candidates for jobs and would not add to the country's productivity. Excluding those who cannot afford the passage also allows the state to filter out those at the bottom rung of the socio-economic ladder who might become a "burden" to the state upon arrival.

An equally important aim of the Medan Agreement was to ensure that those who made it through this filtering process would remain in the estate sectors and would exit Malaysia in a timely manner. Under the Medan Agreement, an Indonesian worker's ability to remain in Malaysia was tied to their employer who sponsors their TEP. In this way, the Agreement allowed the state to use employers as a border control tool to condition guestworkers after they have made it through the initial filtering process. Tying Indonesian workers to a specific employer was a way for the state to ensure that they remain only in the estate sector and not become part of the general labor market. The constrained labor mobility also grants Malaysian employers a sense of control over their workers that they would not have with citizens. In doing so, the state is able to indirectly expand the labor productivity of these temporally limited actors (J. T. Anderson and Franck 2019b).

The high standard of the Medan Agreement made it inaccessible to many on the margins of Indonesian society. It was particularly difficult for those who were poor and/or lived in rural areas without access to government offices. Some of my interviewees commented saying that in such communities, it was not even a guarantee that everyone would even have basic identity documents (e.g., the *kartu tanda penduduk (KTP)* or the national identity card). Yet, to migrate through formal channels requires that the prospective acquire passports and a wide number of documents varying from village exit permits (*surat jalan*) to police testimonies of good behavior (*surat keterangan kelakuan baik*) (Spaan 1994) all before they are able to apply for the Malaysian visa and Employment Pass. This was a lengthy and costly process. One newspaper estimated that the costs of processing the necessary travel documents, food and lodging during the journey, and the

passage itself could cost up to Rp\$400,000 IDR (US\$390)³⁹. On top of this, all workers had to pay a compulsory 150,000 IDR (146 USD) exit tax (Manggi Habir 1984). In comparison, one estimate placed a one-way trip through informal cost MR\$50-100 (US\$20-40) depending on the length of the journey (*The Star* 1981b). Evasion, therefore, is an everyday struggle against these regulative functions of the border that violently block the passage of migrants in search of better economic opportunities (Mezzadra and Neilson 2013).

The universal answer among my interlocutors for why they came to Malaysia during the 1980s was to escape poverty. In fact, it is this overwhelming emphasis on survival that distinguishes this generation of Indonesian emigrants. As Nurwan, who is now a leader within a Central Javanese community, explains, “Many of the young people who come to Malaysia now come for different reasons. But we came for work.”⁴⁰ What Nurwan’s comment encapsulates not only informal conversations with younger Indonesian migrant workers, but also past studies that have shown that economic concerns are but one of many reasons – albeit usually the most important reason – people engage in migrant work (e.g., independence, adventure, etc.) (Parreñas 2000). Unlike later generations, the escape from and the overcoming of poverty was always a starting point in how this older generation of Indonesian emigrants narrated their migration experience. Often unprompted, my interviewees who came to Malaysia during this time reflected on what life was like before they migrated. Ainur, who came to Malaysia to work as a domestic worker when she was only 13 years old, told me, “My *kampung* [village] was very isolated. [*Begins to cry*] Life was very difficult and there was not enough to eat. I still remember having to divide one egg into three to share with my young siblings.”⁴¹ Similarly, when asked why he decided to come to Malaysia, Isaac began his story by recalling seeing his neighbors going to the post office to pick up 100,000 IDR (97 USD) each month from relatives who had gone to Malaysia to work. At that time, he was making 1,500 IDR (1.46 USD) per day building roads and was astonished by the large sum of money his neighbors were receiving from abroad.⁴²

³⁹ In 1984, \$1 US = 1,026 IDR (World Bank 1990)

⁴⁰ Nurwan, *ibid.*

⁴¹ Interview with Ainur, Kuala Lumpur, March 2019

⁴² Interview with Isaac, Kuala Lumpur, May 2019

Thus, Indonesian workers' evasion of the border was not driven by an abstract notion of economic or immigration justice but by a very real and concrete need to survive. In response to the violence of the border, Indonesian workers opted to come to Malaysia through informal routes that were less expensive but still costly. For example, Nurwan came from a rural community where most worked as farmers, fishermen, or plantation workers. To afford the 150,000 IDR (146 USD) to pay the *taikong* for his journey to Malaysia, his family had to sell two oxen. Those without livestock to sell, he told me, had to borrow money with high interests.⁴³ This story gives us two concurrent insights into the politics of emigration at that time. On the one hand, it highlights the extent to which Indonesian emigrants were willing to go to improve their situation. Yet, it also shows that despite the extreme lengths migrant workers went through, undocumented migration was still preferred in comparison to traveling through the Medan Agreement. The Agreement also limited each worker to only a two-year contract. Considering the large discrepancy between the costs of the journey with average income, there was no guarantee that workers will be able to recoup these expenses by the end of their two-year contract. This further reduced workers' incentive to travel through formal channels.

The disregard of the Agreement in favor of unsanctioned migration was ubiquitous. Reports of dozens or even hundreds of migrants stopped at the border were a common sight in Malaysian newspapers. According to the Ministry of Human Resources, there were about 500,000 undocumented migrants residing in Malaysia by the mid-1980s, the majority of whom were Indonesian migrants. Mirroring these reports, all of my interlocutors who came to Malaysia during this time came by boat without state sanctions. Through my conversations with them and listening to how the community spoke about life during this time, it is evident that undocumented migration in the 1980s was the norm and documented migration was the exception; evading the border was broadly understood to be the only way possible to enter Malaysia. These workers did not see these acts as illegal or wrong but saw them as acts of survival.

Foreign labor dependency provided the necessary political-economic context for undocumented migration to become ubiquitous. Migrant workers were able to enter Malaysia and find employment because critical sectors in Malaysia relied on foreign labor

⁴³ Interview with Nurwan, Kuala Lumpur, March 2019

to overcome labor scarcity and maintained growth. An estate owner in Johor Baru explained that undocumented workers made up 20 percent of his employees but “Of course if I were asked officially, I would not admit it... [The labor situation] is not as bad here as in the interior estates, say in Keratong, where there has been a labour shortage for the past two to three years. There, this illegal labour often represents more than 50 per cent of the labour, sometimes even as much as 80 per cent” (*New Straits Times* 1981). The private sector was not alone in its reliance on undocumented foreign workers. Agricultural agencies under the purview of the Ministry of Land and Regional Development⁴⁴ also hired tens of thousands of foreign workers to perform tasks like clearing and replanting, first steps to develop a new estate (S Jayasankaran and Angeline Lim 1986). The need, or the very least desire, for foreign workers was not lost on foreign workers. There was a broad understanding among workers at this time that if they could make it to Malaysia, there would be a job for them. This incentivized workers to be willing to accept the dangers of undocumented migration. When asked how he found work when he first arrived in Malaysia, Priyo laughed and told me, “It was the job that arrived, not the worker.”⁴⁵ He went on to explain to me that it was the employer who sought out foreign workers, not the other way around; if a worker could find his/her way to Malaysia, there would be work for them. He pointed out the fact after landing in Johor, he and his fellow travelers were met by a *taikong darat* who brought them directly to a construction site. It was this knowledge that incentivized many to brave the dangers of undocumented migration.

It is also important to note that not all migrant workers have the same assistance in their evasion of the border. While it is no guarantee that migrant workers would not face by abuse on their journey, such actions in a tight-knit community could mean a loss of reputation for the *calo* back home.⁴⁶ As such, the “extent to which such exploitation occurs would depend on the strength and closeness of the relationship between the village broker and the other middlemen, determined by mutual business interests or by ethnic or kinship ties” (E. Spaan 1994). Unlike Priyo, who is from a district in Central Java with long history of emigration, Isaac is from a non-Muslim community without such history and traveled

⁴⁴ These agencies were developed in the 1950s-1960s to develop rural communities (e.g. provide them with land, assist with relocation, encouraged planting of export agricultural commodities like palm oil, etc.).

⁴⁵ Interview with Priyo, Kuala Lumpur, March 2019

⁴⁶ Interview with Samuel, Kuala Lumpur, May 2017

using a *calo* and *taikong* who came without prior recommendations. He told me the story of his eight-day journey from Eastern Nusa Tenggara (NTT) to Johor in a small wooden boat (*kapal kayu*) which slowly fell apart over the course of the journey starting with the compasses, then the steering mechanism, and finally the boat itself. Laughing, Isaac recalled: “Sea water had gotten into the boat. All of us (*teman teman semua*) scooped water out of the boat (*buang air laut*). The young people on the boat had to tie together the body of the boat with rope, one in the front and one in the back, or else the boat could not go by itself.” Yet, despite these risks, the knowledge of a job motivated even those without such networks to pursue employment in Malaysia. As Isaac explained, “The hope of everyone is that this would be the beginning of our *selamat* (safety, prosperity, happiness).”

Phase 2: Evading Detention and Deportation

Once inside Malaysia, foreign workers must continue evading the regulative practice of the border. This is because the “filtering” effects of the border continue even after migrant workers cross the physical border. The aim of the “filtering” effects within the border is the same as along the physical border: to keep out those the state deemed undesirable. It uses the threat of state violence, namely detention and deportation, to ensure that Indonesian workers do not become part of the general laboring population or a permanent part of the Malaysian *demos*. Inside the boundaries of the nation-state, however, this regulative practice also produces the vulnerability associated with undocumented migration (Mezzadra and Neilson 2013). The various types of violence used to regulate the border within Malaysia – e.g., immigration raids, harassment, detention, etc. – all work together to maintain the undocumented worker’s “deportability” even if they are never actually deported. For workers, these bordering practices, like the physical border itself, are another roadblock preventing them from being able to access better economic opportunity.

As such, once inside Malaysia, evasion continues as workers find ways to hide from immigration raids and deportation efforts. Indonesian workers did this by relying on a network of co-patriots created by decades of migration across the Malacca Strait that extended back to colonial times and the era of quiet migration.⁴⁷ It is important to note that

⁴⁷ Author’s fieldnotes, Fall 2018.

this was not a “pan-Indonesian” network; being an Indonesian citizen did not automatically give a migrant worker access to the network. The ties that hold together this network were ties of kinship, ethnicity, or shared place of origin. It is also important to remember that many of the smugglers and *taikong*, some of whom were exploitative, were themselves Indonesians. In other words, co-patriots can be both protectors and abusers for the newly arrived migrant worker. These networks of co-patriots are important in helping foreign workers avoid immigration raids and detention. It was common knowledge that foreign workers strategically avoided sleeping in areas that were often raided by the police and tried to blend in with Malaysian society in order to make it difficult for police to effectively conduct raids (*The Star* 1982b). Although these acts represented an individualized desire to evade detection, they could not have been undertaken in an individualized manner. Nurwan explained that at night, they slept in the forest to avoid detection. In each group of workers, there would usually be an Indonesian who already had Malaysian permanent residency. It would be the responsibility of these documented workers to collect information about when the raids would take place. And if someone were to be arrested, it would be a permanent resident who would go to the police and pay bail.⁴⁸

The decisions of migrant workers took into consideration possible retaliation from the state. Specifically, workers were able to take advantage of the country’s limited and stretched immigration enforcement resources. During the 1980s, immigration enforcement officers oversaw all matters related to “illegal immigrants” including the large refugee population the country was hosting. As a result, the limited resources of the DoI were spread very thin and was unable to cope with an influx of new Indonesian migrants. Beyond having to cover a broad scope of responsibilities, there were simply too few enforcement officers to cover the country’s extensive coastline. Thenappan, who worked as a federal immigration enforcement officer in Selangor said that his team had to cover multiple districts with few officers. Moreover, when asked about his job, it was clear that he was not just responsible for a wide geographic area but also a wide array of responsibilities including collecting tip-offs from the public, planning immigration raids, and preparing to prosecute those detained. He explained that their job was made further difficult because employers who were desperate for but unable to hire workers through official channels

⁴⁸ Nurwan, *ibid*

which he described as “tough” and “not transparent”. The individuals who helped to bring workers in through these informal channels had expansive networks to monitor the behavior of enforcement officers and establish hideouts for immigrants to temporarily stay in once they were ashore.⁴⁹

Throughout the 1980s, the federal government made many attempts to strengthen the Department of Immigration. Although many of these tactics look like normal border patrol procedures for the 21st century traveler, technologies of border patrol like disembarkation cards and the computerization of DoI were developed in the 1980s as a way to “weed” out overstayers (*Malay Mail* 1983). Most significantly, in 1985, the federal government took Taskforce VII, an entity that until that point oversaw monitoring of Vietnamese “illegal immigrants,” and transformed it to a taskforce used to cope with monitoring new arrivals from all countries. To bolster their enforcement mechanism, the Department of Immigration had to combine the existing Taskforce VII⁵⁰ with the marines and the People’s Volunteer Corp (RELA) – a volunteer paramilitary group – to monitor known landing points (*Asiaweek* 1985).

Despite its attempts to strengthen its immigration enforcement capabilities, workers knew the state had weak deportation capabilities. After getting arrested and serving their sentence for illegal entry, workers would be deported to international waters (*New Straits Times* 1987). It was openly known, however, that these workers – many of whom had to pay a great sum of money for their initial passage – would simply turn back and slip across Malaysia’s porous borders again. Nurwan said that as an Indonesian, being an “illegal immigrant” in Malaysia at that time was easier than it elsewhere because of the cultural, linguistic, and geographic proximities between the two countries. He explained, “an illegal immigrant could be arrested in the morning, and they would be back in Malaysia by nighttime.”⁵¹ In brief, although unsanctioned border-crossing was undoubtedly dangerous, Indonesian migrant workers also had faith in their ability to bypass border patrols intended to keep them out and saw this as a reasonable risk given the price of their journey.

⁴⁹ Thenappan, *ibid.*

⁵⁰ Taskforce VII is an abbreviation for Taskforce Vietnamese Illegal Immigrants.

⁵¹ Nurwan, *ibid.*

Phase 3: Evading Poor Working Conditions

The Medan Agreement not only defined the relationship between migrant workers and the state's immigration bureaucracy, but also shaped the relationship workers had with their employers. The Medan Agreement, as a regulatory practice, increased vulnerability of foreign workers. For all foreign workers, documented or undocumented, the Agreement ensured that foreign workers only remained in Malaysia so long as their labor was necessary. This temporal limitation helped employers externalize the maintenance of labor to the home country (Burawoy 1976; Sassen-Koob 1981). At the same time, the Agreement also required that the worker attach themselves to just one employer in order to remain in the country legally. The combined effect of all these measures skewed the labor market in favor of the employer and made foreign labor "cheap" (Burawoy 1976).

The Medan Agreement was part of a larger set of immigration laws, policies and practices – namely the 1959/63 Immigration Act and the 1955 Employment Act – that differentiated foreign workers from local workers. While the Immigration Act laid out who was and was not a Malaysian citizen and the conditions of entry and stay for non-citizens, the Employment Act specified the parameters non-citizens were able to work in Malaysia wage, laboring conditions, and laboring rights. It was this differentiation that allowed for the vulnerability associated with that the juridical status of "illegal foreign worker" to flourish.

As with other countries experiencing high economic growth, Malaysian businesses used foreign labor to cope with labor scarcity that could threaten the projected growth (Sassen-Koob 1983). It is border enforcement policies and practices, which makes both presence and the labor of migrants "illegal", that allow foreign labor to become "cheap" (Burawoy 1976). The state's refusal to authorize the presence of foreign workers disincentivized employers from pouring resources into caring for or maintaining their foreign labor force, knowing that at any moment workers might run away or they could be detained and deported. This treatment of foreign workers as forever temporary combined with the drive to maximize accumulation made foreign workers cheap and exploitable.

It is important to acknowledge that causes of abuse associated with undocumented labor are structural and connected to the workers' unique position in the larger global economy (Castells 1975; Sassen-Koob 1981). These structural issues, however, were

translated into everyday exploitations which evasion could and did combat. Employers often expressed that they felt like they must “get their money’s worth” because of the price they paid to brokers to recruit the workers. In other times, employers were under the assumption that price paid to the brokers was the “wage” and that it would be the brokers who would pay workers directly.⁵² In many ways, the treatment of workers by those along the labor supply chain was an actualization of these structural factors. Employers were able to engage in exploitative behavior by using a workers’ undocumented status against them, working on routine fears of being discovered and deported (Chiswick 1988; De Genova 2002). Similarly, employers also used workers’ lack of knowledge of the on-the-ground dynamics of labor market conditions and worker rights.

Running away from employers, as a tactic of evasion, offered workers protection against unfair or even exploitative employment practices and in doing so, helped to unravel the broader migration regime within Malaysia that made their labor cheap. Evading employers challenged the employers’ ability to diminish the value of the worker’s labor. As an everyday form of resistance, this act was not meant to directly challenge the employer but by acting for their own survival, the worker disrupted the employers’ ability to extract their labor. This disruption flowed through two mechanisms. First, foreign workers were cheap because the “maintenance” of labor is externalized to the home country (i.e., repairing the wear and tear caused by labor) since the host country’s welfare state is not accessible to foreign workers (Burawoy 1976; Geddes 2003). More specifically, the temporal limits of the Medan Agreement ensured that foreign workers return home before they could qualify for residency guaranteeing that the Malaysian welfare state would never be responsible for these individuals. Using a network of co-patriots, foreign workers disrupted this by creating their own welfare community. For example, my interlocutors explained to me how more senior members of a community would step in to care for workers when they become ill or injured.⁵³ When a worker must run away from an abusive employer, they were taken in by a community member and found alternative employment. Second, employers often blamed abusive laboring practices (e.g., long working hours, poor housing conditions, wage theft, etc.) on the high prices paid to brokers for their workers.

⁵² Author’s fieldnote, November 2018.

⁵³ Author’s fieldnote, November 2018.

By running away, new immigrants found work through community networks that were free of the caustic employer-broker relations. Through this, undocumented employment became a viable option for foreign workers allowing them to not only live and work but also to thrive outside the parameters of the Agreement.

As such, workers who arrived in Malaysia with a protective network of co-patriots were often better positioned than those without to evade abusive employers. Nurwan, for example, explained that 400-500 people in his *desa* (village) had gone to Malaysia; he was part of the second group of mass emigration following in the footsteps of his two older siblings. When he arrived in Malaysia, Nurwan was taken in by friends from his hometown (*teman sekampung*) who helped him to find everything from food, to lodging, to a trustworthy employer.⁵⁴ Isaac, for example, did not have this pre-established network of co-patriots. Isaac also knew of others from his hometown had gone to Malaysia before him, but, unlike Nurwan, these earlier movers did not meet him on arrival. After landing in Johor, he and the other new arrivals were told that they had to walk to Pahang, a neighboring state. It was a long journey but the *taikong darat* did not provide any food or water. A few hours into their journey, however, they met other Indonesian workers from their home province. Isaac told me that these workers provided him and the other travelers with food and allowed them to rest because of their provincial connection. These stories are consistent with informal conversations I had with other Indonesian workers who emphasized the physical and emotional help usually offered by strangers from their province or those of their own ethnicity.

In addition to avoiding abusive employers, undocumented migration also offered migrant workers more flexibility in choosing a job than through the Medan Agreement. Once in Malaysia, the Agreement limited the mobility of these workers by specifying which sectors they could work and by tying them to a specific employer. Undocumented workers, however, were not contractually tied to an employer and therefore could simply leave if they encounter an abusive employer or to go in search of better employment opportunities. Isaac told me that when he first arrived in Malaysia, the *taikong darat* brought him to a palm oil plantation where he was promised 13 MYR per day. After working for 10 months without pay, however, he and all the other Indonesians working

⁵⁴ Nurwan, *ibid.*

under the same contractor together decided to all run away (*lari*) and found work on a cocoa farm per the suggestion of an Indian Malaysian who oversaw their day-to-day activities. After that, he and those who worked with him did not stay at one workplace for very long. Following rumors and information from other Indonesian workers, they would always be on the lookout for jobs with better pay and conditions.⁵⁵ In constantly being on the lookout for a better job, foreign workers refused to accept the idea that, as an immigrant, they must accept whatever was given to them. By looking for better jobs, they were able to shift the balance of the labor market back in their favor, specifically pushing back against the way the Medan Agreement restricted labor mobility by tying them to a specific employer.

Still, not all working conditions allow for the development of a network of co-patriots after arrival in Malaysia. This is most evident in the experiences of Indonesian women who made up the majority of the migrant domestic workforce. Unlike workers on plantations or construction sites, domestic workers were often confined to their employer's home with little opportunity to meet other Indonesians. During a conversation at a friend's home, Dimas, a man, explained in the past Indonesians on construction sites often ran away saying, "They came without passports so if employers do not give them overtime or cut their wages they will move." Ayu, a woman, interjected saying "Before cell phones were available, running away was difficult for *pembantu* (helper). This is why many do not want *pembantu* to have their cell phones, they will tell their friends bad things about their employers."⁵⁶ In other words, there was an unequal distribution of ability to participate in this protective network that often fell along the lines of laboring conditions and gendered participation in the migrant labor market.

End of the Medan Agreement

In its aggregate, these everyday acts of resistance overwhelmed the state and incentivized business elites to pressure the state to pursue alternative policies to regulate foreign workers. The foreign labor dependency provided the political-economic context for evasion within Malaysia to affect employment practices and subsequently the trajectory of

⁵⁵ Isaac, *ibid.*

⁵⁶ Author's fieldnotes, February 2019

Malaysia's migration regime. At the most basic level, the size of the migrant population and the inability of the state to quickly "quit" using foreign workers allowed these acts to aggregate. So, while all states use foreign labor to some extent, the fact that Malaysia's political economic vitality depended on the presence and contribution of foreign workers allowed everyday acts of resistance to be amplified in a way that would not be possible in non-foreign labor dependent countries.

The effects of these everyday acts of resistance on border control policies flowed through two mechanisms. First, *directly*, evasion helped to bring an end to the Medan Agreement by overwhelming the state's capacity to enforce it. The high costs of traveling through the Medan Agreement compared to the low-earning capabilities made travels through informal channels either established by *taikong* and/or by kinship and/or hometown ties established in earlier eras of migration. The *en masse* decision to migrate through these informal channels rather than through the Medan Agreement was a calculated act that took into consideration the dire poverty in rural Indonesia, the knowledge that there would be work for them upon arrival, and of Malaysia's weak immigration enforcement capabilities.

Migrant workers' general preference for undocumented migration overwhelmed state bureaucracies charged with upholding the border. In an attempt to control the temporality of undocumented migrant workers, that is to ensure that workers do not become a permanent presence in Malaysia, the state utilizes deportation to forcibly remove migrant workers from Malaysia. The number of workers flowing into and remaining in the country, however, was too much for the police and the DOI. The police and armed forces charged with patrolling the borders and transporting migrant workers across the border lamented that their resources were overstretched, and detention cells had been operating beyond capacity (*Business Times* 1985). This, in turn, made it even more difficult for the DOI and the police to track down and deport undocumented workers as well as the *taikong* and *calos* bringing them into the country (*Malay Mail* 1986). The large number of undocumented workers in the country had made deportation a weekly routine for immigration authorities stretching available resources for the DOI who must also handle other aspects of border control (e.g., attending to ports, handling visa applications, issuing passports to Malaysians, etc.) (*New Straits Times* 1987). The process of detection,

detention and deportation could take up to two years per worker (Berthelsen 1985). The process was also costly running into the millions of ringgit per year to pay not only to bring undocumented migrant workers back across the Malacca Strait but also to pay to house detained migrants awaiting departure as well as the administrative staff making the process possible (*Malaysian Business* 1986a). Beyond those who enter the country without state sanctions are those did enter Malaysia through legal means – either through the Medan Agreement or as tourists – but then overstay their visa. It also takes time and human resources to go through the files of these individuals, locate, prosecute, and deport these individuals (*Business Times* 1986b).

Second, the aggregated effects of evasion also worked to pressure the state *indirectly* through employers. Whether it is through workers running away from abuse employers or in search of better paying jobs, these acts made it difficult for employers to keep a stable and well-trained workforce. Although the Medan Agreement had mechanisms for employers to contractually tie down employees, the terms of the Agreement were tedious and did not necessarily give employers workers with the necessary skill set they wanted. One plantation manager, for example, explained that plantation owners did not oppose the termination of the Medan Agreement because the number of Indonesian migrant workers arriving through the Agreement was insignificant compared to the availability of “illegal immigrants” and – to make matters worse – many of those who arrived legally were “not suitable for plantation work” (Lee Boon Siew 1986). Moreover, evasion made it difficult for employers to control the mobility of their workers, both workers hired the Medan Agreement and on the irregular labor market. For example, the same plantation manager explained that about 70 percent of those hired to work on his plantations simply disappeared after a few months (Lee Boon Siew 1986). Similarly, the chairman of the Johore Planters Association, Mr. Boon Wen Siew, said that 65 of the mere 100 Indonesian workers through Medan Agreement were gone within a year of arriving in the state (*The Star* 1985a). These comments not only highlight the small impact the Medan Agreement had on employers’ ability to recruit workers with the necessary skill sets but also underscores the little incentives employers had to utilize the Agreement at all. Those who attempted to go through the tedious and costly process of hiring workers through the

Agreement were met with an unstable labor force who could simply abscond using the transnational network to find more suitable working conditions.

Employers' concerns over controlling the mobility of workers were exacerbated by the government's deportation efforts which pushed migrant workers to further take evasive actions. For example, in 1985 when police announced that it would begin an operation to detain 20,000 undocumented workers detected in Pahang, the President of the Malaysian Estate Owners Association announced that he feared that rumors of a mass raid would cause unrest among workers not only in Pahang but also in neighboring Johor which had the largest number of undocumented immigrants. Workers, he believed, would leave their jobs in large numbers and go into hiding dragging down the national economy (Soh Eng Lim 1985). Similarly, president of the Malaysian Agriculture Producers Association, Tun Tan Siew Sin, called raids and deportations "the surest way of ruining the nation's economy" (Berthelsen 1985) and warned the government that the expulsion of undocumented Indonesian workers would cause the Malaysian plantation industry to "collapse" (Khalid Jaafar 1985). It is unclear whether the effects of evasion on the national economy could be so direct, but what can be learned is that the language of economic decline was politically meaningful and impactful at the time. Responding to real threats of evasion from workers, estate owners exerted tremendous pressure on the state which eventually called off the operations.

The instability to the labor market caused by acts of evasion led employers to pressure the government to pursue policies that would allow them greater control over the foreign labor force. Such concerns led employers to favor an amnesty program that would allow them to keep workers that have demonstrated their skills and loyalty. One manager lamented the loss of productivity as 170 of his workers were deported only to come back to him again simply by changing boats and hiring another *taikong*. He continued explaining that he and other planters have advocated that the government for an amnesty program that would allow them to keep Indonesian workers already under their employment. In return, employers "could monitor the workers to make sure they are returned at the end of their terms" (Berthelsen 1985).

As such, employers pushed the government to allow them to legalize those who were already working for them – workers who had proven themselves in terms of having

the necessary skillsets and loyalty. For example, Heah Hock Khoon, president of the Malaysian Estate Owners Association, urged the government to allow “illegal immigrants” to remain in Malaysia for a limited period time. He argued that this would not only grant the industry their needed supply of skilled workers but would assist the government “to identify [illegal migrants] as well as contain and restrict their movements.” Such a policy stance would work better than deportation, he claimed, as it would only force these undocumented workers to go on the run (*The Star* 1985b). Similarly, the National Association of Smallholders president Datuk Haji Ahmad Arshad argued that an amnesty campaign would enhance the ability of both the business community and the state to control migrant workers by getting more information about the country’s current labor force (*Business Times* 1986a). Johore Planters’ Association’s chairman Leong Heng Khoon also urged the government to grant the country’s “illegal workers” status rather committing to “futile acts to get rid of them” since they would simply “return within three days of deportation.” Calling deportations a “waste of time,” he argued that legalization would better enable estate owners and the state to control the mobility of migrant workers without further damaging the industry’s access to its primary source of labor (Priyadev Aravind 1987).

This call for better control of foreign labor was met by a receptive state concerned with maintaining continued economic growth. The fear that the state would lose its tight grip over the size, skills, and sectoral distribution of the labor force was pervasive in the mid-1980s. This fear was exacerbated during the 1985-86 economic recession when Malaysia experienced a high unemployment rate for the first time since the NEP was initiated (Lim 1996). Despite the rising unemployment rate during the recession and the critical importance of these sectors to the national economy, Malaysian employers struggled to hire local workers suggesting a change in laboring culture – or at the very least, hiring culture – away from these labor-intensive sectors. Not having enough labor in the estates would result in Malaysia losing its position in international commodity markets losing valuable foreign exchange earnings (Lim 1996). State concerns over the size and make-up of its labor force was particularly pronounced in the second half of the 1980s when the government began to draw up plans for the country’s next phase of economic

development – specifically its dream of becoming a high-income country in the next 30 years – made maintaining a steady labor supply even more important.

Realizing that patterns arrest, detention, and deportation alone will not stem the flow of undocumented workers, the state switched to an amnesty program that would allow workers to register and give them permission to remain and work in the country legally. The program was first launched in 1989 targeting workers in the plantation, construction, and domestic work sectors (Lim 1996). The amnesty program was thought to improve the state's ability to monitor the mobility and temporality of migrant workers because it gave the state a clearer picture of who and how many migrant workers were in the country. The program brought unsanctioned workers into the fold by issuing them work permits which allowed the state to ensure that they worked in only in labor scarce sectors and left in a timely manner risking returning to their undocumented status. In some ways, the program could be seen as a compromise with migrant workers and employers in that it allowed migrant workers to remain in the country and to work for their preferred employer. Foreign workers were not allowed to apply for amnesty directly. Rather, they were required to find an employer who had agreed to hire them and was willing to undergo the formal process of hiring them.⁵⁷ The government wanted to use the amnesty program to rein in migrant workers because allowing migrant workers' mobility and temporality to go unchecked could have long-term economic consequences. Although the state had just legalized labor migration years earlier, the state was already fearful that in the long term the presences and wide availability of cheap labor would make it difficult for the country to transition away from labor-intensive and low-wage industries (Pillai 1995). A better way of monitoring migrant workers would allow the state to allow a brief infusion of labor without fears of it affecting the future economic prospects of the country.

The replacement of the Medan Agreement with an amnesty program reflected Malaysia's inability to control the inflow of workers across its physical border and its growing dependency on migrant workers. Exacerbated by the government cut-backs on civil services, the combined effect of underusage of the Medan Agreement and the great number of migrant workers pouring into the country made deportation – which in itself

⁵⁷ To apply for amnesty, employers went the DoI to register their foreign workers. Once they have registered their presence with the DoI, then their employer can begin processing their employment pass through the DoI.

was a costly enterprise – a “fruitless” endeavor (S Jayansankaran 1985). In addition, it also reflected a larger effort by foreign workers who found stable and safe employment not through formal channels but through informal channels. The reason that migrant workers felt empowered to come and remain in Malaysia was their ability to access a transnational network of co-patriots and the knowledge that they would be able to find jobs upon arrival. Moreover, as noted above, migrant workers understood that the Malaysian state had limited capacity to enforce its borders and keep track of their mobility and temporality.

Conclusion

Malaysia’s quick turn away from the Medan Agreement in favor of an amnesty program set the tone for the subsequent decades of its labor migration history. This chapter argued that to understand this policy reversal, we must dig beyond the relationship between UMNO and Malaysian businesses to investigate i) the role foreign labor played in fueling the transformation of the Malaysian economy under the NEP and ii) how the Medan Agreement aided the state in working towards these developmental goals. Specifically, Malaysia utilized the 1984 Medan Agreement to ensure foreign workers were limited in terms of their temporality and mobility while working in the country (Surak 2013a; J. T. Anderson and Franck 2019a). The restrictions under the Agreement, specifically the TEP, which linked a worker’s legal status to their employer, allowed Malaysia to construct and treat foreign workers as a supplemental labor force flowing only into the labor-scarce sectors who would depart the country before they permanently upset the country’s delicate interethnic relations. Although these restrictions were an expected part of any guestworker program, to migrant workers – who viewed labor migration as a route to escape poverty – these restrictions functioned an everyday mode of violence. It was against this mundane and pernicious mode of violence that evasion worked as a tactic of resistance and self-preservation.

The combined effect Malaysia dependency on Indonesian workers in the plantation, construction, and domestic services sectors and the deep network of care and protection created by previous generations of Javanese and Sumatrans, allowed for these acts of evasion to aggregate and influence state policy. This network of family and hometown ties provided new migrant workers with an alternative route to enter the Malaysian labor market

that would bypass the high barriers of entry under the Medan Agreement including the high costs of entry and the potential of being tied to an abusive employer just to maintain legal status. Over time, Indonesian migrant workers' preference of irregular over regular channels wore away at Malaysia's already weak Department of Immigration. Additionally, Malaysian employers, who acquired these workers at great expense, pushed the state to enact policy that will allow them better control over the mobility of their workers as a way to protect labor productivity on their worksites.

Chapter Three

Culture of Dependency: Unwanted Workers, Unwanted Jobs in a Bifurcated Labor Market (1990-1997)

Today, many foreign workers, mainly from Indonesia, Thailand, Bangladesh, Burma and India can be seen working everywhere. Bangladeshis are now monopolizing the petrol stations in the Klang Valley operating the petrol pumps. Malaysia's plantation sector would be paralysed without Indonesian and Bangladeshi workers... Go to the wet market in Kuala Lumpur and you can see that Indonesians have taken over the businesses that were once controlled by Malaysians. The message here is very clear, that is, we, or rather the system, do not have to wait until the country's economy faces some unexpected downturn in its growth, before we make contingency plans on how to solve the problem of foreigners in this country.

(The Sun 1995)

Introduction

When the Malaysian government legalized the employment of foreign labor in the 1980s, foreign workers were not permitted to enter the manufacturing sector which was considered too "sensitive" (Clad 1984). This decision made political sense given the sector's critical importance to the government's economic development plans, specifically its role in uplifting the economic standing of ethnic Malays, UMNO's political base (Ong 2010; Rasiah 2010).⁵⁸ Starting in the 1990s, however, the manufacturing sector showed early signs of its eventual transformation from a Malay-dominated to a foreign labor-dominated sector (see Table 3.1).⁵⁹ This transformation of the manufacturing sector represents a wider pattern of policy inefficacy in stemming the expansion of foreign labor usage. Since independence, the Malaysian government had approached the employment of foreign labor

⁵⁸ From the 1970s and until the mid-1980s recession, manufacturing was a powerful engine in Malaysia's push for rapid and equitable economic development under the NEP. During this era, the manufacturing sector not only led the country in total exports but was also the leading generator of jobs which were reserved for ethnic Malays (Ong 2010; Rasiah 2010).

⁵⁹ In the contemporary context, foreign workers make up 35% of the labor force in this once off-limit sector (Harkins 2016).

cautiously both in fear of how a new immigrant population might affect the country's delicate inter-ethnic relations and in a desire to protect the access of ethnic Malays to the labor market. Yet, in the 1990s, the employment of foreign workers grew not only in terms of the overall number but also in countries of origin and the diversity of jobs they occupied (see Table 3.2).⁶⁰ Why, despite concerns over the socio-economic impact of a large non-citizen labor force, did the employment of foreign workers spread rapidly during the 1990s? In other words, why did Malaysia's foreign labor management policies aimed at controlling the inflow of foreign workers fail to stop the proliferation of foreign labor usage?

To answer these questions, this chapter examines the relationship between foreign labor and the Malaysian labor market in the 1990s, the era in which foreign workers were first permitted to enter sectors that were once deemed off-limits to foreign nationals, namely manufacturing and services. I do so by analyzing the deterioration of the 1991 Comprehensive Policy on the Recruitment of Migrant Workers (CPRMW), which emerged during a time of real fear of the social and economic costs of over-reliance on foreign labor. Unlike the bilateral agreements that came before it, the policy sought to establish a comprehensive set of mechanisms that would reduce the nation's dependency on foreign labor as it transitioned away from a labor-intensive to a knowledge-based economy. Understanding Malaysia's struggle to control the inflow of foreign labor, I argue, requires a consideration of not only the political and economic determinants of state behavior – such as political pressures from voters to close its borders to the perceived “threat” of new immigration (e.g Karapin 1999; Dancygier 2010; Hainmueller and Hiscox 2010; Burgoon 2014) and pressures from capital to further open its borders to a “cheap” form of labor (e.g. Portes 1978; Freeman 1978; Sassen-Koob 1981; Lahav 2004; Calavita 2010; Peters 2015) – but also the discursive context that underpins employment practices in Malaysia. I consider this discursive context by analyzing how different actors – the state, employers, and the broader public – come to terms with the country's employment of foreign workers. Together, their justification for why the country needed these “unwanted workers”

⁶⁰ Malaysia signed bilateral agreements to import workers from Indonesia (1984), Philippines (1985-86), Bangladesh (1985-86), and Thailand (1985-86) for plantation, construction, and domestic services. In 1992, this list of countries was expanded to include Pakistan. Also in 1992, employers were permitted to recruit workers from Indonesia, Thailand, Philippines, Bangladesh, and Pakistan for the manufacturing and services sector (Devadasan and Meng 2013).

highlights how foreign workers have changed laboring culture – the “practices of meaning-making” at the worksite – in Malaysia and the structural importance of foreign workers in Malaysia’s bifurcated labor market (Wedeen 2002). As such, this chapter seeks to add texture to these causal stories by showing laboring culture constrained the state’s ability to restrict the inflow of foreign labor and reduce the country’s dependence on foreign labor.

This chapter argues that the Malaysian government backtracked from the CPRMW returning to a bilateral model of labor migration governance because foreign labor had become culturally engrained in the everyday life of the Malaysian labor market. Specifically, the instruments put in place by the policy struggled to take hold because by the early 1990s foreign labor had become fully incorporated into the Malaysian labor market, dominating the secondary labor market – a section of the labor market characterized by low wages and poor employment conditions (e.g. Reich, Gordon, and Edwards 1973; Piore 1979). This incorporation is not just based on an economic calculus alone but is understood through a discourse that normalized and legitimized the hiring of foreign workers over local workers in so-called unwanted sectors (Bauder 2006; Yeoh 2006). In other words, foreign workers – whose labor is characterized by their precarity, flexibility, and deportability (Sassen-Koob 1981) – were no longer treated as a temporary addition to the labor force but had simply become a part of how these sectors operated. As a result, the CPRMW, which worked by i) streamlining the recruitment process to decrease the availability of highly precarious undocumented workers and ii) increasing the appeal of local workers, did not fit with the logic of a bifurcated labor market where the dominance of foreign workers in unwanted sectors had become the natural order of everyday employment practices.

This chapter proceeds as follows: I begin by outlining how the discourse of the “unwanted job” was deployed in the early 1990s by business elites to justify their expanded use of foreign labor. I demonstrate that in an era where the connection between nationalism and economic development was being promoted, the idea that some jobs will eventually be abandoned by Malaysians was met by an accepting audience. The position of the “unwanted job” in an era of growing interconnectivity between developmentalism and nationalism form the discursive underpinnings in which the CPRMW was introduced, unfolded, and failed. I then turn my attention to the development and format of the 1991

CPRMW and demonstrate how the state used a similar discourse of the “unwanted job” to legitimize the increasing of foreign labor usage in face of public outcry over these “unwanted workers.” Third, using archival data, I contend that underpinning issues of implementation and enforcement that led to the 1991 CPRMW’s demise was the wide acceptance of the “unwanted job” discourse which made foreign workers an irreplaceable component of the Malaysian labor market. I conclude by summarizing my findings.

Development and Nationalism: “Unwanted Jobs” at the end the NEP

In mid-1991, following the completion and success of the NEP, the government launched the National Development Plan (1991-2000) (NDP), a national economic plan aimed at continuing the NEP’s pursuit of rapid export-oriented industrializing and uplifting the socio-economic standing of *bumiputera* population.⁶¹ Announced alongside the NDP in 1991 was Wawasan 2020 (Vision 2020).⁶² To complement the NDP’s medium-term economic policy intentions, Wawasan 2020 provided long-term objectives of making Malaysia a fully developed economy and united society under the banner of *bangsa Malaysia* (Malaysian nation) by the year 2020 (Gomez and Jomo 1999; Cheah 2002).

Through these plans, the Malaysian state saw the 1990s as a decade in which the country would begin making a transition towards becoming a high-income knowledge-based economy. Towards these goals, the government sought to revamp the Malaysian economy into one that competitive, self-reliant, and technologically proficient. This was to be done by moving away from state intervention towards privatization and deregulation (Searle 1999).⁶³ This new policy’s approach to rapid economic growth left the Malaysian state opened to both external and internal pressures to increase the overall inflow of foreign

⁶¹ In conjunction with the Sixth Malaysia Plan (1991-1995), the NDP furthered these goals with four major policy shifts: “to encourage private-sector led growth; to concentrate on eliminating serious poverty; to expand the development of BCIC [Bumiputera Commercial and Industrial Community]; and to focus on human resource development” (C. B. N. Chin 2000). The NDP set an average growth rate of 7-7.5 percent for the next three decades, growing the Malaysian GDP to eight times its since in 1990 (Gomez and Jomo 1999).

⁶² The main objectives of Wawasan 2020 were: i) A united, peaceful, integrated and harmonious Malaysian nation;; ii) A secure, confident, respected and robust society committed to excellence;; iii) ; iv) A mature, consensual and exemplary democracy; v) A ‘fully moral’ society with citizens strongly imbued with spiritual values and the highest ethical standards; vi) A culturally, ethically and religiously diverse, liberal, tolerant and unified society; vii) A scientific, progressive, innovative and forward-looking society; viii) A caring society with a family-based welfare system; ix) An ‘economically just’ society with inter-ethnic economic parity; and x) A ‘fully competitive dynamic, robust, resilient and prosperous’ economy.

⁶³ The NDP, thus, formalized shifts in the government’s approach to the economy following the mid-1980s recession (Searle 1999; Case 2005).

labor. Externally, there was rising competition from neighboring countries (namely China and Viet Nam) whose large numbers of low-wage workers threatened Malaysia's status as a manufacturing powerhouse, pushing it to find ways to keep labor costs down (Gomez and Jomo 1999). Internally, the shift from heavy state-intervention and towards privatization left many firms opened to the pressures of the global market. No longer could Malaysian manufacturers rely on state support, but must compete on the global market for foreign investors.⁶⁴ Foreign labor was an inviting and quick solution to alleviate these pressures and ensure the government would sustain its export industries while also allowing industries to keep production costs low (Crisis 2010).

Malaysian Businesses: A Call for Labor in Unwanted Sectors

In this political-economic climate, business elites argued that access to foreign workers was vital to meeting the labor demands needed to execute the state's vision of economic growth and expansion. As Chapter Two described, both the plantation and construction sectors had become deeply dependent on the presence and contribution of foreign workers. The dependence on foreign workers in these sectors deepened in the 1990s as urbanization continued simultaneously moving workers away from rural areas while creating a need for housing projects and high-rise buildings (Kaur 2014). Unlike previous decades, however, these calls for foreign workers also came from manufacturing and services sectors. Business elites in both the manufacturing and service sectors complained that labor shortages were affecting their productivity and began pressing the state for access to foreign workers (The World Bank 1995). Although these sectors were once protected and off-limit to foreigners, the restructuring of state-capital relations in the 1980s opened up new pathways for business elites to make demands on the state (C. B. N. Chin 2000).⁶⁵

⁶⁴ Through the 1986 Investment Promotion Act, the government provided generous tax breaks to foreign investors in export-oriented manufacturing while also implementing far-reaching structural adjustments including massive cutbacks of public expenditure, liberalizing equity guidelines in the Industrial Coordination Act (i.e., reducing opportunities for Malays) (Searle 1999). What remained of government assistance to Malay-owned businesses tended to favor larger and more politically well-connected businesses (Gomez and Jomo 1999).

⁶⁵ In 1987, exacerbated by the recession when support for the government declined, the party splintered into two: one faction was continued to be led by Mahathir and the second faction, called Parti Semangat '46, was led by Deputy Prime Minister Musa Hitam (R. S. Milne and Mauzy 1999). Although Mahathir eventually wrestled back control of UMNO during the 1990 elections, the coalition was met with a strong opposition and lost 21 seats in parliament. These struggles opened up institutionalized channels for a wider array of viewpoints as the party had to widen its appeal to attract the support of groups who have historically been critical of UMNO (M. L. Weiss 2006).

To justify their need of foreign workers, employers argued that foreign workers occupied jobs that were “unwanted” by local workers. This justification reflects the broader discourse explaining why foreign workers had become a fully incorporated part of the secondary labor market in Malaysia. For example, in his discussion of migration management and the projection of the plantation sectors moving into the 1990s, Plantation Agencies Sdn Bhd estates director and vice-president for the United Planting Association of Malaysia Bryan Cecil Cooper acknowledged that the sector would collapse without the presence of foreign workers. In explaining why this was the case, he pointed to the inherent nature of the work saying, “Despite various efforts to upgrade amenities and living conditions in estates, the sun is still hot, the estates are wet (in the morning) and mosquitoes do bite. Estates are hard work” (*The Star* 1991c). Most significantly, he saw this increasing reliance on foreign workers as a natural part of the industrialization process believing that it would be “very unlikely” that local workers would be interested in working on the estates moving forward; until the sector can effectively mechanize its work, the sector must rely on the inflow of foreign workers.⁶⁶ In other words, while there are certainly unavoidable and undesirable aspects of the plantation work – such as working in the hot Malaysian sun – the justification for why plantation jobs are perceived as “unwanted” goes beyond working conditions. Instead, it draws on the value these jobs connote and its place along Malaysia’s industrialization journey. Plantation jobs became unwanted jobs was an inevitable – and arguably admirable – part of Malaysia’s transition away from a labor-intensive economy.

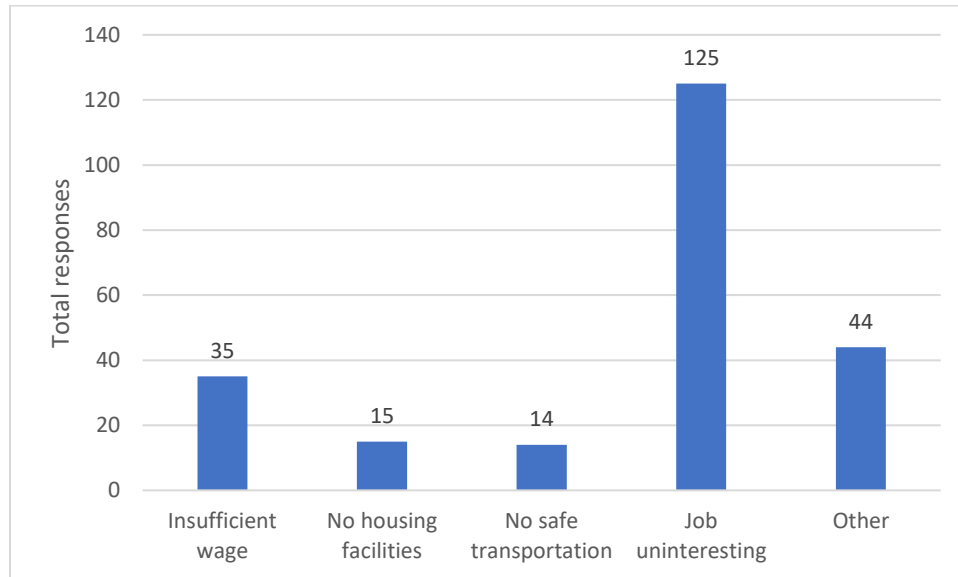
In addition to being used to explain foreign workers’ continued dominance in sectors that have employed foreign workers for decades, the discourse of the “unwanted job” was used by employers to justify the expansion of foreign labor usage into the manufacturing and service sector (small eateries and petrol stations) which gained permission to hire foreign workers in 1992 (Devadason and Meng 2013). Although the

⁶⁶ These sentiments remain an enduring part of the sector. For example, Hisham began his career at the Ministry of Human Resource but moved into the agricultural sector in the 1980s. He explained that about 80 percent of workers in the agricultural sectors are foreign workers and that they are unable to hire local workers because “plantation for them is the last choice.” When I inquired further, he told me that Malaysians are too well educated and do not want to work “manual job” that is “dangerous” and “dirty” preferring to migrate to the city or – he added with a chuckle – “other sectors with air-con.” Citing examples of agricultural workers in Western countries like the US and Australia, he went on to explain that “this is nothing new” and is “the natural progression of developing.” He then points to me and said, “one day your country [Viet Nam] will be the same” (Interview with Hisham, Kuala Lumpur, November 2018).

treatment of assembly line jobs as “unwanted” was not as entrenched in the manufacturing sector as it was in the plantation and construction sectors, it was clear that the seeds for foreign labor domination of factory was laid in the early 1990s. For example, in a sample of 150 letters from the Labour Department sent to the Committee on the Employment of Foreign Workers (see below) in 1992 certifying that a manufacturing business was unable to hire local workers, 125 stated the primary reason the business was applying to recruit foreign worker was because local workers were uninterested (*keadaan kerja tidak menarik*) (see Figure 3.1).

A similar dynamic was unfolding in the service sector. In 1995, for example, after several petrol kiosks were raided by immigration officers, the Petrol Kiosk Operators Association announced that it would reduce the hours of operation for more than 3,200 across the nation as a way to push back against what it perceived to be resistance from the government in allowing the sector to hire foreign workers. According to its president, Abu Samah, about 60 percent of the sector’s workforce were foreign workers from Bangladesh and Indonesia (Wan Suhaimi Saidi and Loong Meng Yee 1995). Foreign workers were needed, according to Abu Samah, because local workers preferred to work in better paying manufacturing sectors (*Business Times* 1994b). Similarly, in their petition to be able hire foreign workers, restaurant, coffeeshops, and other eateries said that they were unable to hire local workers who were too “status conscious” and preferred to work in the manufacturing sector or to emigrate to Singapore (*New Straits Times* 1995; *The Star* 1995). While it might be true that these sectors’ turn to foreign workers represented a quick and cheap solution to the sector’s concerns (versus engaging in skill development or industrial upgrading), it is also true that the sector was able to employ such a discourse because it was a powerful signifier and an easily understood and accepted a reason for hiring foreign workers in the eyes of the state and broader public. In other words, regardless of whether there is truth to such actions, what is true is that the discourse was pervasive.

Figure 3.1: Reasons for inability to hire local workers, manufacturing sector (1992)



Source: Malaysian National Archives

Malaysian Society and the Concerns over Unwanted Workers

The Malaysian public at the end of the NEP was a receptive audience for the discourse of the “unwanted job” espoused by business elites. Despite the overall success of the NEP in poverty eradication and eliminating the association between ethnicity and occupation, certain socio-economic issues remained.⁶⁷ First, while the NEP decreased the inter-ethnic wealth disparity, it also led to an increase in inequality within the *bumiputera* population with many still living in poverty working in small-scale agriculture (Gomez and Jomo 1999). In an effort to address the issue of lingering poverty within the *bumiputera* community and to prepare Malaysians for a more competitive global labor market, the government invested in education across the board and provided vocational trainings to rural youths in order to assist their movement away from agricultural and into manufacturing jobs (C. B. N. Chin 2000; Ong 2006). This human capital improvement project began following the mid-1980s recession when the government launched the First Industrial Master Plan (IMP1) (1986-1995), Malaysia’s first attempt to promote upgrading

⁶⁷ Increased state intervention and public sector expenditure as well as ensuring economic growth through export-oriented industrialization reduced the rate of poverty from 49 percent, at the onset of the NEP in 1970, to 15 percent by the end of the 1980s on Peninsular Malaysia (Gomez and Jomo 1999). While not fully eliminated, the association between ethnicity and sectoral occupation faded with the reduction of interethnic socioeconomic disparities, the rise of both a Malay middle class and Malay ownership of corporate wealth (Gomez and Jomo 1999; Searle 1999).

of its technological capabilities and created a laboring population for these sectors (R. S Milne and Mauzy 1999). The IMP1 introduced a series of training and skills development initiatives including the Human Resources Development Fund (HRDF) which, beginning in 1993, began to require larger firms to invest in skill-upgrading (Henderson and Phillips 2007).

Second, the extent to which the NEP achieved its overarching ambition of establishing “national unity” was highly questionable. For example, over the course of the NEP, the MCA became increasingly critical of the Malay-dominated government’s attempts to constrain Chinese accumulation of wealth and the MIC argued that ethnic Indians were becoming increasingly marginalized in Malaysian society (Gomez and Jomo 1999). To create a sense of national unity, Wawasan 2020 also included a commitment to multiculturalism – the development of a national identity over ethnic identity (while still centering Malay culture). One reason for this shift in cultural policy was the consequences of the intra-UMNO power struggle in the mid-1980s and the rise PAS as an electoral competitor for the Malay vote forcing UMNO to seek out voters beyond its base (R. S Milne and Mauzy 1999; M. L. Weiss 2006). Moreover, the growth in the numbers of Malay capitalists during NEP created greater competition for patronage resources within UMNO which, in turn, led many small-scale Malay businesspeople to believe the government was only interested in supporting Malay tycoons (M. L. Weiss 2006). As such, Wawasan 2020 and the NDP, which was seen as much less ethnically divisive than the NEP, was met with some enthusiasm, especially from non-*bumiputera* populations (Gomez and Jomo 1999; M. L. Weiss 2006).

One such effort to build a unified Malaysia is the portrayal of economic growth as a nationalist endeavor, particularly after the accession of Prime Minister Mahathir in the early 1980s.⁶⁸ As the country gained economic power and became more embedded in the global economy, a narrative of “an Asian renaissance” emerged that harkened back to precolonial times “when Islam was the force that brought commerce and splendor to Southeast Asian trading empires” (Ong 2006, 80). Through this nationalist discourse, the state saw the future as one defined not only in terms of Malaysian autonomy from its

⁶⁸ A few years into his leadership, for example, corporations that had been under control of Europeans since colonial times were taken back either by the state or UMNO-linked corporations (C. B. N. Chin 2000).

colonial past, but also as an era of economic transformation across Asia. For instance, Mahathir wanted to build up Malaysia as another example of Asian development as a way to increase the country's influence across the developing world (R. S Milne and Mauzy 1999).

The presence of foreign workers in Malaysia was often explained and understood through this narrative of pride in the progress Malaysia has made since the start of the NEP. Below is an op-ed that compared Malaysia's relationship with foreign labor to that of other Asian countries that had rapidly industrialized:

MODERNISING societies are almost bound to leave behind an economic substratum whose functions can no longer be feasibly carried out by its own workers. Usually technology and social evolution would sooner or later make such sweat-back low-end jobs redundant. But rapidly modernising economies, such as those in East Asia, can move too fast for social adaptation to keep pace. These left-over jobs for which locals have become too snooty for - from bricklayers in Japan, to coal shovellers in Korea, to menial municipal workers in Taiwan - become a magnet for immigrants from poorer countries, who are losing many of their most productive workers. For Malaysia, the problem of immigrant workers is compounded by its economic expansion: not only are Malaysians becoming choosier about job quality, there are not enough of them to take up the mundane jobs that are so essential to maintaining output.

...In a growing economy whose competitive advantage has been anchored in low resource and wage costs, the option provided by readily-available cheap foreign labour is not only tempting, it is economically preferable. Regrettably, the popularity of foreigners has not diminished - Malaysian producers and employers are beginning to take their lower wage costs for granted, and slanting their cost structures accordingly. It is this cloying economic habit that poses the heaviest impost to the country's economic progress (*Sunday Times* 1994).

While the "unwanted job" discourse did not cause these sectors to become migrant-dominated, this language usage mattered for the organization of the Malaysian labor market because it showed the congruence between how the Malaysian public imagined itself and employers' justification for foreign labor recruitment. To the writer, Malaysia's economic progress was something to celebrate and the emergence of "left-over jobs" as a part of "modernization" was treated as normal and natural. The comparison to the Asian Tigers - Japan, South Korea, and Taiwan - not only emphasized the author's belief that these jobs becoming "redundant" was inevitable but also their portrayal of this evolution as something aspirational. Although there was recognition that these "left-over jobs" are an essential part

of the Malaysian economy, within the context of a modernizing Malaysia with its “social evolution”, it was understandable why Malaysians were becoming more “choosy” and unwilling to take on these jobs. The question for the writer was not whether foreign workers should be imported for these sectors but rather the role foreign workers ought to play moving forward and its potential impact on the health of the Malaysian economy.

As Malaysia opened its labor market to a greater number and a greater diversity of foreign workers, however, there was a real and growing fear that dependency on foreign labor could bring down the country’s progress. This fear that Malaysia was becoming too dependent on foreign labor was not unfounded (Arifianto 2009b; Kaur 2014). Table 3.2 shows the number of *documented* workers as proportion of the total labor force across the 1990s. Even this modest number alone suggests that the proportion of the total labor force occupied by foreign workers was slowly increasing throughout the decade. The estimated number of *undocumented* workers in the country, while varying widely depending on the source, consistently indicated that the actual number of foreign workers in Malaysia was much higher. For example, in 1990, Labour Minister Datuk K Pathmanaban stated that there were between 100,000 to 150,000 undocumented foreign workers in the plantation sector alone (*New Straits Times* 1990b). At the same time, Indonesian officials said there were 500,000 undocumented Indonesian workers employed in Malaysia at the turn of the decade (*New Straits Times* 1990a). From another source, it was estimated that there were 1.2 million foreign workers in Malaysia making up 17 percent of the labor force (The World Bank 1995).

Moreover, by the 1990s, the impact of foreign labor dependency had expanded beyond the economic sphere. Foreign workers, no longer restricted to secluded plantations or in hidden away in *kongsi* on construction sites, were becoming a part of everyday life in Malaysia. In the following passage, a journalist perfectly describes not only how foreign workers had transformed the landscape of Kuala Lumpur but also the uneasiness felt by some Malaysians watching this transformation:

ILLEGAL immigrants are steadily making their presence felt in Balakong Kajang, following its rapid development and mushrooming factories. Though not in a large numbers [sic] like Chow Kit, Indonesians and Bangladeshis can be seen in great numbers mostly at construction sites and food stalls. When we arrived in Balakong, the first three persons we asked for directions gave away their nationalities. One answered *ngak tahu*, the Javanese version of “I don’t know”,

the next said “saya orang luar” [I am a foreigner] and the third said “I no speak Malaysia” [sic] when asked for directions to Taman Taming Jaya... (*Malay Mail* 1993b)

In their discussion of the development of ethnic enclaves in Kuala Lumpur, the author reminds us of the interconnectivity between economic life and social life. In their efforts to earn an income, foreign workers are also engaged in acts of social production building a community and networks (Swider 2015). Thus, despite institutional restrictions (e.g., visas) that seek to make these workers a temporary stop-gap measure, over generations they have permanently transformed their host nation. While contemporary Malaysia might treat these ethnic enclaves as a normal part of the urban landscape, they were a relatively a new phenomenon in the early 1990s and were met with serious outcry.⁶⁹ In all parts of the country, migrant workers are often labeled as criminals who, driven by dire poverty, commit robberies or are lured into sex work (e.g. Rusdi Mustapha 1991; *Malay Mail* 1993a). *Pasar malam* (night markets) in areas like Chow Kit had been traditionally confined to the Malay community. Yet by the 1990s, there were public concerns, particularly from ethnic Malays, that these small-scale business ventures were being overtaken by Indonesians (e.g. Syed Azhar 1993). Specific to urban areas, migrant settlements began popping up in areas under development (i.e., nearby construction zones on which they work) became an eyesore to local Malaysians who argue that such settlements lack proper sanitation and impinge upon infrastructural developments (e.g. Leong 1993).

⁶⁹ By the time I did my fieldwork in 2018, Chow Kit (an area of Kuala Lumpur mentioned in the quote above) had become the “migrant worker” part of town. While this is often said to me by Malaysians in a mocking tone, there is certainly truth to these comments. Walking through Chow Kit on any given day and you will see advertisements for money wiring services or international calling cards. On Sundays, the neighborhood would explode as migrant workers come from across the Klang Valley to attend church, send money home, or go shopping at markets that sell specific ingredients from home (Kassim 2000).

RAPE OF THE FOREST

M. MAIL 12 DEC 1994

By V. VASUDEVAN

FOREIGN workers have built at least four illegal settlements on the fringes of secondary forests in Hulu Klang — with two of them looking more like low-cost housing schemes.

With no fewer than 200 units built in the past 18 months, it is a wonder why the local authorities have not demolished these houses as they had been told of the "squatter invasion".

The four settlements are on the fringes of Kampung Kemersah, Kampung Pasir Tambahan, Pinggiran Ukay and behind the Ramah Bakti Orphanage. And they seem to be well-organised.

The number of units in a settlement ranges from 20 to 100 — and more are being built. Some are terrace houses with lot allocations while some are perched on slopes.

None have drainage or sanitation facilities, a worrying factor as this could lead to pollution and health problems in the form of water-borne diseases.

The settlements are not given urban services and indiscriminate disposal of rubbish will foul up the environment. Units being built on slopes do not have any erosion prevention measures.

Last Thursday, Hulu Klang Assembly

Alien workers building illegal settlements in Hulu Klang

man Fuzi Hassan highlighted the presence of these settlements in Hulu Klang at the Selangor State Assembly, calling them new Prapat (informal) in a town near Lake Taka in Sungei.

He said the squatters pump water from streams and use generators for electricity. Fuzi said the settlers even had their own watchdog team to check on harassment from the authorities.

He urged the state to put an end to this "outdoor" invasion and suggested the Government form a committee comprising local authority, Purvey Department and relevant institutions to check their activities.

The Malay Mail visited the areas occupied by Fuzi's special assistant Mohamad Mustafa Latif.

Mohamad Mustafa said they had some phased severe) lanes about these settlements to the Lembah District Office and the Ampang Jaya Municipal Council.

SEE PAGE 4

ILLEGAL FOREIGN SETTLEMENTS

Location of the four illegal settlements



M. MAIL 12 DEC 1994

Squatters or low-cost schemes?



JUNGLE SETTLEMENT: The dirt road leading to the Kampung Kemersah houses.

FROM PAGE 1

He said Fuzi had also brought the matter to their attention, but nothing has been done.

"It has become a place where people have come to accept these settlements as a permanent feature. Mohamad Mustafa said although some of the squatters may have permits to work here, he believes most are illegal immigrants.

As for the settlements are by day, most of them cleared recently.

At the Kampung Kemersah settlement, which is built on a slope, 20 units were occupied.

Women could be seen peering about their chores in the units built on the long narrow plots on the slope.

At Kampung Pasir Tambahan, some units are being built while some are already occupied. There are at least 30 units here, with conditions similar to those at Kampung Kemersah.

It was a different story at the Pinggiran Ukay and Ramah Bakti settlements. The



ILLEGAL CLUSTER: The units near Pinggiran Ukay

were built of brick and wood, resembling low-cost housing schemes. Mohamad Mustafa said the squatters had been in

the making over the last 18 months but they had taken on a more vigorous turn during the last three months.

"They have been building with greater urgency lately and despite our complaints, nothing has been done," he said.

A sensational article describing the impact of unregulated migrant worker settlements on Malaysian natural resources.

Malay Mail, December 12, 1994



An article about the transformation of Jalan Gereja (Kuala Lumpur) into a meeting place for Filipina migrant workers. This photo had the caption, "Filipina migrants open an open-air salon on Jalan Gereja" ("Pendatang Filipina membuka salon terbuka di Jalan Gereja").

Watan, August 16, 1995

The 1991 Comprehensive Policy for the Recruitment of Migrant Workers

The development of the 1991 CPRWMW was a response to two contradictory pressures: On the one hand, there was growing pressure for effective regulation of foreign labor inflow after the failure of the 1984 Medan Agreement. As detailed in Chapter Two, the migration mechanisms laid out by the bilateral agreement were largely ignored in favor of informal migration channels. This concerned the state which feared that such a large inflow of undocumented workers into the labor market would lead to its losing control over the labor force of these sectors (*New Straits Times* 1990b). On the other hand, the country's new industrialization ambitions under the NDP created a desire among businesses for a large and flexible pool of foreign workers. As the country transitioned into this new era of industrialization, there were loud cries of labor shortages in the plantation, construction, manufacturing, services, and domestic services sectors. For example, the Federation of Malaysian Manufacturers said the sector was facing countrywide shortages of between 50,000 and 80,000 workers (*The Star* 1991a). Considering the role export-oriented manufacturing was to play in the upcoming era, this outcry – regardless of its veracity – was a concern when compared against the growth of Malaysia's laboring population as part of its projected natural population growth. To further exacerbate concerns, in February 1991, the Manpower Department projected that a total of 9.71 million workers would be needed by the year 2000 if the economy was to meet its desired growth rate. Malaysia's natural population growth, however, was the declining leading the Department to expect a shortfall of 580,000 workers by the end of the decade. The Department said the gap if not bridged could stifle economic growth and lead to upward pressure on wages (*The Star* 1991a).

On the other side of the border, the Indonesian government continued to offer Malaysia its own citizens to meet Malaysia's labor needs. Labor emigration as a solution to underemployment in Indonesia dates back to the 1960s, but it was under Manpower Minister Cosmas Batubara that the Indonesian Government began to promote their workers to labor scarce countries (Palmer 2016). In January 1990, for example, Malaysian Deputy Home Minister Datuk Megat Junid Megat Ayob and Cosmas Batubara announced that the two countries have been discussing the sending of *trained* workers (*The Star* 1990a) – a shift towards focusing on the *skills* workers possess and not just the overall quantity of

workers needed. Going beyond traditional sectors (i.e., plantation and domestic services), the Indonesian government in August 1990 offered to send workers to alleviate labor shortages in Malaysia's industrial sectors (V Chandrasekaran 1990).

Going it Alone: A Unilateral Approach to Labor Migration Policy

In response to these pressures and the offer from the Indonesian government, the government announced in June 1991 its plans to streamline the process of recruiting foreign workers. The primary purpose of this policy was to alleviate concerns over the perceived "social problems" caused by foreign workers while also ensuring that industries would have access to necessary pools of labor. In his announcement of the government's plans, Deputy Human Resources Minister Datuk M. Mahalingam underscored the importance of this policy for the country's economic development (*The Star* 1991b). Moreover, since the 1980s there were public concerns over the appalling conditions in the *kongsi* and at the worksites. Concerns over the well-being and treatment of foreign workers became acute in July 1991 when a barter boat carrying deportees went down in the Malacca Strait. Killing hundreds this incident spurred public condemnation of the government's lack of care towards foreign workers (*Business Times* 1991a). This, in turn, pressured the government to address the "humanitarian" dimensions of foreign labor rather than simply continuing to treat it as a "security" concern.

The final policy, announced in October 1991, would be valid for five years and subjected to annual reviews to identify foreign labor need of each sector and regulate/monitor recruitment. The Committee on the Employment of Foreign Workers (CEFW)⁷⁰, also formed in October 1991, was the coordinating body of the policy tasked with formulating guidelines and vetting employers' applications to recruit foreign workers. The CEFW formed the nexus between the two government Ministries involved in the recruitment of foreign workers. The first was the Labour Department, under the Ministry of Human Resources, who was tasked with determining the number of foreign workers each firm/business was permitted to hire and issuing work permits to foreign workers. The second was the Immigration Department, under the Ministry of Home Affairs, was tasked

⁷⁰ It comprised representatives from the Home Ministry; the Primary Industry Ministry; Culture, Arts and Tourism Ministry; International Trade and Industry Ministry; Labour Department; Manpower Department; Immigration Department and the police. It was chaired by Human Resources Minister Datuk Lim Ah Lek.

with screening potential foreign workers for security concerns and issuing Temporary Employment Pass (TEP). Each application needed CEFW's recommendation before employers could apply for the TEP.

Unlike the Medan Agreement, the 1991 CPRMW was a unilateral approach to create a stable and state-controlled inflow of foreign workers while also pushing employers to hire local workers. It created a comprehensive set of rules Malaysian employers had follow to hire foreign workers, regardless of their nationality.⁷¹ In their application submitted to the Foreign Workers Recruitment Secretariat (under the ministry of Human Resources), employers interested in hiring foreign workers had demonstrate that they had done their due diligence in advertising the positions to local workers (e.g., putting it in newspapers including all details concerning salary and working conditions) and had exhausted all possible avenues of hiring local workers (Wong Chun Wai 1991). Regardless of firm size, they also had to outline a way to resolve that shortage moving forward, such as implementing a training program (Fernandez 1991). Similarly, the policy pushed businesses to improve their working conditions (the logic being that poor conditions are why local workers stayed away from these jobs) and required the provision of medical benefits (*The Star* 1992a; Bahaman K'Zaman 1992; *The Star* 1992c). Parallel to the policy, the government changed labor laws and practices to make local workers a more attractive option than foreign workers (e.g., increasing the overtime limit from 64 to 104 hours) as well as finding ways for factories along the west coast of the Peninsular to hire from areas of labor surplus in the country, namely states in the northeast, through the Labour Mobility Program (Bahaman K'Zaman 1992; *Sun* 1995).

In addition to streamlining the rules for hiring foreign workers, an objective of the policy was to reduce the overall number of undocumented foreign workers who were not only viewed as a source of "social problems" but also a "cheap" labor force that the state could not control (see Chapter One). In other words, the policy was a response to the

⁷¹ Recruitment process under the 1991 CPRMW: 1) Employers fill out an application form designated by the Ministry of Human Resources; 2) Employers to submit forms to the CEFW; 3) CEFW considers and recommends firm/business to the Immigration Department; 4) Ministry of Home Affairs carries out security checks; 5) Ministry of Home Affairs makes recommendation to Immigration Department for a visit pass; 6) Ministry of Human Resources approves number of foreign workers permitted to hire (may be less than number on application); 7) Employers can recruit foreign workers directly or through employment agencies.

growing concern regarding the state's inability to control the temporality of migrant workers. The gap between the steady supply of labor and the limited state border control capacity created a large population of undocumented workers who were becoming a permanent presence in Malaysia – going against the aim of the modern guestworker program. Under the 1991 CPRMW, some of the burden to control migrant temporality fell onto employers. Before entering Malaysia, foreign workers were required to find a sponsor (typically their employer) who would be held responsible for ensuring that they did not overstay the time limit of their TEP. To ensure this happens, each employer had to pay a deposit which they lost if their foreign workers overstayed.

Alongside the mechanisms within the policy, the government enacted a series of programs across the 1990s to control migrant temporality and reduce the overall number of undocumented migrants entering and staying in Malaysia (see Table 3.3). This included a regularization which allowed currently employed undocumented workers to gain legal status; voluntary repatriation which allowed undocumented migrant workers to return home without being penalized; *Ops Nyah I*, a campaign to strengthen border security by stopping and deporting migrants at the border; and *Ops Nyah II*, a campaign to detect, detain, and deport undocumented migrant workers within Malaysian borders. To assist these efforts, the government routinely imposed freezes on the recruitment of new foreign workers to allow security forces time to carry out their operations (Kamarulzman Salleh 1994).

Legitimizing the Presence of Unwanted Workers: Nationalism, Developmentalism, and Migration

Like business elites who must explain to the populace their hiring preferences, the state must justify not only the continued presence of foreign workers in the country but also its decision to permit more workers to enter Malaysia under the 1991 CPRMW. Migration theories have argued that unlike other cross-border flows of goods or capital, what makes migration politically unique is its potential to impact the social contract between the state and its people (e.g., Hollifield 2004; Zolberg 2006). Since independence, the legitimacy of UMNO's dominance in government is connected to its ability to ensure sustained economic growth while protecting the special position of ethnic Malays. In the context of early 1990s Malaysia, as noted earlier, the combination of the economic downturn and intra-party

fracturing in the mid-1980s had caused some damage to UMNO's – and specifically Mahathir's – hold on power (R. S Milne and Mauzy 1999). In such a context, UMNO was sensitive to how the CPRMW, a policy which sought to increase and diversify the inflow of foreign workers to Malaysia, would be met by an increasingly dissatisfied electorate who treated this inflow of labor as a threat to national security (e.g., rising criminality or communicable diseases). In addition to the uneasiness of a growing Malay-speaking Muslim population for the non-*bumiputera* voters, the growing presence of ethnic enclaves and perceived encroachment of migrant workers into Malay-dominated areas (e.g., *pasar malam*) created a fear that long-term dependency on foreign workers would alter the social fabric of the nation.

Since the early years of formalized labor migration in the 1980s, the state often combined nationalist rhetoric with language that portrayed certain jobs as unwanted to explain why the government was forced to take action to fill these vacancies with foreign workers. For example, when the possibility of allowing Bangladeshis to work in the plantation and construction sectors was met with public outcry that foreign workers were changing the socio-cultural fabric of the nation, Deputy Home Minister Datuk Megat Junid Megat Ayub warned his countrymen noting:

Our economy is based on agriculture. We cannot afford to let the agricultural and construction sectors to lie idle. If our youths turn down jobs in the plantation and construction sectors, there is no way we can boost our economy. The Government will have to act and may be forced to legalise the import of workers from Bangladesh and Indonesia (*The Star* 1987).

He goes on urging Malaysian youths to “sacrifice certain modern amenities and work in estates to help revive the economy” and “save the Government from having to resort to importing foreign workers” (*The Star* 1987). When the federal government eventually admitted these Bangladeshi workers, Deputy Prime Minister Ghafar Baba noted the critical role of the plantation sector to the recovering Malaysian economy saying that “it was essential that the vacancies be filled as the harvesting of latex and oil palm, which are currently enjoying good market prices, would be interrupted if there was a labour shortage” and also blamed the need to resort to foreign workers on Malaysian youths who were too choosy and refused to put nation before self (*New Straits Times* 1988).

Transitioning into the 1990s, Mahathir continued to nurture the connection between nationalism and economic development in pursuit of Vision 2020 (C. B. N. Chin 2000). It was at this nexus between nationalism and developmentalism that the Malaysian state understood and portrayed why the country had to allow foreign workers to work in certain sectors of the labor market. For example, when Malaysia began losing its standing as a palm oil exporter, Deputy Prime Minister Abdul Ghafar Baba warned his people:

We will be left with no other choice but to legalise these 500,000 illegal immigrants if the locals do not want to work in estates... It is up to you (youths) whether we legalise these illegals or not, but I warn you not be choosy. You must be patriotic and be willing to take any job... There is nothing wrong in a graduate working as an oil palm harvester. Just don't remain unemployed while waiting for a white-collar job (*The Star* 1990b).

Similar language connecting working in these sectors with sacrificing for the nation can also be found in the state's discussion of the construction sector. In response to growing pressure to expand the employment of foreign workers to manufacturing sectors, Minister of Trade and Industry again called out the nation's youth saying, "I am disappointed with Malaysians. They [sic] are so many young unemployed hanging around but do not want to work." She goes on to deny that it was low earnings that drive local workers away from construction sites, pointing out the fact that contractors paid 40 ringgit a day but were still unable to attract local workers and, "This is why we have to import Indonesian workers to fill the vacancies. Our youths have to change their attitude towards blue-collar jobs or face the dire consequences of unemployment" (*The Star* 1990c).⁷²

On the surface, the state appeared to be raising the status of agricultural and construction jobs calling them the foundation of the national economy. In its description of these jobs, it recognized that these migrant dominated sectors were foundational and instrumental to ensuring that the country remain on track to meet the projected growth of the NEP and NDP and, subsequently, secure the base of UMNO's political legitimacy. Yet, by reprimanding Malaysian youths for their lack of desire to work in such sectors, the state helped to reinforce and proliferate the notion that there was something so undesirable about these jobs that even patriotic fervor could not overcome it.

⁷² Despite the continuity of language decrying the "lazy youths", it should be noted that unemployment rates in Malaysia fell from a height of 8.3 percent in 1986 to only 4.5 percent in 1990 (World Bank 2022).

Like the Malaysian public, there was a sense of acceptance that the import of foreign labor was a necessary and even admirable aspect of economic development. Below is an excerpt from a radio interview during which Deputy Prime Minister Ghafar Baba was asked about the issue of undocumented migration in Malaysia:

Question: Could YAB [*Yang Amat Berhormat* or The Most Honorable] explain the current situation on illegal immigrants? At one time, our country faced a severe problem of Vietnamese illegal immigrants which was later amicably solved. What are your views on the current problem of illegal immigrants?

Answer: Malaysia has progressed from a country with a high unemployment rate 30 years ago to one which is experiencing manpower shortage. It is in our estimation that our current unemployment rate is 5.6 per cent, one of the lowest in the world. However, the World Bank says Malaysia's unemployment rate is only 3.5 per cent, and this clearly indicates that we are experiencing labour shortage. Due to this labour shortage, our country has opened our doors to foreigners to come and work here. With more jobs available, more people will want to come...

Q: The nation's economy is improving so is its standard of living resulting in low interest among locals for labour-intensive jobs. What is YAB's view on the possibility that in the future locals will occupy all high-level jobs while menial occupations are left to foreign labour like in some Arab countries now?

A: As long as it does not damage the country's economy and security, there is nothing wrong with this... (*New Straits Times* 1991).

There are three dynamics worth noting in this interview. First, captured in Ghafar Baba's words was a sense of pride in Malaysia's meteoric rise in terms of economic development since gaining independence from Britain. This is not only seen in his recitation of Malaysia's employment statistics but in justifying why foreigners want to come and work in a country like Malaysia, with its high living standards and wide availability of jobs. Second, evident in the exchange between the Deputy Prime Minister and the interviewer is that the bifurcation of the country's labor market is a reality that is not only recognized by the state but also by the broader public. In other words, the equation of some sectors of the economy or specific jobs to foreign workers is widespread and an easily recognized pattern within the country's labor market. Lastly, echoing the op-ed quoted above, there is the perception that this bifurcation is a natural byproduct of Malaysia's growing economy that allows its people to move toward "high-level jobs" leaving behind "menial occupations." It is the combination of the widespread perception of this bifurcation, the acceptance that

it is the natural progress of an economy that makes it a powerful force in lending legitimacy to the practice.

Failure of the 1991 CPRMW: Unwanted Workers in Unwanted Jobs

Despite the significance of the 1991 CPRMW in allowing UMNO to meet its economic agenda under the NDP while also securitizing its border by reducing the overall number of undocumented foreign workers in the country, the government quickly abandoned this restrictive stance in favor of new bilateral agreements allowed more workers to flow into the manufacturing and services sectors. In this section, I examine why the government eventually backtracked from this policy stance to ensure that workers traveled through regular channels and to constrain the country's usage of foreign labor. I begin by laying out the weaknesses both within the policy itself and in the institutions responsible for policy implementation. I argue that in addition to policy flaws and institutional capacity, the policy failed in its objectives because it underestimated the degree to which foreign labor had become entrenched in the Malaysian labor. Specifically, the discourse of the "unwanted" job that had helped justify the presence of foreign workers in Malaysia also further embedded foreign workers as an enduring part of the Malaysian labor force.

Policy Weakness, Implementation, and Enforcement

At its base, the 1991 CPRMW contained elements that worked against its goals of reducing the overall inflow of foreign labor and number of undocumented foreign workers. Most importantly, as detailed in Chapter Two, the high cost of travel are a determinant factor in a potential migrant workers' decision to migrate through formal or informal channels. Yet, as Table 3.4 outlines, the 1991 CPRMW placed a substantial financial burden on foreign workers wishing to come to Malaysia for work. In addition to both formal and informal costs of emigration charged by the government and recruitment agencies in foreign workers' home country, a potential migrant worker was responsible for paying for their own medical examination and a levy – an annual tax on migrant workers.

In addition to elements inherent within the 1991 CPRMW, there was a lack of both political will and capacity to fully execute the policy and parallel initiatives (Kassim 2001). The clearest insight into the state's limited capacity lies with its Immigration Department. Many of the state's difficulties in detecting and deporting foreign workers detailed in

Chapter Three continued into the 1990s. Recognizing this weakness, there was a concerted effort to bolster the capacity of the Immigration Department to handle a growing non-citizen population by building new detention centers (Zulkifli Talib 1992) and switching to machine readable cards (Zacharian 1995) that would be enable security officials to better track foreign workers. Despite these efforts, detention centers remained over capacity (Morais 1995) and the Immigration Department was often overburdened by mounting requests for foreign workers from employers and rising number of foreign workers. Institutional weaknesses in the implementation process allowed employers to exploit loopholes within the recruitment procedures to avoid paying for the TEP and the deposit. For example, employers were given up to a month after their foreign workers arrived to pay for these charges, allowing many to evade paying these fees.⁷³

As a result of these institutional weaknesses, the policy and its parallel initiatives suffered poor enforcement. Most notably, penalties against hiring undocumented foreign workers was rarely enforced (Kassim 2001). This, alongside a lengthy recruitment period that often took months, further disincentivized time-constrained employers from using state-controlled channels allowing the number of undocumented workers to remain high. For instance, in 1994, in an attempt to assist the Immigration Department, the CEFW created the Task Force, a new division under the Home Ministry, specifically to handle the labor recruitment process allowing the Immigration Department to focus on other duties (e.g., issuing passports for Malaysian citizens). In justifying the creation of the Task Force, Immigration public relations officer Mohamed Aris Chonin said: "...we found the previous system not only caused anxiety among employers who understandably wanted to have the permits as soon as possible, but also caused a backlog" (Yushaimi Yahaya 1994).

The failure of the policy also reflects the money politics that had come to define the Malaysian political-economic landscape. The workings of money politics, corruption, and political patronage are well-documented aspects of Malaysian politics (e.g. Gomez and Jomo 1999; Teh 2002; Case 2005; M. L. Weiss 2006; Pepinsky 2007; Dettman and Gomez 2020). The politics of labor migration was no different. It was true that the government feared that an unregulated inflow of *foreign* workers would affect its mission to build

⁷³ The Government attempted to address this issue in September 1995 when specialized terminals were established at ports of entry to collect fees before TEPs were endorsed (Yushaimi Yahaya 1995).

national unity and that an unending supply of cheap foreign *labor* would be a hindrance to its goals of industrial upgrading under Wawasan 2020 and the NDP. Still, pressures from the business community limited the state's commitment to aggressively reduce the country's growing dependency on foreign workers.

An insight into the push and pull between fears of dependency and business interest is the introduction of the levy. The MTUC had originally proposed the levy as a monthly tax imposed on employers for each foreign worker hired, hoping to disincentivize employers from hiring "cheap" foreign workers over local workers (Ahirudin Attan 1990). In the final policy, however, the purpose of the levy was reworked to being a flat tax on foreign workers to pay for social services used while in Malaysia. As Mahathir stated, "The Government provides facilities and infrastructure to tax-paying Malaysians but the same benefits are being enjoyed by foreigners working here. If some form of levy is not imposed on these workers, it will seem we are subsidising" (Ahirudin Attan 1991). Although the government had briefly entertained this approach to the levy (Raj 1991), it was quickly abandoned over concerns of ill effects on businesses. Leading up to the CPRMW's announcement, Prime Minister Datuk Seri Dr Mahathir Mohamad argued that to do so would be unfair to employers: "When employers are already paying their foreign workers salaries competitive with those of local workers, forcing the levy on them (the employers) would mean the employers are paying their foreign labour more. This is not fair" (Ahirudin Attan 1991). It is unclear whether shifting the burden of the levy from employer to foreign workers was based on a genuine fear of a slow-down in industrial growth or simply the government bowing to pressures from business elites through Malaysia's network of money politics. What is clear, is that any attempts to "rein in" foreign labor recruitment and employment were secondary to fears of damage to the country's economic progress.

The lack of enforcement raises questions about why the state would adopt a policy that it lacked both political will and capacity to execute. Although the number of foreign workers who traveled through formal channels in the early 1990s was substantially higher than in the 1980s (see Table 3.2), it is less clear if the overall number of undocumented foreign workers decreased under the 1991 CPRMW. For example, during the 1991 registration exercise (when employers were permitted to register and then apply for a TEP for undocumented workers already in their employment), nearly 500,000 foreign workers

were registered with an unknown number who did not come forward and remained undocumented (*The Star* 1992b). By 1993, this number of undocumented workers was estimated to be around 800,000 (*New Straits Times* 1993). Moreover, as Table 3.4 shows, despite the concerted efforts to improve the Immigration Department's detection and detention capabilities, the number of undocumented migrant workers deported each year did not climb throughout the 1990s and even dipped slightly in the mid-1990s. Together, this suggests that contrary to official discourse touting the necessity of the policy to rein in the country's dependence on foreign labor, there might not have actually been the political will to push for this goal. Instead, the policy functioned as a way demonstrate state commitment and placate an increasingly anxious public without needing to committing resources or efforts. While I am unable to establish the government's true intentions, what is clear is that the (perceived) economic and social impact of undocumented migration was something that necessitated a state response. Although understanding state intentions would give us a more complete picture of how the policy was formed and implemented, it would not negate the fact that the policy was flawed in terms of setup and execution that eventually led to its rejection in the mid-1990s.

The Role of the "Unwanted Jobs" Discourse

In addition to these issues inherent within the policy and in terms of implementation and enforcement, the 1991 CPRMW failed because the policy's instruments did not align with laboring culture of the 1990s. Like other foreign labor dependent countries, the laboring culture in early 1990s Malaysia saw foreign workers as an indispensable, integral, and natural part of the labor market. Although foreign workers were portrayed as an "unwanted" population, they dominated sectors that formed the foundation of the economy, namely plantation and construction. In brief, they were no longer a temporary addition to these critical sectors but had become a part of everyday life on the estates and construction sites.

The incorporation of foreign workers into the Malaysian labor market relied on the broader discourse of the "unwanted" jobs which legitimized the dominance of foreign workers in specific sectors of the labor market. The discourse of the "unwanted" job was a narrative and culture that portrayed certain jobs as low-status and demeaning. According

to the logic of the discourse, the country is forced to import unwanted foreign workers to fill the vacancies in jobs shunned by local Malaysians. Over time, the discourse produces and reproduces a laboring culture that treats the hiring of foreign over local workers for these specific jobs as a “natural” part of economic life.

The discourse of the “unwanted” was effective in organizing the Malaysian labor market because it was widely internalized. This image of the Malaysian labor market existed at every level from the state to the business sectors. At the very top, state actors often used a nationalist rhetoric to explain its decisions to permit foreign workers to legally enter the plantation, construction, and services sectors despite anti-immigration sentiments amongst the populace. On the one hand, Malaysian workers had outgrown these sectors because of the country’s meteoric economic development and rising position within the developing world. On the other, it urged Malaysians to put country before self to take up these left-over jobs (see above). In both cases, the state’s portrayal of these sectors contributed to the broader devaluation of these necessary jobs. Echoing state actors, businesses deployed the discourse of the unwanted job to justify their growing need to hire foreign workers often embedding their business interests in a broader concern for the health of the national economy (see above). While it can be argued that businesses were attracted to the flexibility and cheapness of foreign workers, their decision to rely on this discourse to underpin their argument suggests its effectiveness in legitimizing their needs to the Malaysian public. This discourse resonated with a wider public who, despite being concerned about the socio-cultural impact of foreign workers, also took pride in the continued growth of the Malaysian economy. In turn, this prevalence of the discourse made the presence of foreign workers in certain sectors be seen as a normal or even aspiration part of economic life.

The 1991 CPRMW underestimated the way foreign labor usage had transformed the way both employers and the larger Malaysian public imagined and understood the layout of the national labor market. Perhaps the most powerful example of this transformative power is the way the “unwanted” job discourse bifurcated the Malaysian labor market along a local-foreign divide. The CPRMW sought to decrease Malaysia’s dependency on foreign labor by incentivizing employers to hire local workers and decreasing the size of the undocumented workers population. These incentive structures,

however, were at odds with an employment culture that saw persistent employment of foreign workers in specific jobs be so engrained in everyday life that it is treated as an obvious or even admirable part of economic life. In addition to transforming the physical landscape of the nation, foreign labor dependency created a cultural context where certain sectors became equated with foreign workers and seen as incompatible with Malaysian workers. This gap between policy intention and laboring culture created an environment where the poor enforcement and implementation of the 1991 CPRMW were perceived as legitimate or at least meaningful. For example, the business elites' call for more foreign labor – even during a time when many Malaysians felt like there were already “too many” foreign workers in the country – was perceived to be politically meaningful because the discarding of these “left-over” jobs was seen as a natural part of the “modernization” process. As such, when employers undermined the 1991 CPRMW to acquire foreign workers by exploiting loopholes in the policy, their behavior was seen made legible in this discursive context.

Conclusion

The 1991 CPRMW was a response to concerns about Malaysia's seeming inability to control the inflow of labor. Following the Medan Agreement's failure to ensure that Indonesian workers left the country in a timely manner, the state faced great pressures from the public to better enforce its borders. Malaysians often pointed to areas in the country that have been transformed by the social ties built by generations of migrant workers as evidence that the social fabric of the nation was being recoverably altered by the employment of foreign workers. Similarly, sensational stories of criminal acts committed by desperate and impoverished migrant workers further created a sense of a state unable to control its own borders.

In addition to weaknesses in implementation and enforcement, this chapter argued that the state's reversal to bilateralism highlighted how foreign labor became integral rather than supplemental to the Malaysian labor market. By the 1990s, foreign workers dominance over certain sectors of the economy had begun to spread into the manufacturing and service sectors. This bifurcation of the labor market was reinforced at the micro-level by Malaysian employers who argued that they were forced to turn to foreign workers

because they were the best fit for the job in a country where local workers were becoming increasingly “choosy”. Even when the state attempted to call upon Malaysians to take up these jobs, its usage of nationalist rhetoric further reinforces the demeaning attitude of employers. The structural position of foreign workers in the Malaysian labor market is upheld by a discourse that portrayed these jobs as “unwanted jobs” that must be taken up by “unwanted migrant workers.” Malaysian employers’ argument was met by a readily accepting audience who took pride in the country’s ability to relegate these labor-intensive sectors to foreign workers. Under Mahathir, the maturation of Malaysian nationalism and economic developmentalism became increasingly intertwined. Within this context, one that portrayed the dominance of foreign workers in the secondary labor market as an aspirational good, the CPRMW’s attempt to take change employment practices could not take hold.

Table 3.1: Immigrant Labor in Manufacturing (1990-1997)

Year	Number	Share of Labor Force (%)
1990	16,673	1.97
1991	21,162	2.17
1992	33,544	3.24
1993	71,833	6.24
1994	108,075	8.82
1995	142,380	10.25
1996	204,989	14.15
1997	208,335	14.76

Source: Suresh Narayanan and Yew-Wah Lai (2014)

Table 3.2: Documented non-citizen workers in the labor force, 1990-1999 (100,000)

Year	Total labor force	Malaysians	Non-citizen	Non-citizen/labor force (%)
1990	7,000.20	6,751.10	249.1	3.6
1991	-	-	-	-
1992	7,319.00	6,963.60	355.4	4.9
1993	7,700.10	7,249.50	450.6	5.9
1994	-	-	-	-
1995	7,893.10	7,404.10	488.9	6.2
1996	8,616.00	7,702.50	913.5	10.6
1997	8,784.00	7,825.10	959	10.9
1998	8,883.60	7,869.10	1,013.50	11.4
1999	9,151.50	8,080.10	1,071.40	11.7

Source: Labor Force Survey (1982-2019), Malaysia Department of Statistics

Table 3.3: Number of undocumented immigrants identified and apprehended (1993-99)

Year	Ops Nyah I	Ops Nyah II	Regularization	Voluntary Repatriation	Total
1992			483,784		483,784
1993	14,211	41,584			55,795
1994	11,082	43,189			54,271
1995	7,828	32,835			40,663
1996	10,919	25,873	554,941		591,733
1997	8,547	35,521	413,812		44,068
1998	14,670	42,574		187,486	244,730
1999	11,721	42,889			54,610
Total	78,978	264,465	1,452,537	187,486	1,904,484
Source: Kassim, Azizah. "Integration of foreign workers and illegal employment in Malaysia." <i>International migration in Asia: Trends and policies</i> (2001): 113-135.					

Table 3.4: Costs incurred by foreign workers under 1991 Comprehensive Policy for the Recruitment of Migrant Workers

ITEM	AMOUNT (RM)			
	<i>Men</i>		<i>Women</i>	
I. <i>Medical Examination</i>				
General physical examination and report	60		60	
X-ray	25		25	
Test for venereal disease	10		10	
Urine test for morphine and cannabis	40		40	
Hepatitis B antigen and antibody	20		20	
HIV test	20		20	
Pregnancy	n/a		15	
TOTAL		175		190
II. <i>Levy (Yearly)*</i>	<i>Plantation**</i>	<i>Construction</i>	<i>Manufacturing</i>	<i>Domestic Services</i>
General workers	360	360	420	420
Semi-skilled workers	540	540	600	600
Skilled workers	720	720	900	900
*Levy payment structure was changed to monthly in February 1994.				
**Levy for plantation sector was reduced from RM360 to RM300 in April 1993.				

Chapter Four

Political Economy of Dependency: Impact of the Migration Industry (1997-2011)

Immigration officers know that people are making money off of workers, so they want in on the money. Instead of simply accepting and approving requests to hire foreign workers, they say to the people who come to them “you have to pay to get what you want. Sometimes, the person will only request permission to hire 10 workers but the immigration will say, “I can give you 100 if you are good to me.”...If an employer only had 10 workers then he could go himself but if his business grows then he would have his human resource manager engage in a company that helps with the process. These people are often called agents. There are two types of agents. The first are the legitimate ones who are regulated by the government. The second are the “fly by night” agents who are self-regulated – these are the problematic ones. They are never there when problems arise and when you try to call their office the phones are off and the doors are closed.

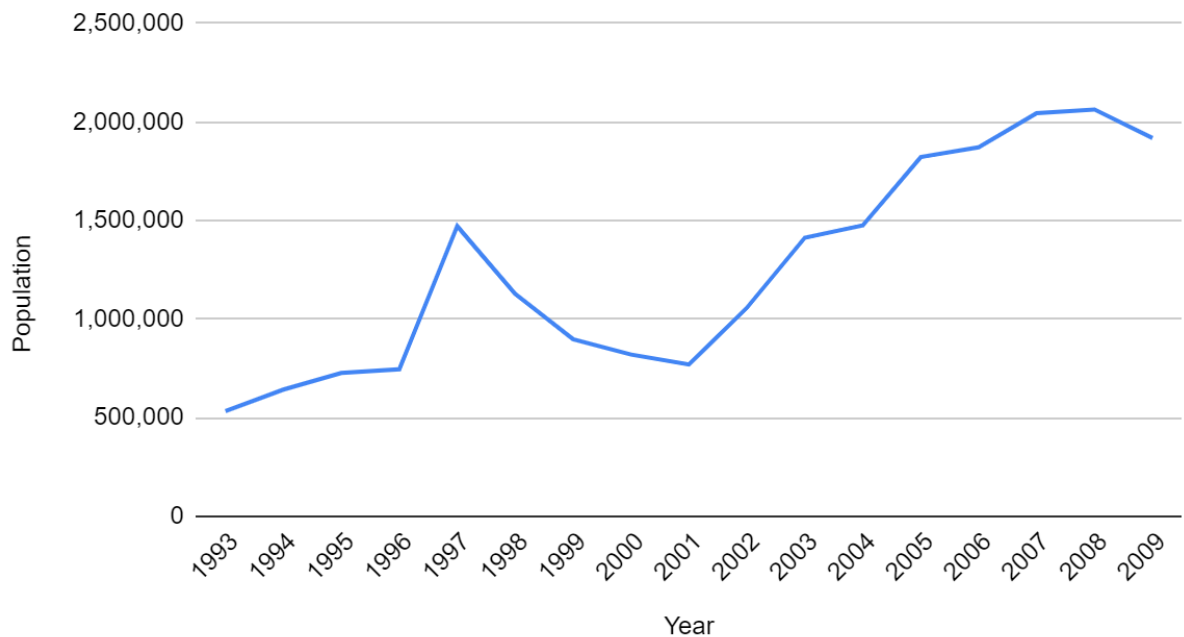
Radzi, former immigration officer

Introduction

At the turn of the century, the Malaysian government was engaged in an “all-out war” against “illegal immigration.” For the state – which for years had portrayed migrant workers as “ungrateful” guests engaging in criminal activities and a burden to public resources – this war against “illegal immigrants” became a convenient way to display its strength and capability in the midst of the political-economic instability following the 1997 Asian Financial Crisis (AFC) (C. B. N. Chin 2000). The structural importance of foreign labor to the Malaysian labor market, however, meant that any government crackdown had to also take into consideration its impact on the country’s economic growth and recovery. The solution was to revamp Malaysia’s migration management regime by signing a slew of bilateral agreements with new labor-sending countries and re-introducing the use of employment agencies in recruitment procedures. By the end of the new millennium’s first decade, however, there were more documented workers in the country than ever before, and an unknown number of “illegal” migrant workers (see Figure 4.1). In response, the government launched yet another regularization program in June 2011. Like previous regularization programs, the 6P program was meant to help resolve the problem of undocumented workers by offering these workers legal status which would allow the state

to better monitor their mobility and temporality. Moreover, granting undocumented workers legal status would allow the state to offer “protection” against the harms and exploitation that come with undocumented labor. Within the first few months of the program’s launch, 1.3 million undocumented workers registered under the new scheme – a similar figure to the number of *documented* workers at the start of the AFC – granting policymakers a glimpse of how much irregularity had risen (Harkins 2016). As Figure 4.1 shows, the combined effects of the new bilateral agreements and reintroduction of employment agencies to track labor mobility at both ends of labor migration corridors did allow for an overall increase in the number of documented migrant workers entering the country. Contrasting the number of undocumented workers registered under the 6P program, however, shows that despite these renewed efforts, undocumented migration to Malaysia not only remained a “problem” for the Malaysian but had increased.

Figure 4.1: Population of foreign workers in Malaysia (1993-2009)



Source: Kassim Azizah and Ragayah Haji Mat (2011) “Policy on Irregular migrants in Malaysia: An analysis of its implementation and effectiveness”

The purpose of this chapter is to examine Malaysia’s road to yet another amnesty program at the turn of the century. I ask: Why did the government quickly backtrack from

its new policies stance to regulate the inflow of labor through the use of bilateral agreements and employment agencies? To answer this, I examine the effects of employment agencies on the experiences of migrant workers in Malaysia. I argue that the increased reliance on employment agencies to carry out the everyday practice of migration management in the 2000s impeded the state's ability to achieve its goals. First, the employment agencies created new pathways to irregularity. Although private employment agencies increased the likelihood that migrant workers arrived in Malaysia through state-sanctioned ports, the activities taken by private employment to increase their profits pushed migrant workers down alternative pathways towards undocumented (e.g., overstaying their visa to pay off debt). Second, employment agencies' creation of a "desirable" workforce, which was understood by employers in terms of creating a docile labor force, left migrant workers vulnerable to labor abuses upon arrival in Malaysia. Employment agencies contribute to the production of a docile labor force by setting a high price for labor migration and through the restricting migrant workers' access to a protective social network. These effects, in conjunction with continuation of corruption and money politics mentioned in Chapter Three, allowed for the number of undocumented migrant workers and accusations of mistreatment to remain a concern for Malaysia through the late 2000s.

This chapter proceeds as follows: I begin by laying out the status of Malaysia's political economy at the turn of the century focusing on changes to its labor migration policies. Second, I detail the various ways private employment agencies produced migrant vulnerability and irregularity through an analysis of three migration corridors into Malaysia: Indonesia, the Philippines, and Viet Nam. I then consider how the rising number of undocumented workers and stories of labor abuses eventually pushed Malaysia to adopt yet another regularization campaign. I conclude by summarizing my findings.

Migration Management: The State, Employers, and the Employment Agencies

The 1997 Asian Financial Crisis put a halt in the near three decades of continuous economic growth. The resulting economic and political fallout of the crisis impacted how the Malaysia and its people understood the position of foreign labor in the country. In the section, I detail the impact of the 1997 AFC on Malaysian political economy at the turn of the millennium and its effects on changes in Malaysian labor migration policies.

Foreign Labor and the Malaysian Political Economy at the Turn of the Millennium

The 1997 AFC created a political economic climate that pushed the state to take more drastic measures to address the country's growing dependence on foreign labor and the perennial "problem" of "illegal migration".⁷⁴ In the immediate months following the crash, the Malaysian government sought to drastically reduce the number of foreign workers in the country. In November 1997, the MoHA ordered approximately 400,000 workers in "non-productive" sectors (e.g. the service sector)⁷⁵ regardless of their documentation status to leave Malaysia by August 1998 (Human Rights Watch 1998). In early 1998, the government announced that no new work permits would be issued for various service sectors (e.g., shopping complexes, hotels, and restaurants) (Human Rights Watch 1998) and that the work permits of 700,000 foreign workers would not be renewed upon expiry (Pillai 1998; Ford 2006). To further discourage both regular and irregular immigration, the government raised levies (Pillai 1998; Ford 2006) and stepped up its efforts to arrest unregistered labor agents and even immigration officers suspected of issuing forged documents (Pillai 1998; Ford 2006).

This economic crisis was accompanied by a political upheaval. Going against the then Finance Minister Anwar Ibrahim's push for IMF-style free market-oriented measures, PM Mahathir adopted an interventionist stance implementing capital controls and corporate bailouts (Case 2005). These bailouts, however, ignited protests and accusations of cronyism.⁷⁶ The firing of the charismatic and popular Anwar transformed this discontent into the popular and well-organized Reformasi movement. Unlike many past popular movements in Malaysia, the Reformasi movement took a decisively noncommunal approach focusing on issues like human rights, corruption, and economic justice over ethnic identities. In 1999, Reformasi moved its fight from the streets to polls when it

⁷⁴ Briefly, the AFC caused the ringgit to lose half its value which provoked panic selling by foreign investors pushing the KL Stock Exchange to devastating new lows. This crash devastated enterprises that relied on foreign loans. Fears that these enterprises would be unable to service the interest on loans creating a general loss of confidence in the Malaysian economy. These factors resulted in a massive contraction of the economy as the average income fell and FDI shrank (Lee Poh Ping and Tham Siew Yean 2007).

⁷⁵ This announcement exempted domestic services (Human Rights Watch 1998).

⁷⁶ Like previous state interventionist policies, selective patronage dictated who got bailed out by the government. While it was true that the many of the companies most badly hit by the crisis had ethnic and/or political ties, the government's decision to bail out companies owned by well-connected Malays damaged the government's credibility (Vithiatharan and Gomez 2014). As a result, these once venerated "korporat Melayu" (corporate Malays) became widely condemned as "cronies" (Case 2005).

challenged the ruling BN in the general elections as Barisan Alternatif (Alternative Front), a coalition made up of PAS, Keadilan, the DAP and PRM. Although the Barisan Alternatif (BA) ultimately failed to oust BN in the elections, BN's share of the popular vote fell to 56.5 percent from the 65 percent it won in 1995. The combination of BA's headway and BN's ultimate survival revealed that racial and religious identities and interests remained highly significant to Malaysian voters. Economic incentives under the New Vision Policy (NVP), for example, continued to place *bumiputera* identity at the center of nation's economic development plans motivating many ethnic Malays to continue embracing communalism (M. L. Weiss 2006).⁷⁷

The continued importance of ethno-religious identities in Malaysian policymaking contextualized the anti-immigration, and in particular anti-Indonesian, fervor in the years following the AFC. In August 2000, the government announced plans to halve the number of Indonesians working in the country from 900,000 to 450,000 through deportation (Ford 2006). In late January 2002, two well-publicized riots of Indonesian workers in industrial zones in Negeri Sembilan and Cyberjaya led the government to take drastic actions (Ford 2006). In response, Deputy Prime Minister Badawi announced plans to ban Indonesian labor outright while Mahathir argued that it was time that Malaysia "replace" Indonesian labor with other nationalities and implemented the 2002 "Hire Indonesians Last" policy (Ford 2006; Garcés-Mascareñas 2012). In March, the government ordered the 600,000 to 1.5 million undocumented migrant workers in the country to leave before August 2002 when the new Amendment to the Immigration Act – which imposed harsher penalties for undocumented migration, including caning and a higher prison sentence – came into effect. This led to an exodus of more than 300,000 migrant workers congesting transportations, ports, and other exit routes (Amnesty International 2004). True to their words, the day after the Amendment came into effect, the police began to destroy immigrant settlements deporting almost 400,000 Indonesian to various ports in Sumatra and Kalimantan – the largest single deportation effort to date (Ford 2006).

The violence of the late 1990s and early 2000s, however, did not align with Malaysia's need for foreign labor. Although Malaysia's political-economic troubles

⁷⁷ The NVP was a national economic introduced in the Third Outline Perspective Plan (OPP3 – 2001-2010) succeeding the NEP and NDP.

continued into the first few years of the new millennium, its low-paying sectors (i.e., plantation, construction, domestic services, manufacturing, and services) had become dominated by foreign labor. In the early 2000s, export-oriented sectors, including revered electrical and electronics subsector, struggled due to a decline in foreign investors' trust who remained put off by rising wages, a declining export market for electronics, and fears over Islamic resurgence in Southeast Asia following 9/11 (Case 2005). Alongside this economic slowdown, the public continued to associate migrant workers with criminality (e.g., *The Star* 2003), public health concerns (e.g., V. Chin 2003; Sa'Odah Elias 2003), and national security concerns (Liow 2003). In light of these two factors, the mass deportations in the period made sense given the government's effort to reduce the number of workers in struggling export-oriented sectors and placate the public by presenting itself as a strong state capable of "solving" the security "problem" presented by undocumented migration. But as Chapter 3 argued, foreign workers had become fully integrated into the labor force by the time the AFC struck. Even at the height of the deportations, employers continued to demand more foreign workers and the government intermittently lifted recruitment bans upon special request from industries (Ford 2006). As such, by the mid-2000s when it became clear that Malaysia had economically and politically survived the AFC, the steady inflow of labor became the norm again.⁷⁸

Even before this recovery became certain, in 2003, Malaysia signed multiple new bilateral agreements with new countries of origin: Sri Lanka (August 2003), China (September 2003), Pakistan (October 2003), and Viet Nam (December 2003). The establishment of these new migration corridors was meant to follow in the footsteps of the "Hire Indonesians last" policy by opening up a new pathway for the country to hire from a different pool of workers who lack the historical, cultural, and linguistic ties that had once made Indonesians a desired labor force.⁷⁹ These new bilateral agreements enabled Malaysia to select the nationalities, skill-level, and set sectoral limitations. The Malaysian

⁷⁸ This is not to say that the Malaysian economy made it through the crisis unscathed. Both foreign and domestic private investments declined to an average of RM4.3 billion between 1998 and 2008, compared to an average of RM5.2 billion between 1990 and 1997 (Vithiatharan and Gomez 2014). In the first half of the decade, with the exception of petroleum and coal products, the manufacturing industries saw negative growth in labor productivity particularly in export-oriented industries – the engine of Malaysia's rapid growth during the NEP (Rasiah, Crinis, and Lee 2015).

⁷⁹ Indonesia and Malaysia, however, signed a bilateral agreement in 2004 on a new set of rules of managing labor flows. This return to Indonesian labor after the strong anti-Indonesian rhetoric and breakdown in bilateral relations just two years earlier highlights the structural importance of Indonesian labor to Malaysia.

government and employers hoped that these new corridors would help the country reduce its dependence on Indonesian workers who made up the bulk of the country's undocumented population. According to this logic, turning to sending countries without a history of sending workers to Malaysia, and therefore without a pre-established transnational community in Malaysia, would make it more difficult for foreign workers to become undocumented. Moreover, the agreements were meant to aid in migrant worker protection efforts by articulating procedures for each step of the migration process from recruitment mechanisms in the country of origin, to border crossing, employment standards, and exit.

Re-institutionalization of Employment Agencies

A legislative effort to resolve the “problem” of illegal migration was the 2005 Amendment to the 1981 Private Employment Agencies Act. The Amendment, which went into effect in 2006, reintroduced private employment agencies which the state saw as a way to expedite the labor inflow process by lifting the bureaucratic burden off employers. The basic function of the employment agencies was to connect employers with a laboring population and facilitate the movement of potential migrant workers to Malaysia. An employer wishing to hire foreign workers would seek out the services of an employment agency who had connections with employment agencies in countries of origin. In the country of origin, employment agencies identified and recruited potential migrant workers and sent the required information to their counterparts in Malaysia. The specificities of how employment agencies carried out their work varied depending on the country of origin. Once employers agreed on the portfolio of workers (i.e., the set of characteristics such as age, gender, skill-sets, and so forth desired by employers), the agencies on both sides of the border began the necessary proceedings to facilitate the movement of workers. In Malaysia, this process often required agencies to act on behalf of the employer as they acquired the necessary approvals from the Labor Department (which certified a legitimate need for labor and determined each employer's quota) and the Immigration Department (who oversaw security and medical checks and issued TEPs). Once migrant workers arrived in Malaysia, they were met at the airport by Malaysian recruitment agencies before being transported to their worksite. In addition to the initial recruitment of workers,

recruitment agencies in Malaysia were also responsible for the renewal of the work permit and the annual payment for medical check-ups, insurance, and levy (Garcés-Mascareñas 2012).

Employment agencies first became part of Malaysia's modern migration management infrastructure in the early 1990s.⁸⁰ In 1992, the 1981 Private Employment Agencies Act was amended making the usage of private agents mandatory in the recruitment process (Garcés-Mascareñas 2012).⁸¹ Acknowledging that most employers were unfamiliar with the intricacy of the Malaysian labor migration bureaucracy, the government believed that integrating these specialized actors into the country's foreign labor recruitment structure would make the process more expeditious and orderly (Garcés-Mascareñas 2012). According to the government's logic, reducing the amount of time employers spent recruiting workers would incentivize employers to utilize the legal process and therefore increase regular (i.e., orderly) migration.

Throughout the 1990s, however, the relationship between employers, recruitment agencies, and the government was fraught. Employers and labor agencies argued that these recruiters provided a necessary service coordinating recruitment efforts and ensuring that a worksite had a steady stream of new workers as older workers reached the end of their work permit and departed (Garcés-Mascareñas 2012). Despite their importance, both employers and the government saw flaws in the way these agencies operated and often portrayed them as “unscrupulous” cheats out to make a profit (e.g., *New Straits Times* 1992; A Letchumanan 1993; *Business Times* 1994a). While these criticisms were certainly warranted, the close association between legal private employment agencies and illicit people smugglers of the previous decade made them an easy target for blame for the country's “illegal immigrant problem”. As a result, in 1995 the use of employment agencies (except for the domestic service sector) was outlawed (Garcés-Mascareñas 2012). Despite state efforts to curtail the power of recruitment agencies, these actors had become part of how both employers and the “street-level” bureaucrats working in the immigration and

⁸⁰ The history of the migration industry on the Peninsula can be traced by to the 19th century when labor intermediaries acted as coordinators ensuring that the colonial state had the necessary supply of labor to transform British Malaya into a global supplier of tin and rubber (Kaur 2012; Andaya 2017). These intermediaries became illegal following independence when Malaysia restricted new immigration.

⁸¹ Implemented during a time when Malaysia was a net exporter of labor, the first version of this Act, primarily dealt with labor emigration rather than immigration.

labor offices expect the acquisition of new foreign workers to unfold. In other words, the use of employment agencies was simply how things were done regardless of legality. Employers continued to use private employment agencies to undertake the recruitment procedure under the name of the employer; this practice was open secret (Garcés-Mascareñas 2012). For example, Paul, a former labor agent, explained that, “If an employer tried to go directly to Immigration, the officer might ask the employer, ‘Why do you do this by yourself? Why don’t you hire an agent?’” When I pushed him for the reasons behind this preference, he explained that some immigration officials wanted to get a “kickback” but for many it was simply because they had become accustomed to working with employment agents.

In addition to re-introducing employment agencies into the migration management infrastructure, the 2005 Amendment also required all firms hiring less than 50 foreign workers use the services of outsourcing companies. Like the employment agencies of the 1990s, these outsourcing companies were responsible for connecting employers with potential workers and navigating the recruitment bureaucracy. Unlike these employment recruitment agencies, however, outsourcing companies became the legal employer of foreign workers and were responsible for negotiating contracts, arranging workers’ visas, paying workers, and providing their insurance. In other words, foreign workers’ contracts were not directly tied to their employer but with the outsourcing company (Devadason 2021). According to the government’s logic, the introduction of outsourcing companies would make migration more orderly by reducing the overall number of employers of foreign workers while still ensuring that SMEs had the necessary labor force. Even in circumstances where the employer directly hired their foreign workers, these outsourcing companies, through partnership with an employment agency in the sending country, acted as the firm’s representative handling all administrative tasks including recruitment, organization of contracts, travel documents and journey (Ernst Spaan and van Naerssen 2018; J. T. Anderson and Franck 2019b). Within the decade, there were 280 registered outsourcing companies and around 1,000 private employment agencies (J. T. Anderson and Franck 2019b).

Both the government and employers favored this new system. Employers, such as the Malaysian Employers Federation, the Federation of Malaysian Manufacturers, and the

Master Builders Association Malaysia, had been petitioning for the creation of outsourcing companies since the early 2000s. Since each work permit was issued on the basis of a two-year work contract, employers saw outsourcing companies as a way to help redistribute labor within the Malaysian labor allowing employers the flexibility to easily change the size of their workforce depending on market conditions (Garcés-Mascareñas 2012). Moreover, employers were in favor of this new system because it freed them of having to undergo the complex and costly work of organizing recruitment and stay, including applying for and renewing work permits and being responsible for migrant workers during their stay. Instead, employers only need to pay a fixed some (62 MYR a day when the policy went into effect in September 2006) for the services of the outsourcing companies (Garcés-Mascareñas 2012). For the government, the institutionalization of private employment agencies enabled the government to better control and regulate these actors who, despite being outlawed, had remained an enduring presence in the migration management landscape due to the preferences of employers and street-level bureaucrats (Garcés-Mascareñas 2012).

Regularization Again: The Migration Industry and the Political Economy of Migration

In re-institutionalizing employment agencies, the Malaysian government argued that it could increase regularity by reallocating the burden of recruiting and hiring to specialized private actors. This policy action, however, neglected a political economy of migration that had emerged after decades of dependency on foreign labor. As noted above, the practice of utilizing employment agents had become routine for both employers and street-level government bureaucrats. Together, the integration of foreign labor into the national labor market and the ubiquity of employment agencies in the acquisition of foreign labor created a political economy of labor migration in which employers and employment agencies together produce an image of the ideal worker who is not only productive but whose mobility and temporality could be controlled by employers. The production and the supplying of this ideal worker, in turn, opened pathways for employment agencies to influence labor migration patterns on a systemic level.

There are two aspects of this political economy of migration that are worth noting in discussing why Malaysia failed to bring down irregularity and better protect migrant workers in the 2000s. First, employment agencies were motivated to increase the overall number of people moving across borders (Low 2020). Unlike firms or the Malaysian government, the profits of employment agencies did not depend on the productivity of migrant labor but simply their movement and the administrative procedures that enabled and sanctioned their movement. This inflation of labor inflow ran contrary to the state's desire to match foreign labor supply with demand as a way to reduce foreign labor dependency. Paul, a former labor agent, perfectly described how and why employers and employment agencies inflated foreign labor inflow:

If an employer wished to hire 100 workers, they had to apply through the Department of Immigration. To do this they had to use an agent because the process was very complicated.... The agent would go to Immigration to ask for permission to hire foreign workers but sometimes they will increase the number to 200 even if employers did not ask for it. The agent would get paid more from the workers and the employer would get a kickback.

This practice meant that there was not always adequate work for migrant workers seeking to pay off the high debt they incurred in the emigration process. Consequently, some foreign workers decided to join the undocumented workforce to supplement their income.

This propensity to increase overall migrant flow regardless of actual demand was also driven by the oscillation of Malaysia's labor migration policies. Paul explained, "Employers will also be tempted because there was always uncertainty because the law did not protect the stability of labor demand. Employers could not guarantee that there would be a hiring freeze in the near future." In other words, although employers could not be certain *when* the next freeze – a temporary ban on the new intake of foreign workers – would take place, previous patterns of labor migration policies made them painfully aware that it would inevitably happen. As such, even employers who want to be "honest" and not ask for more workers than needed inflated their requests to protect their own business interests. The inflation of labor needs matters because unsettles the balance between labor supply and demand. In other words, this puts more foreign workers in Malaysia than there is an actual need for them. This not only allows employers to ensure that they will have a steady pool of workers regardless of any sudden policy changes from the government, but it also allows them to outsource any excess workers to smaller firms to earn an additional

source of income. The oversupply of foreign workers not only goes against the government's desire to minimize the country's supply of foreign workers but makes it difficult for foreign workers – who paid a high sum of money for the ability to work in Malaysia – to acquire enough work to recoup their debt.

Second, Malaysian employment agencies viewed and portrayed migrant workers' fears of speaking out against their employers as a desired quality. The behavior of the employment agencies in the countries of origin (e.g., high debt, lack of knowledge re rights, etc.) often created a compliant workforce that was more vulnerable to abuse. Malaysian employment agencies used the cross-national differences in migrant vulnerability to explain why some groups of foreign workers made for a more desirable workforce than others. My exchange with Paul highlights how this unfolded:

Paul: Bangladeshi workers were where the money was at – not so much Indonesians. Bangladeshi workers were very willing to come and very willing to pay. But with Indonesians, it was much easier for them to cross the border and they are culturally similar to Malays.

Researcher: Why would employers go through the trouble of hiring a Bangladeshi worker when they could hire an Indonesian worker and pay no fees?

Paul: Loyalty – Indonesians could easily go home while Bangladeshis could not...Vietnamese workers were not in high demand. This is because Vietnamese workers were more informed of their rights and were much more likely to make complaints which will cause problems.⁸²

Paul's discussion of "where the money was at" highlights how employers' preferences for a compliant and immobile labor force helped to perpetuate certain behaviors (e.g., withholding knowledge regarding worker's rights) to produce this highly desirable group of workers.

The ubiquity of this fear that migrant workers will abscond was tied to the recruitment process on the Malaysian side of the border. As a migrant rights advocate explained, because employers paid so much money to employment agencies to recruit the workers, they felt like they must "squeeze" the worker for their money's worth.⁸³ This

⁸² It was unclear to me whether my Vietnamese identity influenced his portrayal of Vietnamese workers in this light. Moreover, per my interviews with Vietnamese workers about their predeparture training, it is questionable to what extent they actually understood their "rights". Regardless, what is important is how he equated their supposed knowledge of labor rights as a hindrance to their profitability.

⁸³ Interview with Dipesh, Kuala Lumpur, May 2017.

attitude was particularly true for Indonesian workers whom Paul, a former labor agent, called “not very profitable in this industry” because “they can easily integrate into Malaysia” allowing them to leave a job if they did not like; this was less likely for workers from other countries.⁸⁴ Noah explained that profit-seeking behavior combined with control of knowledge enabled employment agencies to exploit loopholes in the system. For instance, domestic workers arrived in Malaysia with a one-month temporary pass while they await clearance on their second medical exam. Employers often used this opportunity to “test out” a domestic worker. More cunning agents would instruct first time domestic workers to behave in a way that would displease or anger their employer allowing the agency to collect extra money during the “trade out” process.⁸⁵

As a result, the re-institutionalization of employment agencies did not contribute to the bilateral agreements’ goals of decreasing migrant irregularity and offering great protection to migrant workers. By 2009, there were close to 2 million registered foreign workers in Malaysia and an estimated 1.9 million undocumented workers (“Trafficking in Persons Report 2010 - Malaysia” 2010). These numbers show that although regular migration certainly increased as intended, so did the number of undocumented workers. Similarly, reports of systemic abuse of foreign workers remained a concern. The 2010 US Trafficking in Person Report placed Malaysia on its Tier 2 Watch List, noting that Malaysian outsourcing companies’ practice of recruiting excess workers often resulted in those workers laboring in exploitative conditions and argued that many activities endemic to the Malaysian migration system (e.g., overinflation of wage by employment agencies) were indicative of labor trafficking (“Trafficking in Persons Report 2010 - Malaysia” 2010).⁸⁶ Domestic workers, in particular, faced mobility restrictions, nonpayment of wages, unclear working standards, as well as physical abuse (Human Rights Watch 2010). Beyond these extralegal behaviors, problems observing minimum working hours were built into

⁸⁴ Interview with Paul, Kuala Lumpur, January 2019.

⁸⁵ Interview with Noah, Kuala Lumpur, May 2017.

⁸⁶ A Tier 2 Watch List include “Countries and territories whose governments do not fully comply with the Act’s minimum standards but are making significant efforts to bring themselves into compliance with those standards, and: a) The estimated number of victims of severe forms of trafficking is very significant or is significantly increasing and the country is not taking proportional concrete actions; or b) There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year.” (US Department of State)

the labor migration system since most contracts required foreign workers work overtime to earn their promised wage (Crisis 2010).

In addition to these labor rights concerns, the business community began to express dissatisfaction with private employment agencies and outsourcing companies. For example, many outsourcing companies forced firms to sign a one-year contract, to avoid risk of unemployment, which went their intended goal of creating a more flexible and mobile foreign labor force (Garcés-Mascareñas 2012). Rising fees and the delivery of workers who lacked necessary skill sets also made employers skeptical of these companies promise of cost reduction.⁸⁷ As such, and despite their contribution to the problem, employer associations often blamed these agencies the country's "illegal immigration problem" (Low 2020). In response, in 2010, the government began to phase out outsourcing companies by issuing no new licenses (Low 2020).

As a result, in June 2011, the government announced yet another regularization program to address its "illegal immigrant problem". The 6P Program – short for the different phases of the program: pendaftaran (registration), pemutihan (legalisation), pengampunan (amnesty), pemantauan (supervision), penguatkuasaan (enforcement), and pengusiran (deportation) – marketed itself as being different from past amnesty campaigns because it went beyond just granting legal status to undocumented workers by collecting biometric data to track movement, enhancing the enforcement of recruitment agencies, and scheduling deportation campaigns to eliminate those who refuse to register (Rahim et al. 2015). The enhanced and more comprehensive approach to the program, combined with the phasing out of outsourcing companies, reflected alarming trends in the inflow of labor following the re-institutionalization of private employment agencies and the need for more systematic change.

Impact of the Migration Industry: Evidence from Three Corridors

Malaysia backtracked from its policy of relying on outsourcing companies and implemented yet another regularization campaign due to new pathways towards irregularity created by employment agencies' institutionalized position in Malaysia's migration management regime. In this section, I detail how the migration industry

⁸⁷ Interview with MAPA, Kuala Lumpur, November 2018

increased the vulnerability and irregularity of migrant communities across three corridors that differ in two important ways. First, they differ in how sending states regulate employment agencies. My analysis shows how these state-employment agencies relations in the countries of origin influence the different ways migrant workers experience their vulnerable position as non-citizen workers. Second, they differ in how migrant workers develop a protective social network within Malaysia, affecting how they perceive and pursue undocumented work. Together, these differences highlight the various ways employment agencies help to produce alternative pathways to irregularity and different forms of vulnerabilities. In other words, it shows how despite the overall increase in the number of documented migrant workers flowing across the border, it does not decrease the number of migrant workers in Malaysia leading the government to pursue regularization.

The Indonesian Corridor: Out-of-control Employment Agents and the Limits of Documents

The Indonesian corridor shows how, despite efforts from the Indonesian state to protect migrant workers, the institutionalized role of employment agencies along the corridor created pathways for Indonesians to either become undocumented or experience other forms of vulnerability after arriving in Malaysia. Specifically, employment agencies' control of the emigration process often left migrant workers without an alternative way to access information about the migration process and laboring conditions in Malaysia beyond the employment agencies on either side of the border. In addition, punitive measures to bring down the flow of migrants traveling along the corridor without documents only pushed employment agencies to pursue false documents in order to still provide a steady supply of workers to Malaysian employers. These factors, in addition to the high debt to undertake the journey, worked as a form of labor control enabling employers to have labor force whose mobility is under control.

Indonesia's modern labor emigration program can be characterized by the state's struggle to control employment agencies and protect its overseas workers.⁸⁸ In the late

⁸⁸ Employment agencies have been operating along the Indonesia-Malaysia corridor since the early 20th century when they assisted the British and Dutch colonial government to recruit Javanese labor to work on smallholder estates. Following independence, however, these actors were pushed underground. It would not be until the early 1980s, when the Ministry of Manpower began to take seriously labor emigration as solution for un/underemployment that the

1990s, the decentralization campaign following the end of the New Order regime (see Hadiz 2004; Carnegie 2008; Pepinsky and Wihardja 2011) created an atmosphere of uncertainty for recruitment agencies during this period of transition (Palmer 2016). Although the national government continued to control the setting of migration management policies (e.g., establishing specific emigration procedures, issuing licenses to employment agencies, creating pre-departure training programs, etc.), the specific details regarding *how* these policies would be implemented were decided at the local level, resulting in a lack of coordination across different levels of government (Ford 2006; Ernst Spaan and van Naerssen 2018). In addition, the early 2000s saw an uptick in the Indonesian government's efforts to protect labor emigrants. The death of 70 Indonesians in East Kalimantan as a result of Malaysia's massive 2002 deportation campaign and the 2004 high-profile case of Nirmala Bonat, an Indonesian domestic worker tortured to death by her employer in Malaysia, together highlighted the precarity of Indonesians workers abroad and the lack of government commitment to protect these individuals. In response to public outcry, President Megawati ordered the development of a comprehensive law on labor migration (Palmer 2016).

The resulting Law 39/2004 on the Placement and Protection of Indonesian Workers Abroad set into motion the development of an independent agency, called BNP2TKI (National Agency for Placement and Protection of Indonesian Migrant Workers), responsible for all operational aspects of the migration program (Palmer 2016). Since the inception of BNP2TKI in 2006, the formal labor emigration market has been controlled by private for-profit labor recruitment agencies called PT (*Perusahaan Jasa Tenaga Kerja Indonesia*) who form partnerships with recruitment agencies in host countries. Many activists, however, were skeptical of its ability to offer protection to migrant workers while abroad. For example, Noah, a Malaysian national who worked for an NGO focusing on the Indonesia-Malaysia corridor, called the 2004 law “exploitation in the name of protection” critiquing the ways employment agencies not only subverted but profited off the protective measures offered by the law.⁸⁹

Indonesian government began to wrestle control of the migratory process away from these illicit networks (Palmer 2016).

⁸⁹ Interview with Noah, Kuala Lumpur, December 2018

Kusuma's migration story offers insight into Noah's criticism of how employment agencies pursuit of profit undermined Indonesia's protective measures. Specifically, how she was recruited and how she left Indonesia revealed how the emigration system often blurred the line between personal and business relationships allows for recruitment companies to engender trust among new recruits. Kusuma travelled from a rural district in Central Java to Malaysia to work as an operator on an assembly line in 2007. She explained that she was a student at vocational high school (SMK) when she was approached by teacher who she described, while chuckling, "like an entrepreneur teacher." This teacher, a *petugas lapangan* or a field agent who recruits workers on behalf of the PT, gave Kusuma brochures and information about a factory in Malaysia and told her that if she went there to work, she would be given free accommodation and the opportunity to get a university education. After that, the PT and someone from the factory in Malaysia came directly to her school to explain the type of work she would perform and reinforced the benefits of labor migration. Kusuma recalled, "they said you go to KL easy, you can get high salary, you will get health insurance, you will get this and that – everything is nice. That's why most of us were interested in immigrating." The source of the information also affected her decision to migrate. She explained, "We decided [to go] because first, family economics, second, we got this information from the school so we felt informed...". When Kusuma and a small group of friends decided to go to Malaysia together, it was this teacher who filled out the paperwork for the girls to begin the application process and helped them gather various necessary documents.⁹⁰ The PT then returned to the school to explain the application process in greater detail – getting a passport, medical checkup, and so forth. Again, it was the teacher who led them through this process even accompanying them to Yogyakarta for their medical exam.

When all her documents were processed, Kusuma and a group of 77 girls travelled to the agency to await departure. On the third day, they were called up one by one to sign a two-year contract promising 450 ringgit per month as basic pay plus the opportunity for overtime. "After that, we all had debt... as one packet for the process we owed the agency

⁹⁰ Such as parental permission, *kartu kuning* (literally yellow card which signals their intention to migrate), and school certificate.

2400 ringgit.⁹¹ As collateral (*jaminan*) for the debt, they kept our KTP (national ID card) and birth certificate – they kept it as collateral in case we don’t pay back our debt or if we run away.” Kusuma continued, “[When we went to the immigration office] many of my friends were still underage – still under 18. I don’t know how, we had submitted original documents, but after getting the passport it is already false! I don’t know how!” Of the 77 girls, Kusuma estimated that 10-20 had passports with false information to ensure that they met the minimum age requirements. “But we could not do anything. If we did not want to go to KL we had to pay 2400 [ringgit]. Because they did not give us our passport until after we signed our contract... (*throws up hands*) We did not have a lot of time. We signed the contract at 10pm and we had the flight at 5 or 6am.” She continued, “when we went through immigration [in Malaysia] the agents told us that had to remember the false information on our passport. They told us, ‘if they catch you, you will be in big trouble.’”⁹²

Kusuma’s story highlights three important dynamics in the emigration process that made Indonesian migrant workers susceptible to labor abuse after arrival. *First*, the emigration system was designed in a way that made private employment agencies the primary gatekeeper to knowledge about the migration process and laboring conditions in Malaysia. Kusuma relied on the employment agency to navigate an intricate migration system ostensibly designed to better protect migrant workers. Using *petugas lapangan* to blur the line between personal social network and the migration industry, the PT was able to engender trust among first time movers like Kusuma that they were being led towards better economic prospects. Yet, by over-relying on the PT during the emigration process, many of her friends unwittingly entered Malaysia as undocumented workers due to the false information on their passports. Similarly, Kusuma had no alternative source of information about life in Malaysia as a migrant worker (e.g., a friend or family member) beyond the employment agency who organized her travel and placement. Unlike the previous generation of migrant workers, Kusuma’s social network was made up of friends working in the same factory. She explained that this allowed her employer to “brainwash” her by warning her that if she wandered too far from the manufacturing compound she

⁹¹ This exclude 750 ringgit for the medical checkup which had to be paid upfront.

⁹² Interview with Kusuma, Kuala Lumpur, March 2019.

would risk being harassed or even arrested by the police. During her entire stay in Malaysia, she only went to KLCC (a popular tourist destination in Kuala Lumpur) once.

Second, the high cost of migration and the resulting debt acted as form of labor control creating a more compliant work force. This was particularly true when a migrant worker first arrived in Malaysia. The initial cost of migration in Indonesia, including document processing and travel, was often paid upfront by the employment agency in Indonesia either directly by the PT or indirectly through the *petugas lapangan*. On the Malaysian side, the employment agency or the employer paid for the levy and post-arrival medical exams. These costs in the end come out of migrant workers' pockets through deductions from the wage in the first few months of employment. For instance, Dian, a Sundanese domestic worker, remembered not being paid for number of months (she did not remember precisely how many) when she first began work in Malaysia due to these deductions.⁹³ She explained to me that, due to the abuse she suffered by her employers she had thought about running away but, in the end, she thought about not being able to earn a salary for her family back home and did not. Her decision was further constrained by her lack of a social network and a way to access outside help.⁹⁴ Similarly, Kusuma had part of her wages deducted for the first 10 months of her employment. It was at the 10-month mark, however, that her company began cutting back on hours meaning that she was unable to earn the basic salary promised on her contract. During this time, Kusuma explained, she was only able to afford to buy food and barely had enough to remit home. After 15 months, her contract was cancelled, and she was deported and unable to recoup the cost of migration.⁹⁵

Finally, the introduction of tough criminal sanctions against recruiters who circumvented procedures resulted in the rise of *aspal* documents – *asal tapi palsu* (real but fake) – which were valid documents that contain false information (e.g., birth certificates with false birth dates). This *aspal* document, combined with the lack of prior knowledge about working life in Malaysia and a protective social network, enabled employment agencies to use fear of detention and deportation to control their behavior. A telling

⁹³ Sundanese are an ethnic group from Western Java.

⁹⁴ Interview with Dian, Kuala Lumpur, February 2019.

⁹⁵ Interview with Kusuma, Kuala Lumpur, March 2019.

example was how my interview with Arjani, a woman from Central Java who arrived in Malaysia in 2004 to work as a domestic worker, began. When I asked her for her age she laughed and asked me in return if I wanted her real age or what is said on her papers. She later went on to explain that when she first arrived in Malaysia, she was only 17 so the PT falsified her documents. In addition, when she failed her medical exam, the PT bribed the authorities to give her a pass.⁹⁶ Although she travelled to Malaysia through the correct channels, by using documents containing false information, Arjani fell into the category of “illegal immigrant” according to the Malaysian binary approach to the concept. As Kusumua’s story highlights, however, this falsification often happened without the migrant workers’ consent or even knowledge. Not only did her fellow migrant workers discover this false information after signing their contract and therefore incurring debt, leaving them no choice but to migrate.

The rise of the *aspal* documents brings into question the common wisdom of the era – for both Malaysia and sending countries like Indonesia – that increasing regularity would lead to safer migration. Among many long-time migrant workers, *aspal* documents led many to question whether regular migration was truly worth the added costs. For example, Priyo arrived in Malaysia as an undocumented worker using the illicit system of *taikong* (middlemen) and *calo* (employment brokers) in the late 1980s then participated in the regularization process in late 1990s. When I asked him to compare the migration system controlled by the *taikong* and *calo* versus the PT, Priyo argued that he felt safer before explaining, “Although before we had no documents, we were scared but that was just what it was. Now, even though we have documents, we are afraid of the agents. Now, agents control everything. There could be problems with your documents, and you don’t even know it.”⁹⁷

In addition to the problems presented by the increasing presence of employment agencies along the Indonesia-Malaysia corridor, many of my interviewees did not view the embassy as a reliable source of assistance or protection. Dian, for example, knew where the embassy was located but did not understand how the embassy could help her. She recalled one day, when her employers were at the hospital, she snuck off to find the

⁹⁶ Interview with Arjani, Kuala Lumpur, March 2019.

⁹⁷ Interview with Priyo, Kuala Lumpur, March 2019.

embassy to find out information about they do. When she returned to her worksite, her employers were livid calling her wicked (*jahat*). She never had the opportunity to leave after that. Although Arjani had a basic understanding of consular services, she explained that this knowledge came through her employer who was a migrant rights advocate. On a few occasions she helped to bring distraught and abused domestic workers she encountered to the embassy. Not once, she told me, did the embassy report the abusive employer thus leaving intact the structure enabling abusive behavior to proliferate. Despite this, she explained to me, “Yes, they are not very good. But without the embassy TKI (Indonesian migrant workers) would have no one to help them. We simply have no choice.”

In contrast to the Philippine and Vietnamese corridors below, the Indonesian corridor is characterized by a lack of state involvement in the emigration procedures allowing for employment agencies to flaunt protective measures. Specifically, practices that goes against the spirit of the legislation seeking to protect migrant workers such as debt-induced migration became common place, an over-reliance on migrant workers as the primary source of knowledge of life in Malaysia, and *aspal* documents became common place. As a result, employment agencies on either side of the border and employers are able to create a compliant labor force whose mobility and temporality could be monitored. These efforts, however, also exposed how it also created incentives for migrant workers to become a part of the undocumented labor force.

The Philippine Corridor: Controlled Employment Agents and the Problems of “Empowerment”

The Philippine-Malaysia corridor highlights how a close relationship between the labor sending state and employment agencies does not eradicate vulnerabilities experienced by migrant workers in the host country. Although heavy state intervention and oversight of employment agencies has helped to reduced undocumented migration, this political-economic arrangement still produces a supplicant labor force unwilling and unable to challenge any ill-treatment of migrant workers. In other words, although it did not contribute to the number of undocumented migrant workers, this corridor highlights that regular migration does not necessarily lead to safe migration and how the institutionalized

use of employment agencies can produce vulnerabilities that degraded Malaysia's attempt to portray itself as a protective state in the new millennium.

Unlike Indonesia, a close relationship between the state and employment agencies was built into the very foundation of the country's outmigration program.⁹⁸ It is this close relationship that led many scholars to call the Philippine state a *labor brokerage state* in which the labor-brokering practices of the state (i.e., the institutional and discursive practices through which the state mobilizes and sends its workers abroad for a profit) together with the work of employment agencies create a unique form of labor control allowing the state to present itself as the world's most eminent supplier of labor (e.g., Guevarra 2009; Robyn Magalit Rodriguez 2010). In other words, the state played an active role in the production of the "ideal" worker based on qualities desired by labor receiving states (e.g., skills, temperament, documented status, the promise the worker will not cause "trouble" during their stay, etc.). At the same time, due to the critical importance of overseas workers to its economy, the Philippine state was committed to projecting an image of itself as a "protector" of its overseas workers who were often portrayed as "national heroes" in the national discourse (Robyn M. Rodriguez 2002). In 1995, it passed the Republic Act 8042: The Migrant Workers Act and Overseas Filipinos Act of (RA 8042) which established a rigorous welfare protection program for overseas Filipino workers, recognized the feminization of the Philippines overseas labor force, and promised to use "gender-sensitive criteria" in the development of its policies and programs (Guevarra 2009).⁹⁹

Like in Indonesia, the turn of the century saw the Philippine government further tighten the reins on employment agencies in the name of protection.¹⁰⁰ Although the

⁹⁸ The origins of the Philippines' emigration program can be traced back to American colonization (1898-1945) which not only established the emigration infrastructure on the archipelago – particularly the close relationship between the state and labor recruiters – but also saddled the young country with vulnerable economy that became receptive to emigration as an economic development program (Guevarra 2009). In the post-independence era, the Labor Code of 1974, which established the Philippine out-migration migration, scaled back the role of private employment agencies – which had been a key component of the emigration process since the 19th century – and instead gave the functions of recruiting and "deploying" workers to the newly created Overseas Employment Development Board (OEDB) (later renamed POEA) (Guevarra 2009). The code also created the Bureau of Employment Services (BES) responsible for the regulation and supervision of private employment agencies (Robyn Magalit Rodriguez 2010).

⁹⁹ The pace of Philippine women migrating abroad surpassed that of men in the 1990s (Robyn Magalit Rodriguez 2010). Many NGOs, churches, and grassroots migrant activists were criticized the government's role in promoting the overseas migration of women into vulnerable sectors, including domestic work (Guevarra 2009).

¹⁰⁰ Under RA8042, employment agencies must be owned by a Filipino national and obtain a license by the Philippine Overseas Employment Administration (POEA); this license can be revoked if it the agency is found to engage in illegal

Philippines was comparatively more successful in controlling employment agencies than Indonesia, the business of recruiting and deploying workers overseas was and remains a lucrative business (Guevarra 2009). By the early 2000s, there were more almost 1,200 licensed recruitment agencies operating in the Philippines generating over \$400 million a year in revenue (P. Martin, Abella, and Midgley 2004). Like in other contexts, Philippine employment agencies earned their profits through charging potential emigrants for their services. This incentivized problematic actions like overcharging or offering non-existent jobs. Even for those who could avoid these extra-legal practices, fees to these private agencies account for the largest proportion of migration costs for migrant workers; despite legal limits, this often accounted for three-four months of wages for a two-year contract (P. Martin, Abella, and Midgley 2004).

The combined effect of the state's desire to produce highly "desirable" workers but also to protect its "national heroes" can also be seen in how the state utilized education to "empower" Philippine domestic workers. To the state, "empowering" overseas workers meant instilling within them "an ethic of personal responsibility and accountability as a means of their protection ... It reflects the state's general sentiments about the need to recognize that overseas employment is the choice that workers make and is, therefore, their responsibility" (Guevarra 2009, 58). As such, these trainings and preemployment orientation seminars emphasized the role of skill-development and self-reliance as ways to reduce the vulnerability of domestic labor. This was based on the belief that domestic workers would not ignite the ire and abuse if they were better trained to anticipate the demands of their employers (Guevarra 2009). To "minimize" the "vulnerability" of its domestic workers, the state expanded its predeparture education programs to better inform potential emigrants of the realities of life abroad, their labor rights, and how to make informed decisions while overseas. Domestic workers were now also required to speak English and received basic training in housework prior to departure. Although training programs were partially funded by the state developmental initiatives and certified by the

activities (P. Martin, Abella, and Midgley 2004). The state also linked employment agencies' revenue with migrant protection by making them jointly responsible with employers for ensuring that contracts are upheld (P. Martin, Abella, and Midgley 2004). Lastly, the government sought to eliminate "fly-by-night" agencies – agencies seeking to profit off recruitment fees and offering jobs that do not exist – by increasing financial requirements, requiring agencies to demonstrate a history of business experience, and making it easier to revoke the licenses of employment agencies (Guevarra 2009).

Technical Education and Skills Development Authority (TESDA), private employment agencies carried out the day-to-day operations of these programs (Robyn Magalit Rodriguez 2010).

This had led to a criticism that the “empowerment” narrative of the state’s protection through education program had helped to create a more supplicant labor force. My interviews revealed that such emphasis on self-reliance left many reluctant to speak out against their employers and viewing abusive employment conditions as their personal responsibility. For example, when I asked Xandra what she did when she was upset, she responded, “I would work harder. If you are working hard, they will appreciate your work and will treat you better.”¹⁰¹ In contrast, the Indonesian domestic workers I interviewed located the origins of their unhappiness in the employer (e.g., accusing Chinese Malaysian employers of being anti-Islam) or the isolated nature of their worksites. This proclivity to view abuse through the lens of “personal responsibility” extended beyond their immediate worksite. When I asked Marisol what Filipina workers would do if they experienced a problem she replied, “Sometimes, there are employer who do not let their maids go out, but I don’t like to get involved.”¹⁰² Xandra took the sentiment even further explaining, “Sometimes people still run away because they are so stubborn. They run away even though they have security. When they do this, it affects how everyone views Filipinos.”

Moreover, these trainings added to the overall cost of emigration (P. Martin, Abella, and Midgley 2004). All domestic workers were required to obtain a NC2 certificate from TESDA demonstrating a mastery of skills such as household maintenance, handling of laundry, and food preparation which required passing a three-four hour skill assessment or attending 216 hours of training which cost 10-15,000 pesos (Guevarra 2009). In addition, they must attend a three-day country-specific culture and language seminar which the state argued gave their workers a higher competency for overseas work compared to other nationalities. Like with Indonesian migrant workers, the debt ensured that workers did not run away or back out of their contract (Robyn Magalit Rodriguez 2010). Women often borrowed money or mortgaged family land and houses to pay the Philippine employment agencies for the processing of travel and work documents as well as the Malaysian levy.

¹⁰¹ Interview with Xandra, Kuala Lumpur, February 2019.

¹⁰² Interview with Marisol, Kuala Lumpur, February 2019.

The Philippines also acted as an informal bank lending money to the women to finance their travel. This debt was then sold to the Malaysian employment agency who deducted out of the women's salaries until the debt was settled (C. B. Chin 1998). All of my interviewees noted that this debt was deducted from their wages in the first three-nine months of their contract. Fear of being unable to earn back the debt incurred and the income promised through labor migration pushed some to be reluctant to speak up against an employer's abusive or illegal behavior.¹⁰³

Once inside Malaysia, the overwhelming presence of the Philippine state shaped what migrant workers view as a viable and safe form of migration. Unlike Indonesians who placed greater trust in their community than an incapable embassy to offer them protection, the Filipina domestic workers I interviewed saw the embassy as the sole source reliable source of protection while in Malaysia. Consequently, Filipina workers were much more skeptical of undocumented work in comparison to their Indonesian counterparts. As Xandra explained, "When workers come here, they have to go to the embassy first. The only way to avoid the embassy was to go through the back door – to go through Sabah first to avoid the embassy." At another point in our interview, she expressed a dislike of undocumented migration:

It was common for workers to run away if the employer was not good. Some run away because they want a higher salary – but not me. These women, if they were lucky, they could find a better employer. But the problem is that they became illegal and I don't like that. After a person becomes illegal only the embassy can help them. Other Filipinas might try to help, and some NGO might try to help but, in the end, they have to go to the embassy.

Although it could be argued that there was an underdevelopment of a protective social network due to the isolated nature of their worksites compared to male Indonesian construction and agriculture workers, Xandra's comment suggests that there was a reluctance to even view undocumented labor as a viable form of labor and a reluctance to use informal social networks to seek out such labor. Similarly, Dolores explained, "If a Filipina ran away, the embassy would deport them back to the Philippines. They might reach out to other Filipinas for help, but most would tell them to go to the embassy because

¹⁰³ Author's fieldnotes, February 2019

it was difficult here without an employer. If you don't have an employer, it's better to just go back to the Philippines.”

The use of deportation as the preferred way to resolve labor abuse complaints reflected employment agencies and the Philippine state's desire to produce an amenable workforce who would not cause “trouble” during their state. Although migrant workers also viewed repatriation as the preferred solution, migrant rights activists argued the Philippines' reliance on repatriation as the only method to solve a labor issue allowed the employer to go unpunished and the problem of “maid abuse” to remain a ubiquitous problem in Malaysia. Madeeha, a Malaysian labor lawyer to works with migrant workers, lamented that although the Philippine embassy was more present than any other countries, it was rare that a worker would have the support of the embassy to remain in the country to push her case through Malaysian industrial courts.¹⁰⁴

In contrast to the Indonesian corridor, the state is heavily involved on either side of the border in regulating employment agencies and the creation of an ideal worker all to maintain the country's position as a global supplier of care workers. State intervention in the employment proceedings, often in the name of protecting migrant workers, however, create its own unique set of vulnerabilities. Specifically, in pursuit of a compliant labor force, trainings increased the cost of migration and instilled in migrant workers as sense of “empowerment” that made them see that “trying harder” is the best response to unfavorable working conditions. In contrast with Indonesian workers, however, state intervention on the Malaysian side of the border meant that migrant workers were reluctant to enter the undocumented labor market, instead choosing deportation as the best way to deal with exploitative working conditions. Although this meant that Filipinas were less likely to contribute to the undocumented population, this method of dealing with exploitative working conditions left the problems of poor working conditions in Malaysia unresolved.

The Vietnamese Corridor: State-owned Employment Agencies and “Enduring” Migration

Like Indonesian migration, debt-induced migration and the overwhelming presence of employment agencies leave migrant workers more willing to accept vulnerable working

¹⁰⁴ Author's fieldnotes, March 2019

conditions while in Malaysia. This left many Vietnamese workers unclear or unaware of their rights how to improve their working conditions. Similarly, many are willing to work through exploitative conditions in order to recoup the expense of their journey. Unlike Indonesian migration, however, the state has a strong presence throughout the migration process from emigration to their stay in Malaysia. Unlike the strong presence of the Philippine state, however, there is no clear regulation of employment agencies' profit-seeking behavior and issues of corruption led many Vietnamese workers to view the state as a place of abuse rather than protection. Over time, the vulnerabilities created by these forces incentivized many Vietnamese migrant workers to seek out undocumented work contributing to the nation's "illegal migrant problem."

Unlike both Indonesia and the Philippines, the Vietnamese labor migration program was and remains a state-run program.¹⁰⁵ Since Doi Moi, the Politburo has treated "labor export" as an important development strategy targeted at ethnic minorities and poor rural households (Hoang 2020).¹⁰⁶ In line with this development plan, in 2002, the Vietnamese government began marketing Malaysia as a "poverty reduction" destination country specifically targeted low-income households who lacked the means to migrate elsewhere (ILO 2015).¹⁰⁷ The (re)introduction of the market economy to Viet Nam under Doi Moi also opened the economic space for profit-driven employment agencies which, according to Vietnamese laws, must be either a state-owned enterprise, an enterprise where the state is the main shareholder, or enterprises belonging to an official mass organization (Art. 8, Decree 81/2003/ND-CP).¹⁰⁸ Although Vietnamese employment agencies were state-owned, they bear striking similarities with the Indonesian PT-*petugas lapangan* system in which employment agencies utilized an army of private actors with local connections to

¹⁰⁵ The Vietnamese labor migration program began in the early 1980s. During the decade, close to 300,000 travelled to countries in the Communist Bloc. Selection of workers took place on the commune level and was carried out by local representatives of the Communist Party. The ideal candidate came from a model family such as children of invalids and revolutionary martyrs, ex-servicemen. The government financed the entire procedure, including the air ticket and uniform, and required worker to pay no fees except the cost of their passport and medical checkup (Thu Huong 2010; Schwenkel 2014).

¹⁰⁶ Doi Moi (Renovation) was an initiative introduced in 1986 to transition Viet Nam away from central economic planning to a "market-oriented social economy under state guidance" (see Irvin 1995; Beresford and Phong 2000; Beresford 2008).

¹⁰⁷ In 2006, a 3-year contract to Malaysia cost US\$ 1,300 compared to US\$ 3,000 for Taiwan, US\$ 7,000 for South Korea and US\$ 10,000 for Japan (Thu Huong 2010).

¹⁰⁸ Companies that were not wholly or partially owned by the state must apply for license; data from 2007 showed that only four out of the 145 companies operating in the country belonged to this category.

carry out the everyday task of recruitment. These private actors made use of their established network on the commune level to recruit new workers. Often a native and a well-respected member of the village, these local recruiters would go door to door advertising the benefits of working overseas, often beginning with relatives or close circle of friends before slowly expanding their network (Thu Huong 2010).

The profit-driven approach of employment agencies while operating under state control led to practices that made Vietnamese emigrants vulnerable upon departure. Vietnamese employment agencies earn a profit by charging potential emigrants fees for finding them employers and providing them with required pre-departure training (Schwenkel 2014; Hoang 2020). In exchange for government cooperation, recruitment companies often shared their profits with local authorities which, in turn, incentivize both state and commercial entities engaged in the migratory process to increase the number of people mobilized regardless of whether there was a safe job waiting for them once they depart Viet Nam (Thu Huong 2010).¹⁰⁹ Phi, for example, explained to me that the employment agency in Viet Nam told him that he was supposed to work for a refrigeration company. When he arrived at the airport in Ha Noi ready to depart, he read his contract again, but his employer had changed to a candy company. When he arrived in Kuala Lumpur, he waited with his fellow group of workers to be picked up by the Malaysian agent and quickly realized that they had been misled; there was no job waiting for them.

The influence of state-employment agencies relations on migrant vulnerability could also be found in the way the state helped potential emigrants finance their journey. Vietnamese labor emigration was debt-induced, meaning migrant workers bore the expenses of migration (e.g., travel documents, airfare, insurance, etc.) by going into debt (ILO 2018; Hoang 2020). State-owned banks provided low-interest loans for individuals from impoverished household to migrate abroad (Circular No. 392/NHNo-TD 21/2/2003).

¹⁰⁹ There was legislation meant to protect migrant workers from employment agencies. For example, Decree No. 144/ND-CP sets out regulations regarding fees, certifications, obligations of recruitment agencies and Vietnamese embassies, contracts, medical check-ups, and penalties and allows for the imposition of penalties on companies found guilty of recruitment malpractice or failing to fulfil its duties and obligations (ILO 2016). In addition, the 2008 Decision No. 61/2008/QĐ-BLĐTBXH set the brokerage commission rate for Vietnamese workers bound for Malaysia at US\$300 for men, \$250 for women, and \$200 for an outsourcing company; domestic workers are exempt from paying a brokerage commission. In addition, the Law on Vietnamese Workers Working Abroad under Contract 2006 allows workers employed by employment agencies to lodge complaints. This legal framework, however, is overly complicated and coverage is not universal (ILO 2017).

Although the loan was made in the name of the worker or a close relative, a prospective migrant worker could only access the loan through a recruitment company who provided proof of intended migration, and the money was transferred directly to the recruitment agency. Once the worker signed their request for the loan they were permanently indebted and had no choice but to migrate (Thu Huong 2010). Many Vietnamese workers prior to migration, however, perceived the debt as a safe investment based on the belief that they could recoup this amount through their work in Malaysia. Malaysia-bound migrant workers incurred around US\$1,519 premigration debt surpassing the official fees posted by the government. The difference between official and actual cost was often attributed to the practice of overcharging and corruption, in both Viet Nam and Malaysia (Belanger 2014). This system of debt-induced migration created an employment context in which workers felt pressured to endure abuse and coercive situations in order to quickly pay off the debt (Crisis and Tran 2016; Hoang 2020). Duc, for example, recalled that one restaurant he worked for provided him and other workers with no proper sleeping arrangements. Each night the employer locked him and other migrant workers inside the restaurant; they moved the furniture out of the way and slept in the room above the restaurant. He recalled, “if there had been a fire, I don’t know what we would have done.” Yet, when I expressed horror, he brushed it off and said it was just what they had to “endure.”

The likelihood that one was able to pay off the debt was correlated with length of time spent abroad incentivizing many to overstay their TEPs and become a part of the undocumented workforce. Hang, for example, arrived as a documented worker in 2003 but at the end of her two-year contract she realized that she had not earned enough to pay off her debt. She told me, “After I passed Malaysian [exit] immigration I turned right back around and came in using a tourist visa. After that I began working illegally.” Her co-worker, who had been sitting in the room, added that the cost of the fraudulent passport stamp – that indicated timely entry and exit between Viet Nam and Malaysia – was expensive and that was why they had to all work hard.¹¹⁰ Similarly, after two years of working in extreme conditions and watching his friends be mistreated and deported, Duc told me that he felt very discouraged (*chang nang*) and even his family encouraged him to return home saying that they would figure out how to deal with the debt together. At around

¹¹⁰ Author’s fieldnotes, Selangor, October 2018

the time his TEP was set to expire, however, he was invited by a hometown friend to go to work for a Chinese Malaysian who promised them a job. Although Duc had the option to renew his TEP for another year, he decided to work as an undocumented worker (*bo ra ngoai lam*) rather than add the renewal expenses to his debt.¹¹¹ Debt-engendered undocumented labor was not always so clear cut. Chi for example, was a documented worker during the week while she worked as an operator on an electronics assembly line – the job that was listed on her TEP. Fearing that she would return to Viet Nam with debt, however, Chi spent her weekends working under the table in a laundromat during which she would have been classified as an undocumented worker.¹¹²

Like in Indonesia, Vietnamese and Malaysian employment agencies were the primary gatekeeper to knowledge about the migration process and employment conditions once workers arrive in Malaysia (Hoang 2017). Few Vietnamese migrant workers had experience working in the formal labor market and therefore did not fully grasp the risks they were undertaking (Hoang 2020). Laura, a Malaysian who worked for a faith-based advocacy organization, explained that most Vietnamese workers arrived in Malaysia without knowledge of their rights and were often misled about their wages. Duc's story shows how this practice of gatekeeping knowledge, combined with Malaysia's outsourcing system, left new workers confused regarding basic details of their contracts. He arrived in 2007 and was employed by a Malaysian outsourcing company who hired him and other Vietnamese workers out to small restaurants. He told me that he worked well beyond the stated hours of his contract believing that he would get over time and could more quickly pay off his debt. When he brought the pay discrepancy up with the owner of the restaurant, he was told to bring this up with his agent who was responsible for his wage. The agency, in turn, told him that forcing him to work beyond contracted hours was the employers' fault and they had no control over that.

In addition to the issues rising from the migration process, my fieldwork revealed that there was little trust among Vietnamese migrant workers in the embassy to come to their aid. A consistent response across my interviews with Vietnamese migrant workers to the question of turning to the embassy for assistance was cynical laughter followed by

¹¹¹ Interview with Duc, Kuala Lumpur, 2019

¹¹² Author's fieldnotes, Selangor, May 2017.

derisions. Unlike Indonesian migrant workers, the issue was not a lack of knowledge about consular services, but the ubiquitous need for bribery in return basic consular services. Dang, for example, accused the embassy of being “corrupt” giving the example of embassy officials charging exorbitant fees for basic services like correcting information on his passport.¹¹³ Similarly, Phi called the Vietnamese embassy “useless” explaining that “everything required money and took a long time. I know some of them and took them out for coffee so it has been easier for me, but it should not be this way.”¹¹⁴

Moreover, the Vietnamese government sought to discipline workers who might become “troublemakers” in the host country. Although strikes are a common way of expressing dissent in Viet Nam, Vietnamese migrant workers’ non-citizen status made these activities riskier. While some dissent was tolerated, the Malaysian government with the blessing of the Vietnamese government used deportation to penalize those involved in large-scale strikes (Crisis and Tran 2016). In 2008, for example, 2000 mostly Vietnamese workers at the Esquel Malaysia clothing factory went on a three-day strike when they received less pay than promised; 300 of these workers were deported without compensation. This disciplinary behavior of the Vietnamese state in Malaysia was echoed consistently throughout my fieldwork by both migrant workers and members of civil society. Laura, for example told me that she learned through a friend in the Vietnamese embassy that she had been followed by state agents.¹¹⁵ This treatment was worse for Vietnamese nationals. Chau, a Vietnamese expat from Central Viet Nam, had been attempting to assist Vietnamese workers stranded in Malaysia. Because of her efforts, Chau told me that she has been labelled a “reactionary” (*than phan phan dong*) by the state. Not only did she face harassment each time she returned home, her brother, who lived in a faraway southern province, got intimidating phone calls from the state.¹¹⁶

Heavy state-intervention in the labor flow along the Vietnamese-Malaysia corridor has not resulted in state regulation of employment agencies. In fact, in contrast to Filipina workers who view the embassy as the sole source of true protection in Malaysia, Vietnamese workers view the embassy as a place of abuse making their already difficult

¹¹³ Interview with Dang, Kuala Lumpur, May 2017.

¹¹⁴ Interview with Phi, Kuala Lumpur, June 2019.

¹¹⁵ Interview with Laura, Kuala Lumpur, May 2017.

¹¹⁶ Interview with Chau, Kuala Lumpur, May 2017.

situation worse. Like the other two corridors, profit-seeking behavior from Vietnamese employment agencies result in debt-induced migration that incentivized many Vietnamese workers to become a part of the undocumented labor force. Similar to the other two corridors, employment agencies often acted as the primary gatekeeper about life and work in Malaysia in an effort to create a compliant labor force leaving migrant workers in a vulnerable position unsure of their rights and options on how to cope with an exploitative working condition.

Conclusion

Employment agencies play a central role in the Malaysian labor migration management infrastructure. Since the start of Malaysia's guestworker program, these intermediaries have acted as a bridge connecting Malaysian employers with potential workers in source countries. Even during times when they were outlawed, Malaysian employers continued to utilize the services of these labor intermediaries because they had simply become a part of the repertoire with the street-level bureaucrats in the immigration office. The 2005 Amendment to the 1981 Private Employment Agencies Act not only made these actors a legal part of the Malaysian migration infrastructure, but further extended their powers by allowing outsourcing companies to become official employers. According to the state, ensuring that employers utilize these specialized actors would make labor inflow a more efficient and effective process thereby increasing migrant regularity.

Through document processing and connecting Malaysian employers to workers in source countries, employment agencies not only make cross-border mobility possible but shaped migratory patterns and migrant workers' laboring experience upon arrival in Malaysia. On the labor demand side, employment agencies can shape what employers understand to be the ideal or desired workers. On the labor supply side, the way migrant workers experience vulnerability depends on how sending states regulate employment agencies and whether migrant workers are able to develop a protective social network in Malaysia. Strong state regulation along the Philippine corridor created a laboring population that distrusted the undocumented labor market and was unlikely to take action against abusive employers. The lack of state regulation along the Indonesian and Vietnamese corridors, on the other hand, led migrant workers to view undocumented labor

as a feasible and at times preferable route to recoup the costs of migration. As such, the actions of employment agencies can help contribute to undocumented population in Malaysia, the very thing the 2005 Amendment sought to solve.

The Malaysian state's eventual adoption of yet another amnesty program was due, in part, to the influence of employment agencies in a foreign labor dependent context. In such a context, foreign workers are an integral and not just supplemental part of the labor market. As such, the structural position of employment agencies responsible for ensuring the arrival of these critical workers in Malaysia leaves the state vulnerable to the interests, preferences, and actions of these actors. Specifically, the activities of Malaysian employment agencies to increase the overall inflow of workers created pathways to irregularity and vulnerability that work against the government's stated goals of increasing regularity and offering better protections.

Chapter Five

Conclusion: Theoretical and Policy Implications

This study approached the evolution of labor migration policy as a dynamic rather than a top-down and state-centric process. Through an exploration of three facets of foreign labor dependency, I showed that the iterative negotiations and interplays between the state, business elites, voters, and migrant workers produced a pattern of wild swings in its labor migration policies in Malaysia. As a typical case of foreign labor dependency in the Global South, my study of Malaysia showed how this dependency created a unique political-economic context in which the state cannot limit labor inflow without incurring both political and economic costs. This is because unlike non-FLD contexts, foreign labor plays an integral, and not just simply supplemental role, in Malaysia's development journey. Foreign workers' dominance of the Malaysian low-paying jobs not only gave the state a large pool of flexible workers to compete on the global labor market, but also allowed it to focus its limited resources upgrading the skills of its local workers to meet the needs of country's imagined future based in information technology. As a result, attempts to reduce the inflow of labor sent ripples across the Malaysian economy forcing the state to re-open its doors to more foreign labor.

Chapter Two described the effects of foreign labor dependency on the everyday politics between migrant workers and their host state. It argued that in an FLD context, access to a protective social network enabled migrant workers to engage in acts of evasion, whereby they opt out of formal mechanisms of control. While it is true that irregular migration is ubiquitous, an FLD context allows evasion to create pressure on the state to act. The large number of irregular workers evading formal state control wore down and eventually overwhelmed the state's infrastructure responsible for carrying out border control. In addition, because foreign workers formed the majority of the workforce in Malaysia's agricultural sectors and were critical to the productive output of these sectors, constant absconsion frustrated employers who wanted better control over their migrant labor force. In turn, Malaysian employers pressured the state to adopt an amnesty program that allowed them to retain their preferred workers.

My conceptualization of evasion as a form of everyday resistance foregrounds the violence baked into labor migration policies used to ensure migrant workers are a flexible form of labor. At its basis, the TEP requires that migrant workers leave Malaysia after a set period of time and binds migrant workers to their employer for the duration of their stay. This control of temporality and mobility skews the balance of power in favor of the employer and leaves workers more susceptible to abuse. Although these mechanisms of border control are certainly a “normal” part of a guestworker program, they are nonetheless based in violence. Evasion challenges this violence by allowing migrant workers an alternative route to improving their economic conditions. Although my interlocutors did not view these acts as political, their actions nonetheless had political ramifications. Even though these acts unfolded under highly restrictive and violent conditions, they were strategic actions that took into consideration these restrictions (Mosse et al. 2002; Berntsen 2016; Squire 2017; Collins 2018). In other words, despite limits put upon them by their juridical status and socio-economic standings, they made conscious and proactive decisions based on *their* perceived fears and harms (e.g., weighing the harms of debt against threats of deportation). As such, as a political concept, evasion highlights not only the extreme constraints put on this population but also how they can still carve out a space to act despite such constraints.

Chapter Three investigated a dilemma confronted by foreign labor dependent states like Malaysia: both the restriction and the enabling of foreign labor create discontent within the populace. Like elsewhere, the presence of a large pool of foreign persons created a fraught political environment. Newspapers often told stories of crafty migrant workers whose poverty drove them to engage in criminal activities like theft or prostitution. Although Malaysians might complain about the large population of foreigners in their country, they were unwilling to stomach an economic downturn creating for UMNO the potential of political backlash. A narrative based on unwanted workers performing unwanted work helped to smooth over this dilemma for the state. This narrative normalized foreign workers’ dominance of Malaysia’s secondary labor market and made other routes to resolve the undesirability of certain jobs (e.g., by increasing wages) seem like an improbable solution. As a result, the government experienced difficulties implementing

policies to nationalize the secondary labor market and continued to perceive the employment of irregular migrant workers over local workers for these jobs as legitimate.

This narrative, however, has not been broadly accepted. In the past, labor unions have argued that the reason why Malaysia must resort to hiring foreign workers had nothing to do with the jobs themselves but rather employers' refusal to improve working conditions in order to keep labor costs low and remain competitive on the global market. Similarly, my meetings with union representatives reveal that they do not ascribe to the belief that the employment of foreign workers is inevitable, and instead blame UMNO's ambition to create a rich rather than equitable country.¹¹⁷ Although labor is much more sympathetic to foreign workers now than they have been in the past, they still want to prove that Malaysians can perform these jobs.¹¹⁸ Despite these attempts, the employers maintained the idea of hiring Malaysians for construction or agricultural jobs as something impossible and even laughable.¹¹⁹

Chapter 4 discussed how the institutional position of employment agencies, utilized to acquire this critical workforce, has worked against Malaysia's attempts to rein in irregular migration. This argument is based on two observations about the role of employment agencies in Malaysia. First, by helping to perform the necessary administrative tasks to enable foreign labor migration, Malaysian employment agencies shaped migration patterns. Specifically, employment agencies' drive to increase labor *mobility* created pathways to irregular labor migration. Second, regardless of their legal status, the engagement of these merchants of labor have been engrained in the everyday business of foreign labor recruitment in Malaysia. These irregular migration inducing behaviors combined with the institutional position of employment agencies on the Malaysian labor migration landscape helped to proliferate irregularity forcing the state to respond through policy change.

Comparative Implications

Malaysia represents a typical case of an FLD in the Global South where foreign labor play a definitive role in the country's developmental journey. Foreign labor dependency is not

¹¹⁷ Author's fieldnotes, November 2018

¹¹⁸ Author's fieldnotes, December 2018

¹¹⁹ Author's fieldnotes, October and November 2018

a binary but rather a continuous concept. At one extreme are foreign labor reluctant countries. South Korea, for example, did not employ foreign workers during its economic rise, continues to limit labor inflow, and has a strong preference for ethnic-Koreans over other groups (H.-K. Lee 2003; Kim 2008; Choo 2013). On the other end are the Gulf states where foreign workers – who vastly outnumber its own citizens – provided the region with the necessary labor and skills to begin and continue oil production (P. L. Martin and Malit 2017). Falling in between these two extremes are cases more similar to Malaysia, such as Singapore where foreign workers make up about 38 percent of the total workforce, employed in both low-paying and professional sectors (ILO 2020).

This inductive case study of Malaysia helped to illustrate the how this dependence affected state calculus in terms of policy evolution and implementation. Being a foreign labor dependent state means that migrant workers are an integral rather supplemental part of the national labor force. In the Malaysian case, this characteristic emerged through foreign workers' dominance of low-paying jobs cast aside by local workers. This political economic context established conditions for two sets of actors to impact anti-integration policies utilized to ensure that guestworkers remain just that – guests. First, the enormous size and historical presence of migrant populations enables foreign workers to exert pressure on a state that is already sensitive to shifts in migratory patterns. Second, the political economy of mobility needed to uphold such a foreign labor dependent labor market enabled employment agencies, including their interests and preferences, to feature prominently in policy implementation. Despite the importance of foreign labor, such a large foreign population created a fraught political climate. These pressures, which push and pull on the state in opposing directions, create a policy landscape that constantly swings between permissive and restrictive.

FLD as an analytical lens is best suited to explain policy evolution in countries with a deep history of labor migration. This is because the socio-cultural and political economic constraints on FLD states stem from the integral and structural position of foreign labor in the national labor market. In recent years, there have been a number of countries that are making their transition from a country of emigration to that of immigration. Newly admitted EU states in the Balkans and Eastern Europe, for example, have witnessed a loss of workers taking advantage of their new labor mobility. As a result, they have turned to

guestworker programs to import labor from Asia and Africa (Bejaković and Klemenčić 2017; OECD 2020; European Commission 2020). Although certain sectors of their economies might rely heavily on foreign workers, this new workforce is yet to be engrained into the laboring culture of these newcomers allowing the state greater flexibility in terms of policy action.

In the following, I consider how the dynamics learned through the Malaysian case might travel to other contexts. I begin by exploring a case of extreme foreign labor dependency in the Global South, the UAE. Similar to Malaysia, the Emirati government has struggled to reduce its dependence on foreign labor in the face of public discontent due to rising unemployment. In addition, absconsion and the practice of selling “free visas” have offered both employers and foreign workers a way around the state’s foreign labor restrictions creating pathways for irregular migration to rise. Consequently, the government has relied on amnesty programs to resolve this “problem”. I then consider how these insights might help us better understand policy cycles in the Global North. I do so through a brief analysis of the rise and fall of the Bracero Program as well as its continued impact on the American agricultural sector.

Foreign Labor Dependency in the Gulf: The United Arab Emirates

Labor migration has deep roots in the UAE dating back to its time as a British protectorate.¹²⁰ In 1971, an independent UAE introduced its guestworker program through the Kafala Sponsorship System to import the labor and technical knowledge needed to pursue oil production (Malit Jr and Al Youha 2013). Since the introduction of its guestworker program, foreign workers have become an integral part of the UAE’s labor market. With the onset of the construction boom in the 1990s, immigration to the UAE had been the main driver of population growth. The Federation is home to over 7.8 million foreign workers making up close to 90% of its population (Lori 2011; Al-Waqfi and Forstenlechner 2014; UNPD 2019). Foreign workers from Asia and North Africa dominate

¹²⁰ At the turn of the 20th century, when the federation was still a British protectorate, leaders of the then-called Trucial States saw the inflow of migrants to be beneficial to the states. The confluence of interest of the British and the leaders of the Trucial States would come form the basis of Emirati labor migration policies: a desire by State leaders to limit Arab migration in fear of radicalism and British desire to ensure that only those who will contribute to the Federation’s development will be permitted to enter (Jamal 2015). In the decades following WWII, the UAE welcomed migrants – predominant from neighboring Arab states and India – of all skill levels to work in the States (Davidson 2008; Jamal 2015).

low-paying jobs in the service sectors while workers from Western Europe, North America, and Australia prevail over high-paying jobs in the oil, gas, and finance industries (Aarthi and Sahu 2021). At the same time, historically UAE citizens have had relatively easy access to high paying public sector jobs (Abdalla et al. 2010; Al-Waqfi and Forstenlechner 2014). Together, these two trends created a bifurcated labor market where public sector jobs were reserved for the national workforce while foreign workers dominated the private sector (Ewers 2016).

Despite the importance of foreign workers to the health of the UAE, the Federation is under extreme pressure to reduce its dependency on foreign workers. Unlike Malaysia, the government, with large oil revenues and a small population, responds to popular concerns over rising number of foreign workers in a much more direct manner. To smooth over the political pressure from this demographic imbalance, citizenship in the UAE is tied with the generous provision of welfare benefits such as subsidized education and healthcare (Vora 2013). One key provision had once been the guarantee of public sector jobs. Since the 1990s, however, the UAE's high fertility rate has placed pressure on the public sector job market (Al-Waqfi and Forstenlechner 2014). As access to public sector jobs become increasing scarce, even in a country whose economic health is so clearly tied to labor inflow, the state cannot remain immune to anti-immigration sentiments with Emiratis viewing this large migrant population as a danger to their national identity (United Nations 2009; Lori 2011). In response, the UAE has attempted to reduce its overall dependency on foreign labor inflow and push for greater participation from Emiratis in the private sector (P. L. Martin and Malit 2017).

One factor that has hampered these efforts is the political economy of mobility that enables the *kafala* system to function. Not unlike the Malaysian TEP, the chain of recruitment begins with the *kafeel* – the sponsor and employer – approaching a recruitment agent who act as a mediator between employer and aspiring migrants (Agunias 2009). Once in the country, a worker's legal status is tied to their *kafeel*; leaving the workplace without permission from the employer can be read as absconding and punishable by termination of visa status. The high cost of travel as well as the fees paid to local recruiters and to acquire necessary documents often result in the worker arriving in the Gulf in debt and more willing to work on the irregular labor market to pay off that debt (Human Rights Watch 2006). In

contrast to Malaysia, employment agencies are illegal in the UAE. Regardless, the large number of workers passing through the UAE's border has created a set of informal practices and enterprises that provide similar services to Malaysian outsourcing companies. For example, a UAE citizen may obtain permission to recruit a set number of foreign workers then go on to "sell" these so-called "free visas" to those who do not want to undergo the rigorous recruitment process. By working for someone who is not their legal sponsor, the worker immediately becomes part of the irregular labor force. At one point, it was estimated that such fictitious companies provided as much as 27 percent of the country's workforce (Shah 2009). Such a political economy of mobility works against state efforts to rein in irregularity.

Another key actor undermining the anti-integration principles of the *kafala* system and the state's attempt to control labor inflow is the migrant worker. Although migrant workers are meant to be a temporary labor force, migrant workers in the UAE can prolong their stay almost indefinitely using their personal social networks and relationship with employers. Gulf employers are reluctant to turnover workers who they have become accustomed to working with and who have proven to have the necessary skills to be a productive worker. These employers are also reluctant to routinely invest money and effort into finding, bringing in, and training new workers at the end of each visa period. In the reverse, the high costs of travel disincentivize migrant workers to leave at the end of their visa period in search of new employment (Aarthi and Sahu 2021). Those who have a good relationship with their employers can renew their contract (or find a new employer) enabling them to remain a resident of the Federation for decades (Valenta et al. 2020). In turn, the number of "dependents" (e.g., children and spouses of migrant workers) as well as second- and third-generation migrant workers has been on the rise (Vora 2013). For some migrant workers, participation on the irregular labor market can be a short-term strategy to securing prolonged residency in the Federation. Foreign workers enter the irregular labor market through a variety of ways including overstaying a tourist or work visa, utilizing a "free visa", or through abscondion (Valenta et al. 2020). Those who choose to abscond their employers are at risk of arrests and deportation but these risks are often seen as acceptable to migrant workers especially those with a social network to provide them with protection and a way to find new work (Shah 2009). These acts of survival are

contrary to the state's goals of orderly migration, they are often tolerated and ignored by the state in fear of more public and collectivized acts of defiance such as strikes (Buckley 2013). As a consequence, over time, temporary migrant workers can also have become a permanent presence in the UAE.

Over time, these conflicting pressures of the UAE's dependency have resulted in a pattern of poorly implemented labor migration policies punctuated by recurring amnesty programs. Although the UAE's citizens might express discontent for such a large foreign population in their country, there is explicit knowledge that their quality of life will decline in line with any downturn in oil revenue (Al-Waqfi and Forstenlechner 2014). Moreover, despite efforts to encourage greater participation of local workers in the private sector, many Emiratis prefer to hold out for public sector jobs with better pay and working conditions (Buckley 2013; Al-Waqfi and Forstenlechner 2014). To cope with these conflicting pressures to both liberalize and restrict labor inflow, the UAE has fallen into declaring amnesty every few years to show that it is "dealing" with the problems of irregular migration. During these periods, migrant workers can choose to enter the regular labor market or leave without punishment (Malit Jr and Al Youha 2013; Valenta et al. 2020). These recurring amnesty programs reflect the need to protect the nation while also ensuring that businesses have continued access to foreign workers.

The Global North: The United States and Agriculture

Migrant and new immigrant workers from Latin America make up much of the American agricultural labor force. This dependency on Latin American farmworkers has deep roots dating back to the late 19th century when Mexican workers provided a needed labor supply for the expanding agricultural production in the American Southwest.¹²¹ In addition to Mexico's proximity to US, the majority of these contract workers were adult males with no dependents and whose stay was contingent on their labor being in demand. Together, these factors allowed businesses to expand and contract labor supply as needed thus easing tensions associated with more permanent European immigration (Calavita 2010). Although agriculture is no longer a driving force of American economic output – making up less than

¹²¹ Consequently, the role of Mexican labor had a special place in discussions of immigration policies throughout the 20th century. For example, when the US government placed restrictive quotas on immigration in the 1920s, Mexico was exempt due to concerns over the need for agriculture workers (Calavita 2010).

one percent of the country's GDP in 2020 (USDA 2022) – the sector was and continues to be considered a “crown jewel” of the American economy because it allows consumers to spend very little money on food (P. Martin 2002). This fact, and the success and importance of agriculture in the early 20th century, have given farmers a powerful position at the political bargaining table particularly when it comes to matters of immigration and the presence of undocumented low-skilled labor in the US (P. Martin 2002; 2017).

Comparing Malaysia's current guestworker program against the history of Mexican guestworkers in the United States highlights the long-term effects of foreign labor dependency on border control policies. A key turning point in the relationship between Latin American (in this case, Mexican) labor and the American farm system was the introduction of the Bracero Program, a wartime emergency program designed to fill the declared labor shortage in agriculture. At the onset of WWII, many growers predicted a labor shortage due to farmworkers marching off to war or to better paying manufacturing jobs. Growers in the American Southwest feared that these pressures would energize a new round of union organizing that they have been successfully fighting off. Not dissimilar to the guestworker program in Malaysia, this ostensibly wartime program outlasted its original intentions. When WWII ended, American farmers used their political clout not only to campaign for its extension but also participated in establishing the new terms of the program essentially reshaping it to their demands (Basok 2000; Calavita 2010). In fact, the number of braceros (Mexican farmworkers recruited through the program) during WWII – about 5-10 percent of farmworkers – paled in comparison to a 1959 figure when peacetime braceros made up almost a quarter of the American agricultural labor force (Cohen 2011).

Like in Malaysia, the language of unwanted workers coming to take up unwanted jobs helped to legitimize the need for extensions. While Malaysia nested this discourse in a narrative of nationalism and developmentalism, American growers utilized familiar connections between immigration, race, and agricultural labor that was easily understood by the state (e.g., Cheng and Bonacich 1984). California, for example, relied heavily on cycles of immigrant work force – first Chinese and then Japanese, Filipinos, Mexicans, and transplanted poor whites – to transform the state into a site of industrialized agriculture (Cohen 2011). The link between racialized groups and agricultural labor rest on the belief that “farmwork required specific skills and demeanor...that these skills and demeanor were

biologically based; and...that specific national (ethnic and racial) groups possessed these skills naturally, in contrast to white Americans who had moved beyond this station” (Cohen 2011). Within this logic, braceros represented the perfect “specimen” desired by growers to sustain this profitable and important industry.

Throughout the duration of the program, the government was under pressure to stem the inflow of Mexican immigration and solve the “problem” of undocumented farm labor. Unlike autocratic Malaysia, a key actor in the American story was unions. The American labor movement historically opposed the hiring of undocumented immigrants arguing that this practice depressed wages and displaced local workers. The American Federation of Labor-Congress of Industrial Organization (AFL-CIO) advocated for an end to the program because access to braceros posed a challenge to efforts to unionize farm workers (Basok 2000). Throughout the program, unions were able to chip away at many features that made it an attractive recruitment tool for growers. For example, at the onset of the Korean War and the tightening of the American labor market in the mid-1950s, the government responded to pressures from unions and ended the practice of direct recruitment that had resulted in an increase of undocumented migration (Cohen 2011). By the 1960s, braceros themselves had become participants in these movements. Decades of history, knowledge, and experience banding together to resolve problems experienced in the barracks and fields helped these men to see themselves as workers motivating many to take actions (Jenkins 1985; Ganz 2009). Against the backdrop of the American civil rights movement and farm-union activism, the American government had also begun to see that although “uncontrolled illegal immigration” might be advantageous for agriculture in the short run could threaten stability in the long run as anti-immigration sentiments grew (Calavita 2010).

The durability of “uncontrolled illegal immigration” as a “problem” for the American government, as well as the resulting endless cycles of amnesty programs to resolve it, highlights the agency of migrant workers during the Bracero years. When the program expanded at the end of WWII, becoming a bracero through legal channels became competitive and costly. At the same time, recruitment procedures did not guarantee that those who wanted to do so could re-enter upon the completion of their contract. This incentivized many to stay for an extended period of time becoming part of the

undocumented labor force to recoup expenses (Basok 2000). Like guestworkers elsewhere, braceros rarely engaged in collective action to resolve their labor disputes either because their contract explicitly forbade it, or their representatives were not allowed to negotiate with employers on substantive issues. In the face of these obstacles “the most powerful weapon that most braceros had was their feet—they left” (Cohen 2011). This option of participating on the undocumented labor market was available to braceros because of the presence of a protective social network. These social structures helped to connect potential emigrants with the rising number previous movers reduced the costs of undocumented migration both at the border and after arrival (Massey 1987; 1990). The development of a migration industry often overlapped with these social networks creating a (albeit illicit) pathway between home and their eventual worksite in the US (Krissman 2005; Hernández-León 2008). Once in the US, the existence of a Spanish speaking community and Chicano enclaves in the American Southwest which has a long history of Mexican settlement helped those who “skipped” find work both within and beyond agriculture (Wilson and Portes 1980; Massey 1987; Portes 1995; Basok 2000).

Although a pathway to permanent residency and citizenship is now available, the dependency of American agriculture on immigrant labor continued to create pressures for the expansion of guestworker programs. By the early 1980s, the presence of a large and vulnerable undocumented labor force was a key point of discussion leading up to the Immigration Reform and Control Act of 1986 (IRCA). While employers pushed for another guestworker program, there was strong political pressure to grant amnesty to this critical labor force. The final Act created a relatively simple pathway to residency for of 2.7 million undocumented workers who participated in this legalization program. It also reformatted the H2A programs, two guestworker programs that farmers could access should a labor shortage arise (P. Martin 2002). IRCA, however, did not eliminate undocumented labor; in fact, undocumented immigration increased rather than decreased. In turn, this provided farmers with an abundance of undocumented workers disincentivizing employers from participating in the H2A programs (P. Martin 2017). In 1999, again, the government implemented another legalization program for undocumented farmworkers to apply for residency. Since the turn of the century, undocumented workers still make up a substantial portion of the agriculture workforce. In the wake of an aging labor force, we are again

witnessing discussions of greater utilization of H2A program to supply a supplement labor force (P. Martin 2017).

Directions for Future Research: Data Limitations and Enduring Questions

Looking to the future, there are two enduring sets of questions unanswered by this study. *First*, is the way labor migration in Malaysia, like elsewhere, is racialized and gendered. This study offered little commentary on these factors due to two limitations in data collection: First, I had limited access to women-dominated sectors in Malaysia. Since the 1970s, Indonesian and Filipina women have been coming to Malaysia to work as domestic workers (C. B. Chin 1998). To this day, women continue to dominate the sector. The fact that their worksite is in the home of their employers has made it difficult for these women to create and access a protective social network in the same way as the men worked on plantations and construction sites described in Chapter Two. This was supported by my conversations with women who came in the 1990s which further revealed that, unlike the men, their early years in Malaysia were marked by extreme loneliness being unable to connect with friends from home or in Malaysia. According to these women, life did not get easier until the cellphone became easily accessible. The other sector dominated by women is the manufacturing sector. Like domestic workers, these women are actively discouraged from leaving their compound which contains their dormitories and other basic amenities like shops and restaurants for food. Unlike the *kongsi* on construction sites, these compounds are guarded and not easily accessible to outsiders making research difficult. Another sector with large number of women is plantation. Based on advice from members of civil society that it might be unsafe for these workers to speak to a researcher, I made the deliberate decision to not interview current plantation workers.

Second, my interview data was limited in terms of access to employers. I began the bulk of my fieldwork in October 2018 only months after Barisan Alternatif, the opposition coalition won the national elections for the first time in Malaysian history. As a result, businesses who employ migrant workers – many of whom had ties to UMNO – were not inclined to speak to a researcher fearing that they might be investigated for corruption. Despite numerous attempts to find various channels to interview these individuals, I had

limited success. As a result, I had to rely much more heavily on archival research to piece together how employers perceive the racialized nature of work in Malaysia across the eras.

Second, despite the optimism of evasion described in Chapter Two, Chapter Four of this study also showed how the state – through the market – is fighting back against the effects of evasion. Specifically, Chapter Four explained how the increased involvement of Malaysian employment agencies have created new pathways to creating a flexible, vulnerable, and supplicant labor force. The prices charged by employment agencies for their service drive employer to “get their money’s worth” in their treatment of migrant workers often resulted in abusive conditions. Similarly, the high prices paid by migrant workers to work in Malaysia lead many to endure undesirable working conditions in order to recoup expenses. To make matters worse, employment agencies understand that migrant workers with friends or family in Malaysia are more likely to abscond and have thus begun seeking out new hunting grounds and targeting individuals with no access to a protective social network prior to leaving their home country. The importance of social networks can also be seen in the Malaysian state’s decision to diversify its source countries as a way to decrease its reliance on Indonesian labor. This decision, as a labor control mechanism, only makes sense if we recognize the importance and power of Indonesian workers’ transnational network.

The increasing prevalence and importance of the migration industry across Asia in all matters pertaining to border regulations raises interesting theoretical questions on the changing nature of the state in the era of globalization. Border regulation, which deals with the territorial integrity of the state, has often seen as a sensitive topic and an exclusive responsibility of the state. The growing reliance on the migration industry by both sending and destination countries in Asia adds to this conversation by suggesting that through ceding responsibility to the market, the state is not losing power to the forces of globalization but is in fact transforming its strategies to meet the changing logic of an increasing interconnected labor market (Ong 2000; 2006; Surak 2018). Specifically, Malaysia’s success in meeting the challenges of a fast and competitive global market is based its differential treatment of various groups of people based on their relation to global market forces. In other words, the social relationship between individuals and the state – Malaysian and foreign workers alike – is determined by their relationship to the market

(Ong 2006). By perpetuating the image of the migrant worker as a foreign and even invasive population all the while relying on employment agencies to perform the administrative work of regulation, the state is able to maintain its image of the protective state while placing the blame of ill-treatment and illegality on employment agencies who are only driven by “market concerns” (C. B. N. Chin 2003). Moreover, by allowing the protection of migrant workers to be determined primarily by the market, the state is able to reap the benefits of migrant workers’ vulnerability without needing to expend limited resources.

Policy Implications: Is Orderly Migration Safe?

International labor migration is increasingly touted by policymakers as a powerful tool for global development. Both the 2015 Addis Ababa Action Agenda and the 2030 Agenda for Sustainable Development, for example, make the argument that international labor migration is a ‘win-win-win’ situation not only for the labor-sending and destination countries but also for the migrant worker her/himself (OECD and ILO 2018). Despite this optimism, this study showcases how the uneven power dynamic between the migrant worker and the governments that regulate their movement and labor create a context that is ripe for exploitation. Conventional wisdom says that the best way to protect migrant workers against the potentials for exploitation is through effective migration management. While what constitutes an “effective” migration management regime might be debated, a principle that often goes uncontested is that the best way to pursue safe migration is to encourage migrant workers to travel through regular channels, i.e., state-sanctioned or state-controlled channels. Encouraging regular migration, the logic argues, better enables states to track and reduce the possibilities of discrimination in terms of wage, working conditions, and housing rights. In brief, the pursuit of safe migration necessitates the advocacy of regular migration.

This is exactly what Malaysia did. In response to both the demand for labor and the need to portray itself as protective states, Malaysia and its partnered sending countries have worked to create institutions and mechanisms aimed at ensuring that foreign workers travel through regular channels. The stories of migrant workers in this dissertation, however, brings our attention to the identities and interests of the actors who line the migration

corridors and perform the day-to-day work of migration management. As their stories show, the increasing complexity of the systems, alongside the drive to maintain economic growth, opened the pathway for dependency and desperation for foreign labor as well the entrenchment of the migration industry into the migration process. The intricate relationship between the migration industry, the states' drive for economic development, and migrant workers' own desires for mobility creates a complex relationship between regular migration and safe migration. By decoupling safe migration from regular migration, I argue, we are better able to pursue migrant-centered policies. Specifically, we must treat the continued development of a protective network, which provides knowledge, care, economic resources to new generations of migrants, with equal weight in the pursuit of safe migration as legal documents.

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