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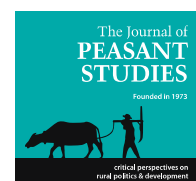
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Misconceiving 'Seasons' in Global Food Systems: The Case of the EU Seasonal Workers Directive

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Lydia Medland

Abstract

Global food production occurs at the intersection between ecological and social systems. As agents negotiating the relationships between social and ecological systems, food workers and farmers are caught between ecological rhythms and those of market and policy contexts. Two such dynamics at this intersection are seasonal production and (circular) labour migration. In this article I will consider dynamics of seasonal production in one case of counter-seasonal horticultural production, El Ejido, Southern Spain. Considering the question of seasonal labour needs in agriculture I will draw on the experiences and discourses of farmers and migrant workers to discuss how the policy approach of the new EU Seasonal Workers Directive (2014) corresponds to challenges faced in such a context. I argue that the assumed nature of 'seasonality' and seasonal labour needs reflected in the Directive does not reflect the experiences of farmers' unmet seasonal challenges in such an industrialised horticultural setting. Rather, the assumptions regarding seasonal work underlying the directive appear to have supported a renewed narrative for reduced rights for temporary migrant workers, and in particular, the promotion of a programme of circular migration.

Perhaps most significant in the Directive is the noticeable lack of options for undocumented migrant workers already working in horticulture, or supporting the horticultural sector through occasional casual work. By considering some experiences from the context of El Ejido I argue that the Directive and its broader policy approach is likely to fail the most vulnerable seasonal workers in horticulture by overlooking them in new circular migration programmes. However it is unlikely to remove the demand for occasional casual labour frequently undertaken by undocumented seasonal workers through longer term circular migration programmes. Furthermore, by creating a reduced set of rights for new circular migrants the Directive and its approach does not do enough to protect new migrants from falling into similar situations of precarity and irregularity.

Agriculture and Seasonal Work: A Clear Connection?

The Seasonal Workers Directive and Agriculture

The *Directive of the European Parliament and of the Council on the conditions of entry and of stay of third-country nationals for the purpose of employment as seasonal workers* (The Seasonal Workers Directive) was adopted February 2014 and EU Member States are required to transpose the directive into their national law by 30 September 2016¹. The objectives of the objective are, specifically, ‘the introduction of a special admission procedure, the adoption of conditions on entry and stay for the purpose of seasonal work by third-country nationals and the definition of their rights as seasonal workers’ (European Union, 2014: Art 25.2). By putting in place common rules for both entry and stay for ‘third country’ migrant workers and defining their labour rights once present within Member States, this makes the Directive an instrument of both migration and labour law (Fudge and Olsson, 2014). The scope is in some senses narrow because it applies only to those workers who enter the member states for the temporary purposes of seasonal work, who are considered to maintain formal residency status in their countries of origin. The scope of the Directive does not therefore apply to ‘third country’ workers who are residents of EU member states, either in positions of documented or undocumented status. However, although the Directive itself only applies to third country nationals undertaking temporary work in Member States, as a policy approach, it has much broader goals. As stated in the impact assessment the global objectives are:

1. To respond to seasonal fluctuations in the economy and offset labour shortages faced in specific industries/economic sectors and regions;
2. To contribute to preventing exploitation and poor working conditions for third-country seasonal workers and illegal immigration;
3. To contribute to the development of third countries.’ (Commission, 2010)

The Directive can therefore be interpreted as part of a broader strategy of immigration control and the degree to which it is likely to contribute to the prevention of poor working conditions should also be considered in this light. I will not be analysing all of the above aims and objectives in this paper. However, by considering the Directive in the light of seasonal migrant workers’ experiences, I argue that it is likely to broadly fail on its own terms: the kind of labour migration facilitated by the Directive may meet an economic demand for low-paid workers in general, however it is unlikely to meet farmers’ unmet *seasonal* challenges (objective 1); the most vulnerable seasonal workers may be further marginalised while the demand for their occasional labour is not likely to end therefore not stopping the incentive for the continuance of irregular migration to regions of horticultural production is likely to remain (objective 2); finally, much doubt has been cast on the notion that circular migration can lead to development in third countries and the EU’s optimism on this point is considered to be unsubstantiated (objective 3).

By considering the experiences of migrant workers and farmers in one region of seasonal work I will discuss some of the founding assumptions of the Directive which appear to be fundamental to both outlining the nature of the need for the Directive and legitimising the approach finally taken. The specific remit of the article will therefore be limited to examining two of the Directive’s assumptions, relating to seasonality and circularity, and to considering how the Directive, if at all, helps to protect seasonal workers in agriculture.

The Seasonal Workers Directive is currently in the process of being transposed into national law. At present no information has been published by the Spanish government regarding how this will be done. It is therefore not clear whether the government will introduce new legal processes to incorporate the Directive or whether they have judged Spanish national law to comply already with it. At this stage it is uncertain whether the situation as described in this article will change in coming months and years or whether the Directive will simply consolidate current practice and further

¹ The UK, Ireland and Denmark are not taking part in the adoption of the Directive and are not bound by it, see points 54 and 55 of the preamble European Union (2014) ‘Directive 2014/36/EU on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.’, *Official Journal of the European Union*, L 94/375.

promote already existing Spanish circular migration programmes. In either case, the Directive does indicate a policy approach to seasonal work and circular migration over which member states (with the exception of the UK, Denmark and Ireland) have come to agreement and could therefore signify the current direction in which EU approaches to seasonal work and similar low paid work may take in years to come.

The Seasonal Workers' Directive and its Relation to the Horticultural Sector

Seasonal agricultural work has for at least four decades been associated with a low-skilled migrant labour force. This has been as evident in Europe as on the other side of the Atlantic where Latin American migrant workers have long been the main fruit-pickers in California and other regions (Gottlieb and Joshi, 2010). Agricultural work by such hired labourers is characterised by low pay, arduous working conditions and a requirement for flexibility in working times and working hours. In the context of increasing urbanisation and a progressive exit from farming of younger workers, migrant workers have to a large degree filled the void in those sectors of agriculture in industrialised countries where mechanisation has not taken away a need for manual labour. This is particularly the case in horticulture where tasks such as fruit picking and flower cutting have remained jobs requiring a significant amount of manual labour. A United States government study found, for example, that of all agricultural products, labour represented the highest share of farmers' expenses in the case of horticultural produce at almost 40% of the cost of production (Kandel, 2008: 5). Changes in salaries of workers also clearly impact upon the cost of food and wages of farmers, neither of which are high. The reluctance of retailers and governments to allow wages to rise in the sector would therefore not be compatible with keeping the cost of food cheap and the profits of retailers high.

The unattractiveness of horticultural work for local populations in industrialised countries has also developed alongside the presence of a migrant workforce who have been in a position to fill it. In the case of the EU, the Commission notes that EU economies face a 'structural need for seasonal workers' (Commission, 2010: 2). In the United States, it is estimated by the government that half of such farmworkers lack legal permission to work in the country (Kandel, 2008: iii). The Commission further notes that seasonal work sectors are 'very prone to work undertaken by illegally staying workers or otherwise unregistered workers' and estimates the total number of seasonal workers (mainly agriculture, horticulture and tourism) to be around 100,000 people a year (Commission, 2010: 3). The Directive can be considered in this context as an attempt to maintain an avenue for employers to be able to attract workers for low skilled labour markets in sectors such as agriculture and horticulture whilst also attempting to tighten immigration controls in Europe.

Some academics have suggested that until recently the work of undocumented migrant workers in sectors such as agriculture (particularly in Southern Europe) was convenient for governments who could turn a blind eye and avoid debates on legal migration demands and figures (Castles and Miller, 2009, p.68). In Spain, this period of status quo of the 1980s – mid 2000s can be seen as having significantly altered after regularisation programmes during the 2000s in which many such migrant workers gained legal authorisation to work. In recent years this situation has changed drastically, in part through the legislative changes through the EU, but also through increasing border control with sending countries such as Morocco. European security and immigration policy increasingly binds the Spanish and Moroccan authorities into increasingly greater collaborations against the entry of African migrants through Morocco (Haas, 2005).

The Seasonal Workers Directive can therefore be seen as part of a broader current of change in immigration and labour market control which is specifically directed from Brussels to agricultural (and other low wage labour) hubs through this, and related directives. One motivation for the development of the Seasonal Workers Directive can therefore be seen as rooted in the desire of the EU Commission and Member States to increase and unify immigration controls while at the same time, ensuring sectors such as the agricultural sector (as well as tourism and others) avenues through which to employ workers who would be unlikely to challenge the wages or broader status quo of the such work. The immigration control side of the Directive was stimulated with the entrance into force of the Maastricht Treaty, the Treaty of the European Union, which identified immigration as a matter of common interest, followed by the Treaty of Amsterdam and a new strategy for competitiveness of the

European Union (Fudge and Olsson, 2014: 442 –445, TEU, 2012). The economic side of the equation meant however, that such a competitive strategy had to include measures in any immigration control system to ensure that employers such as in agriculture, as well as those in higher-skilled corporate sectors, had access to workers outside of the European Union. The Seasonal Workers Directive is one such measure.

The Commission originally aimed to secure legal status for temporary workers of all types which would provide ‘a pathway eventually leading to permeant status’ (Fudge and Olsson, 2014: 442). Although the EU Commission’s original proposals in 2001 for a common entry and residence directive for third country workers did take an approach which would give workers the rights and principles to all workers regardless of their status, the proposal failed (Olsson, 2012: 12). The set of new directives that emerged after the original proposals clearly show differing levels of rights for different groups of workers. The most obvious example of the giving of different rights to different groups is seen comparing the Blue Card Directive for highly skilled workers with the Seasonal Workers Directive. Blue Card workers are offered a set of conditions aimed at being as attractive for highly skilled workers as the American Green Card (Olsson, 2012: 24). The Blue Card workers, for example, can come accompanied by their families (who also have access to the labour market) and can travel freely to other Member States (European Council, 2009: Art.14-15). Seasonal workers have neither of these rights (European Union, 2014: Art.22). Differential rights for different categories of workers does then have the effect of constructing a policy environment of indirect discrimination in which seasonal workers suffer not only from low pay but also a second class legal status when it comes to their citizenship and labour rights in comparison to other categories of temporary workers or EU nationals.

The numbers of seasonal workers to whom the directive would apply in tourism are only minimal in comparison to those in agriculture and horticulture who are referred to much more frequently and in more detail in the Impact Assessment for the Directive (Commission, 2010). Although the Seasonal Workers Directive is aimed at seasonal work in general, it appears clear that it is aimed in particular at agriculture and horticulture, mentioning many more specific cases of high levels of seasonal work carried out by migrant workers in agriculture, including the case of Andalusia, than in any other seasonal work sector (Commission, 2010). In aiming to construct a directive which would not challenge the status quo of the sector, but rather fill this sectoral labour demand with those who would be unlikely to challenge the working conditions or pay due to their vulnerable situation, the Seasonal Workers Directive appears to do more for employers on this count than for workers themselves. Moreover, the Directive reinforces the necessary effect that agricultural work will be low-paid and remain a sector for those workers who are the most vulnerable in society. Governments were also keen in the case of the Seasonal Workers Directive for wages to be kept low. In Olsson’s analysis,

“The desire of Member States to maintain prevailing (low) wages in seasonal sectors did not make it into the Commission’s proposal, although it was identified as a goal in the impact assessment.” (Fudge and Olsson, 2014: 445)

The Directive, by introducing a unified way through which seasonal workers for this sector can enter the EU on un-equal terms to those entering for other purposes (such as those entering via the blue card directive) it reinforces the structural status of agriculture as being a second class sector to be worked by second class workers, offered less rights and options than those entering the EU to work in other sectors.

El Ejido: A Case in Mind for the Directive

As argued above, the Seasonal Workers Directive appears to be aimed at, above all, regulating migrant workers who enter the EU and take up work in the agricultural sector. For this reason, the case of El Ejido, can be considered a very fitting one through which to consider the way the directive responds to some of the current challenges faced by farmers when it comes to hiring migrant workers for as seasonal labourers. The region reflects the characteristics which make it something of a microcosm for the many factors involved in considering the impact of the Seasonal Worker Directive aimed at dealing with fluctuations in the European and global Economy.

The production model in El Ejido is based on the production of a standard group of horticultural crops (tomatoes, peppers, aubergines, courgettes, cucumbers, green beans, melons and watermelons). These

are predominantly cultivated by small farmers, counting on the work of migrant workers. Farmers sell produce either to ‘cooperatives’ that act as intermediaries and pack-houses, negotiating general prices with buyers in Spain, Northern Europe and elsewhere which are established and published in local newspapers on a weekly basis. Alternatively, farmers can take crops to auctions where buyers attend in person to buy loose, unpackaged crops.

De Castro, Gadea and Pedreño have described El Ejido as an “agri-food production enclave” (2014: 90) due to the intensive agricultural production for global markets from a small specific space, or enclave, of production. The site of such production, within an expanse of small plastic greenhouses, is colloquially known in two ways. The ‘sea of plastic’ (el mar de plástico) was coined due to the appearance of white/blue land coverage of side to side plastic sheeting which appears to run from the mountains to the sea. Alternatively, more favourable among farmers, the region is regarded as the ‘Europe’s vegetable garden’ (la Huerta de Europa). Both of these characterisations illustrate the enormity of the role of this region in the provision of vegetables across Europe as well as the importance of the role of horticulture in the social system of the town and municipality of El Ejido.

It is difficult to estimate exactly how many people are directly employed, or supported by the agricultural sector in Almeria, due to problems of both the irregularity of many workers and because it is difficult to know what percentage of related trades are also supported by the agricultural sector. However, it is clear that the number is very significant with 53 per cent of the working population of the province of Almeria working directly in agriculture or in the wholesale trade (INE, 2013). Furthermore, it is worth noting that in the region agriculture has become colloquially known as a sector of ‘refuge’ for Spanish workers since the financial crisis in 2008 as they have lost their jobs in other sectors that were even more exposed to the fluctuations of national and international financial markets (Jiménez Diaz, 2010: 245). This is reflected in official figures which show that while 44,000 people were working in construction in 2008, this fell to just 14,000 people in 2011 (INE, 2013).

Jimenez Diaz estimates that the 30,000 hectares of greenhouses in the two provinces of the Poniente Almeriense and the Granadinian Coast are together worked by 20,000 small-scale farmers (owners of the 1 hectare and larger plots) and 40,000 migrants (Jiménez Diaz, 2010: 112), this suggests that a significant number of migrants live in El Ejido without residency permits. It is unclear how many undocumented migrants are living and working in El Ejido. While officials assert that irregular workers account for only a “small minority” (indicating that this number would be many less than those 26,000 with residency permits (El Ejido Municipal Council, 2013), local union members estimate that the number could be much larger (Lawrence, 2011). Only a small number of migrant workers enter the workforce in El Ejido through the kind of programmes of ‘recruitment in countries of origin’ that the Seasonal Workers Directive has set out to regulate (González and Reynés, 2011: 7). However, one aim of the directive appears to be to promote the option in regions such as this of hiring workers who come on fixed term visas, potentially on track for return migration during repeated years in a pattern of ‘circular migration’. Such programmes would therefore fulfil the objective of closing another door to irregular migrants and facilitating migrant workers to live inside the EU when, and only when, they are needed by employers.

In recent years the case of migrant workers in El Ejido has drawn attention from international organisations, including the ILO. In several cases the ILO have investigated cases which are directly relevant to this research on the labour rights of seasonal migrant workers. Two direct requests adopted by the International Labour Conference both requested details from the Spanish government on the situation of the migrants working in agriculture (CEACR, 2014b) (CEACR, 2014a), a further two observations (CAS, 2013) (CEACR, 2014c) demonstrated concern about overall labour market conditions in light of the recent labour reform (2012), and in a committee report of 2014 the ILO also requested to be kept up to date on legislating limiting collective bargaining (CFA, 2014). Although the foundation for labour rights in Spain is strong², the particular position of seasonal migrant workers

² Spain has ratified more ILO conventions than any other country in the world, including the eight core conventions, the four priority (governance conventions) bargaining and two other conventions directly related to the rights of agricultural and rural workers ILO (2014b) 'Ratified Conventions', *Office of the International Labour Organisation in Madrid*. Madrid, International Labour Organisation. The organisation also has an ILO

has drawn concern, from both the local and international forums. Of particular relevance is the fact that the ILO has expressed particular concern about “the situation of immigrants in the context of the economic and financial crisis” and specifically requested information about “the situation of migrant workers in El Ejido” (CEACR, 2014b). This ILO concern is supported by socio-economic research in Spain which has shown that, an especially high burden of the social effects of the economic crisis is carried by the foreign resident population who are particularly likely to have fallen into poverty and unemployment (Laparra et al., 2012: 173).

In this context, the characterisation of El Ejido as a ‘global enclave of production’ appears fitting in order to capture the sense in which El Ejido represents the acute case of a small site of production. This is also a case where workers are very vulnerable to changes in both global and local changes in the political economy and labour arrangements in part because it is so involved in the dynamics of globalisation and global trade. In order to make reference to some of the challenges faced by farmers and workers in El Ejido I will draw on data from fieldwork in El Ejido in which I carried out 33 semi-structured interviews. These were transcribed in full in Spanish and analysed in full using qualitative data analysis software³. I have translated relevant sections into English. In addition, interviews are supported by some observational data drawn from my stay in El Ejido.

Seasonality and Circularity: The Continuous Demand for “Seasonal” Workers

In this next section, I will consider both the nature of the identified problem that the Seasonal Directive has been developed to deal with, and the policy approach developed by the directive. As we have seen, the Seasonal Workers Directive has been developed to deal with the need for seasonal workers in agriculture. Seasonal work has been defined in the Seasonal Workers Directive in the following terms:

‘activity dependent on the passing of seasons’ means an activity that is tied to a certain time of the year by a recurring event or pattern of events linked to seasonal conditions during which required labour levels are significantly above those necessary for usually ongoing operations’ (European Union, 2014, Art 3 (c)).

It might seem self-evident that agricultural production meets such a definition. Agriculture takes place in the context of ecological conditions which change in the context of changing seasons. However, industrialised agriculture in El Ejido, can be seen to have been almost de-linked from ecological seasons. Technological innovations in the 1960s and 70s which involved principally, drilling into aquifers for water, the construction of greenhouses, planting in sand, and agri-chemical

office in the capital ILO (2014a) 'The ILO in Spain', *Office of the International Labour Organisation in Madrid*. Madrid, International Labour Organisation. The close institutional relationship between the ILO, the Spanish state and workers' associations has also been reflected in a strong normative link with collective bargaining rights being a reality for most workers and the Spanish constitution recognising significant workers' rights such as the right to strike Spain. Parliament. (1978) 'Spanish Constitution (Constitución Española)', *Boletín Oficial del Estado 311, 29/12/1978*. Madrid, Cortes Generales.

³ This research was carried out April – May 2012 as part of a postgraduate research project on agroecology and working conditions of migrant workers in organic agriculture carried out while I was based with the University of Cordoba, Spain. As such, the comments by interviewees may have reduced in relevance. However, as far as I am aware many of the challenges remain constant, as for example, both the financial crisis and competition from other producing regions (such as Morocco) were already underway by 2012.

The research was not originally focused on the role of the Seasonal Workers Directive or circular migration, and therefore in no case do interviewees refer to the Directive as such. However, the practice of ‘hiring workers in their countries of origin’, was raised on several occasions and this refers to a circular migration policy that had already been functioning in Spain since 2004 and that would come under the scope of the Seasonal Workers Directive, González, C. and Reynés, M. (2011) 'Circular Migration between Spain and Morocco: Something more than agricultural work?', *Metoikos Project*. Florence, European University Institute. In discussing seasonal labour challenges I believe that this data still provides useful contextual information which sheds relevant light on the context of the Directive. Interviewees were contacted primarily through the snowball technique via several gatekeepers. I also identified and contacted some organic farmers after downloading and mapping open access data on their registrations available on the website of the regional Andalusian government (<https://ws142.juntadeandalucia.es/agriculturaypesca/roae/>).

in-inputs meant that farmers could achieve planting conditions year-round in the region. Production seasons in El Ejido now last around 10 months (Pumares, 2014) with the down season occurring during the summer, precisely when the traditional ‘season’ for crops as tomatoes and peppers would have occurred. In as much as seasonality is still relevant in El Ejido this refers to a ‘counter-season’ occurring when the traditional season would have been. This counter-season, could be said to still be tied to a certain time of year but this time of year is as much defined by the market as by ecological seasons. The season in these terms, in El Ejido refers to the time of year when crops such as tomatoes are costly to grow in Northern Europe and therefore command a high enough price for farmers to produce and sell them in Southern Europe. This counter-seasonal phenomenon is beginning to attract academic attention, particularly as the model is replicated further south, such as in Morocco (Gertel and Sippel, 2014).

There are two important implications of this contextually informed understanding of seasonality in the case of El Ejido. Firstly, the ‘season’ of the production, represents the norm for the year-round working rhythm. A ten-month season cannot reasonably be understood to represent a period of time during which “labour levels are significantly above those necessary for usually ongoing operations” (European Union, 2014, Art 3 (c)). Rather, the labour demand would be more accurately characterised as ‘ongoing’ or ‘constant’. Of course many farmers may have shorter planting periods or may require workers for shorter periods of time and I will explore one instance of this in the next section. However, what is clear is that there is an ongoing demand for seasonal workers in the region for at least 10 months of the year. This was underlined to me in my fieldwork stay in El Ejido when many people in the region explained that I should visit any time between October and June but not during the July or August which was the down season when I would be likely to find farmers simply preparing for the next season, for example by replacing plastic sheeting on greenhouses or similar maintenance jobs.

It therefore seems reasonable to question whether the labour market for almost year-round workers is best met by measures designed to create a temporary work-force who are not officially based in Spain. The miss-match of an almost year-round activity with a directive aimed at creating a mobile work-force, perhaps explains why some farmers continue to choose to work with migrants based in Spain, even when some of those migrant workers lack the necessary documentation to work legally in the country. The Directive also marks a change in the way in which farmers employ workers. In recent decades farmers and workers have learnt that the route to legalised work is by establishing a working relationship, including through the use of a contract and through social security payments, and then by applying to gain authorisation for the worker in question. Although neither party have found such a process easy, it is through this route that most of the workers that I met who did now have authorisation to work had originally gained their ‘papers’. The challenge to work within the law was therefore something often spoken about as a joint responsibility and a significant achievement for workers if and when they were able to obtain them. Discourse would therefore oscillate more fluidly around the theme of ‘papers’ rather than discretely labelling workers as ‘legal or illegal’. This experience in the context of El Ejido is quite markedly distinct from the discrete labelling of workers in EU discourse as ‘legal’ or ‘illegal’. Such a characterisation does not appreciate that workers who enter the EU under circular migration programmes, and therefore under the ‘legal’ category would sometimes end up unemployed, falling all too soon into the ‘illegal’ category. The approach therefore of the Directive in building on these binary distinctions of preventing ‘illegal migration’ whilst facilitating temporary seasonal work therefore appears short-sighted from the vantage point of experiences in El Ejido in which workers can be seen to pass from one legal status to another. Despite the risks involved in potentially being fined for working with irregular workers, some small farmers told me about this processes and their approach to working with their employees to obtain ‘papers’,

‘I’m going to sort it out because I think it’s what’s right, it’s the correct thing to do, for people to be legalised and in order with their papers [...] and we’re on the third attempt now at getting him his papers. They’ve turned us down twice, we’re on the third attempt and let’s see if this time we’re lucky and they give them to us. But, of course, it’s in my interest that he be legalised even if then he leaves me, but there we go. [...] I am a bit scared too

because if the inspectors come then that's 20,000 or 30,000 Euros that maybe they fine me for having a worker without papers.' Farmer with one full-time employee.

This farmer owned a small plot of organic produce for export. Speaking in confidence, yet evidently aware of my positionality as a researcher originally from the UK a main consumer market for organic crops, he spoke of his frustration with hiring workers and going through the process of regularising their status. He has followed the process several times of applying with them for residency status based on the condition of 'arraigo social' or social rooting foreseen in the Spanish Immigration law. The small character of the farms in the region of El Ejido leads to the common situation of farmers often working alongside one or two workers on a daily basis and developing deep personal relationships with them having hired them, often through personal connections, rather than through agencies. While the option of hiring workers from abroad through circular migration programmes already exist in El Ejido, small farmers in particular still seem to prefer to personally hire migrant workers already permanently resident in the region, even at times where this requires dealing with complex administrative procedures. Hiring workers in their countries of origin is not conducive to small farmers meeting and then hiring workers who are already based in the region according to the personal and often long-term relationships that they might be able to develop with them. The only farmer who mentioned hiring workers in their countries of origin as foreseen in the directive was also a representative from a large union who had been part of the process of hiring workers in countries of origin himself, having travelled to Morocco and the Ukraine to select workers and therefore not representative of the majority of small farmers who would not have the opportunity to travel to Morocco or similar countries as part of their hiring processes.

Changing Labour Practices

Despite the testimony from the farmer outlined above most of the farmers and workers I interviewed suggested that while it was the norm for farmers to hire undocumented workers in the early 2000s, farmers now tended only to employ migrant workers who already had 'papers'. This was underlined by a constant discourse of fear of labour inspectors who farmers referred to as 'capable of sinking their businesses' because of the large fines that they would receive if they were found to be employing undocumented workers.

'These aren't times to be having illegal workers because if they catch you or if anything happens to you it's a massive problem. [...] before it was accepted, there was no problem with it.' Small Farmer

This discourse was supported by the compounding fear of a difficult economic environment for workers due to the economic crisis which began in Spain in 2008.

'With the economic situation that there is at the moment (the economic crisis) anyone who uses illegals is risking the money of their family and their survival because right now the farmers are surviving. They aren't living, they're surviving on the back of loans, by, as we say here 'eating the legs of the octopus'. Farmer and Union Representative

The point was most convincing made to me however, by a Malian migrant worker working as a supervisor in a larger greenhouse employing around 20 people who emphasised that no-one would now be accepted in his greenhouse, even in peak times, who didn't already have permission to work. He later explained how the situation had changed in recent years as he himself had gained residency and working permits by entering the country illegally and then applied with his employer for 'papers' after working for several years. His employer later worked with him to regularise his situation during one of the regularisation programmes. In El Ejido, several factors seem to indicate that the gap in the labour market is getting increasingly small for those who have travelled to El Ejido in hope of work in despite not having papers. Firstly, very many migrant workers do now have residency and working permission with 26,000 signed up to the local social security system. Secondly, some Spanish workers are returning to the sector due to unemployment in other sectors in the region such as construction. Finally, the Seasonal Workers Directive opens another door to employers yet opens no option to undocumented migrant workers already in the region. Before looking in more depth at the relation of the Seasonal Workers Directive to their situation, I will consider the main route through which there does still appear to be widespread recognition of their role in the labour market.

The Watermelon Dilemma: the Seasonal Peak of Several Days

The section above argues that there is a near year-round demand for ‘seasonal’ workers in El Ejido due to long seasons which often comprise the majority of the months of the year. However, this is not to say that farmers do not have un-met needs for workers. Despite the on-going need for workers in planting, pruning, spraying and harvesting labour intensive crops such as cherry tomatoes and peppers, the seasonal need for a larger labour force for short periods of time did appear to be a challenge for farmers. However, the particular challenge faced by farmers was not a labour demand in terms of a need for workers for several months, but rather the shorter sharper demand for workers for a day or two at a time at the very peak of harvesting or planting. This situation is most clearly illustrated by case of the watermelon. Watermelons, unlike cherry tomatoes, or peppers, require little year round labour, yet, at the moment in which they are ready to harvested, they require many more workers than would be needed for their cultivation at other times. The farmers that I spoke to identified three common ways of meeting the need for an increased number of workers for short periods of time.

Firstly, some farmers emphasised the role of unpaid family labour and the tradition of bringing family members together at harvest time to help out. Secondly, farmers told me about their personal strategies to balance legality with peak needs for workers by ‘swapping workers’. In this scenario farmers work with networks of family and friends and ask their employees to work on a different farm for several days, fellow farmers then respond by asking their own employees to go and assist on the other farm when it comes to be the time for the harvesting of the corresponding crop. In this second scenario farmers managed to avoid the strictly illegal practice of employing someone without a contract and social security with the a-legal practice of asking their employee to work on another farmers plot. Thirdly, it became apparent to me through the ethnographic observational element of my time staying in El Ejido and gaining some trust with farmers that the final way of dealing with this problem was to hire workers informally for short periods of a day or two. In this case farmers would balance the risk of impromptu visits from labour inspectors during this short period of time with the feasibility, hassle and cost of hiring workers legally with little notice. The discourse regarding this practice emerged in my inductive data analysis as the discourse of the ‘roundabout’. Residents in El Ejido would often discuss irregular workers at the roundabout, whether or not the spots in which they waited to be hired were indeed roundabouts or not.

An initial focus of my research was around the way in which organic farmers in El Ejido managed this problem. In my interviews with organic farmers these three methods of hiring in peak times emerged. Significantly, one farmer also originally told me that he had no need to hire extra workers at peak times due to what he asserted as the ‘size of his plot’ which was properly organised so as to be workable just by himself, his family and the one worker that he had on a fixed contract. However, on following visits, by chance I met the worker on the fixed contract who was clearly working with another man who was employed casually without a contract, and both the farmer and the worker then discussed their frustration with the difficulty of managing labour demand. The fixed worker explained how he would often go and hire someone extra to help without bothering with a contract unless it would be for several months.

The level of nervousness in the region about undocumented workers and their relation to the agricultural sector was reflected in the research as a whole and this showed up very clearly in my data analysis. Despite the fact that my questions were focused on work in agriculture, the theme for which I had most related quotes was that of ‘undocumented people’ or in Spanish ‘personas sin papeles’ or those without papers which is how both farmers and workers most often referred to undocumented workers. As I went about my life in El Ejido, quite often local people would try to impress upon me (often without my inquiring) that the agricultural sector, or the region as a whole was not responsible for the undocumented workers. In some sense I felt this may have been due to my origin as a British person, rather than a research student from a Spanish University (with Spanish residency) which was the role through which I approached the research. In many respects, the UK symbolised the region and consumer market for residents and farmers of El Ejido. Tired of bad press, residents of El Ejido were keen to impress upon me that Spain was a member of the EU, equal to Britain and had no special responsibility for the poor living or working conditions of migrants in the region.

'The situation in Almeria in labour relations, social security are comparable with the rest of Europe, and in matters of agricultural hygiene, perhaps better due to the controls and difficulties that commercial interests often impose.' Local Government Officer working on Labour and Immigration Inspection

However, despite the attempt to persuade me that the poor living conditions of some migrants living in shacks in the region, one example demonstrated how there continues to be a structural gap in the labour market which creates an ongoing demand for workers who can expect to be employed at a moments' notice and paid cash in hand despite not having the required papers so that farmers are able to comply with the law. This *case of the watermelon* also applies to other crops and implies a sudden need for workers who wouldn't be needed during the rest of the season for a very short period of time.

'Once they were going to come [the export cooperative], we were arguing about the watermelons, whether we should pick them or not and in the end they said to me; "alright, this afternoon we pick them" and I said, "this afternoon I don't have any workers" and they said; "either we come and get them this afternoon or we don't come". So I said, "Well, come" and when they come to pick the watermelons, I need a lot of workers, four people, and so I say, "where am I going to find those people? I can't get..." so I went to the garage in El Ejido and there were four Africans just there...' Small Farmer

In the example above, the farmer resented having to recur to employing workers at a moment's notice from the informal sector in order to comply with buyer demands. Yet, due to both the nature of the growing cycle and of the pressure from buyers, the farmer was put in a situation in which the immediate peak need for workers was not met by the workforce usually working with him. This unresolved question of very short term seasonal work has clearly been recognised by trade unions in the region and others who have tried to develop formal ways in which to deal with it, however such initiatives seen to have been only partially successful and other practices for dealing with short peaks appear to be more common.

The workers organisations here have tried to form a type of bank of workers where, for example, for watermelons it's only a day but that day I need 8 people. Well so that there's a place that you can go and get workers that are legal so that that day you don't have problems. Because if not, what? I go and harvest the watermelon, before what was done, was you told your neighbours, and all the neighbours came and helped you and when they needed to harvest you went to their plot. They called it "tornateón". Tornateón means to say that I go with you today and tomorrow you come with me, that's how it used to be done. But now things have changed, what's done is, well ask for the workers of a friend or if not, go to the stop and you'll see many immigrants, but those immigrants, well the problem is that they don't have papers. So there, yes, there is problem with that [seasonal work], a gap. Farmer who also worked part time as a Farmers' Union representative

The objective of outlining this problem as seen by farmers, is to demonstrate the mis-match of the Seasonal Workers Directive with the actual challenges faced by farmers. The Seasonal Workers Directive is designed to meet a need for medium term labour migration in order to meet seasonal labour needs. Yet, such seasonal needs do not take this form. As outlined by these two cases above, the 'seasonal' labour needs that farmers expressed to me did not correspond to the same conception of 'seasonal' as outlined by the Directive. Farmers needed either fixed employees, working with them year on year, for the majority of the year, or for very short periods of time. The Seasonal Workers Directive which aims to facilitate the temporary and circular entry of migrants into the EU for agricultural work does not meet either of these labour market demands. The Directive aims to facilitate the entry of workers for shorter periods of time whilst not allowing them any route to permanent residence. This is not coherent with the development of established relationships of trust and collaboration which farmers aimed to establish with employees. Likewise very short term labour needs would be better logistically met by workers, whether migrant or native, who are already residing in the area. This is even more the case when considering the fact that such a need is highly unpredictable lasting just a few days, and as demonstrated by the quotes above, can depend as much on the needs of the exporters as on the plans of farmers.

Seasonal Worker Protection

Workers Already (Stuck) in Spain

There are several senses in which consideration of the case of El Ejido brings up concerns related to the relative protection or vulnerability of seasonal migrant workers. I will discuss two specific concerns. One criticism of the Seasonal Workers Directive is that it facilitates the arrival of new migrants without doing anything to assist those that are either working or living in precarious conditions in the region (e.g. Olsson, 2012, p.30). Yet, as identified in the previous section there is still an ongoing demand for workers in the region ready to accept casual work, and this can be where undocumented migrants find work. The other criticism relates to the under-protection of workers who travel to work in the region as foreseen by the Directive, offered jobs while still resident in their countries of origin but who could potentially begin a circular migration path.

As I have alluded to earlier in the article, one concern in El Ejido regards the situation of undocumented migrants living and seeking work in the region. Following regularisation programmes in the early 2000s, the focus of the government in recent years has been to tighten labour controls, as well as to work with the EU to tighten immigration controls in order to prevent migrants from entering Spain. This has also aimed to provide increasing disincentives for migrant workers to go to El Ejido by closing doors to undocumented workers in the labour market. In terms of labour rights, the endeavour to formalise work, particularly through labour inspection is also aimed at preventing a race to the bottom by striving to make sure that employers provide workers with contracts and that all work is done with contractual and social security protections. However, taken together, the measures have also created an increasingly hostile environment for those migrants who have not managed to gain documentation in order to work legally in the region. As one unemployed undocumented worker who had been in Spain for 3 years told me,

“Me, I’m not legal, I’m still not legal. People who have papers work with their papers.”
Unemployed undocumented migrant worker.

He also emphasised that this left him and fellow workers more vulnerable to poorer working conditions. For example through not being given proper protective equipment when using chemicals in the greenhouses or being less able to complain.

Olsson (2012) charts how the concern for providing an option for migrant workers already working in seasonal agricultural work was raised during the drafting of the Directive. Stakeholders put forward proposals to allow for such undocumented workers residing in the EU to be able to apply for a Seasonal Workers Permit for a transitional period of 2 years in order to legalise their status. This possibility might have done something to bring the Directive more in-line with the needs outlined by both farmers and workers above here who are seeking to legalise their own status or that of their workers. Such a possibility was not included (European Union, 2014). This omission has also been criticised by anti-racism, migrant-rights and homelessness NGOs who argue that an option should have been included to allow third-country nationals already residing in member states to apply to work as seasonal workers under the Directive (ENAR, 2013). As Fudge and Olsson discuss, the EU chose in the end to use sticks to deter more migrants from arriving in areas such as El Ejido in hope of work (Fudge and Olsson, 2014: 448). This decision demonstrates a lack of sensitivity to the vulnerable and increasingly marginalised situation of undocumented migrants already in places like El Ejido, who, as discussed above, still fill a gap (as the ‘watermelon dilemma’) in the labour market which means that they cannot be detached from the seasonal labour demands of the agricultural sector.

From the perspective of a case such as El Ejido, the use of ‘sticks’ can be seen as disproportionate. Following the economic crisis in Southern Europe, less migrants appear to have been arriving in search of work in any case. This can be shown in local government figures where immigration statistics can clearly be seen to be slowing from around 2008 in any case (El Ejido Municipal Council, 2014). Those who I spoke to talked of the sensation of being trapped, having missed the era of mass regularisations as well as the periods of economic growth in the region. This can be related to multiple factors at least including: increased fear amongst farmers due to labour inspection fines; large numbers of migrant workers with documentation; the economic crisis which has led more Spaniards back to

agriculture; and finally increased abilities for farmers to hire overseas, through policies such as those facilitated by the Seasonal Workers Directive. The need for more sticks in order to discourage further irregular arrivals is therefore highly questionable. Rather, a route to legality, even if temporary, may have been an option that some vulnerable workers would have welcomed, alongside their employers.

Circular Migration a Questionable Policy Approach

A final critique of the Directive is simply due to its promotion of the notion of ‘circular migration’ and the vulnerable position temporary workers may find themselves in once part of a programme that is designed to incentivise circular migration. The position of the International Labour Organisation (ILO) is particularly informative on this point. Although the ILO has come out in favour of the circular migration of skilled workers (2010, p.168), for many reasons including the avoiding of ‘brain drain’ and the potential of significant remittances, the case for circular migration of unskilled workers is less clear. Many have suggested that it is just a new way of branding unskilled workers as temporary and therefore depriving them of opportunities to gain long term residency or citizenship should their work take on a long term character (Castles and Miller, 2009: 70). It is yet to be seen whether this attempt to *manage* ‘legal migration’ and to keep it temporary and on the borders of Europe will work, as the ILO warns:

“In practice, it is often not possible to turn migration on and off like water from a tap. Policies based on the assumption that migrant workers can be brought in when needed and then sent home when no longer needed have failed in every region where they have been tried.”(ILO, 2010, p.144)

In considering that workers might spend up to 9 months per year in the host Member State and are encouraged to return year on year, the question regarding labour migration posed by Carens is crucially relevant,

“Is it even acceptable any longer to admit people to democratic states without access to to long term residence?” (2008, p.419).

Some argue that it is acceptable. Political philosophers such as Ottonelli and Torresi argue that temporary migration defies the requirements for fixed citizenship rights and that temporary migrants, have rather particular needs in their host countries (Ottonelli and Torresi, 2012). They therefore argue for the development of a set of particular rights for temporary workers, allowing them, instead of having a secondary status in host societies, to be seen in their host societies in a similar way as tourists or diplomats do (Ottonelli and Torresi, 2012: 220). This theoretical position is one that could be seen as reflected in the Directive, which attributes the rights to third country workers that the European Union decision-making bodies have deemed appropriate for their particular position. Yet, the position appears to rest on similar assumptions of both the desirability and feasibility of a temporary work force. As I have discussed above the attitude of exceptionalism to seasonal workers conceiving them as ‘necessary’ but only ‘temporarily’ is not well founded when we consider carefully the ongoing demand for low waged labour. Such policies therefore feed into an ongoing tendency to socially construct such a demand as a ‘need’ (Castles and Miller, 2009: 222). Rather than needing a different set of rights, this appears yet another case of an attempt to justify measures which are designed to keep low-wage migrant workers as only temporary members of the EU. Such programmes have historically invariably led to settlement, despite the many efforts to keep temporary migration from developing into permanent settlement (Castles and Miller, 2009: 33-34). There is no reason to expect that the case of seasonal work is any different and leaving workers less protected is simply prone to make workers more vulnerable to exploitation in the process.

The vulnerability of migrant workers does appear to have been taken into account in later stages of the development of the Directive. According to the account of the development of the Directive by Fudge and Olsson a main achievement within the Directive appears to have been the securing of the right to equal treatment principle which sets out the principle of equal treatment between seasonal migrant workers and EU workers (Fudge and Olsson, 2014, European Union, 2014, Art 23). This point was also welcomed by NGOs (ENAR, 2013). The article which grants these labour rights was lacking in the original proposal from the Commission demonstrating the degree to which the spirit behind the Directive was originally directed more towards immigration control than labour rights. The article on

Equal Treatment was absent in the original draft developed by the Commission and was therefore severely criticised by the ILO, only later secured through the efforts of the European Parliament and Council (Fudge and Olsson, 2014: 457).

The Directive's labour rights protections are also not extensive. Migrant workers are particularly vulnerable to exploitation when their legal residence status is tied to their employment with one employer (Olsson, 2012, p.32). This risk is therefore highly relevant in the case of the SW Directive which is "demand-driven" and where entry permits are dependent on workers having a contract with a future employer, (European Union, 2014, Art.5-6). There is a provision in the Directive which aims to weaken this link, making it possible for workers to apply to extend their stay in order to work for a different employer (European Union, 2014: Art.13 (3-4)). However, in not allowing workers to remain in the country when unemployed (even within the 3-9 month period that they have a work permit for) it is not clear how a worker facing exploitation would be able to find another employer. Seasonal workers would also have limited employment options as it is a requirement that their passports indicate that they are clearly within the Member State for the purpose of seasonal work. (European Union, 2014: Art.12). Furthermore seasonal workers' access to social assistance programmes will be limited, as they are excluded from unemployment and some education programmes (European Union, 2014, Art.5(3), ENAR, 2013). Overall, this approach is very much one of looking for a special, or reduced set of rights for temporary migrant workers, and therefore one that despite equal treatment provisions does not place them in a position where they are protected to an equal degree as the host or other EU nationals.

Circular Migration – and Development?

In light of these limits to labour rights we might ask what, if anything the Directive offers workers? The Seasonal Workers' Directive fits into the win-win rhetoric of the 'migration for development' logic that the EU has adopted in recent years (De Bruycker, 2009, p.214). Under this logic, stated in the preamble of the Seasonal Workers Directive, 'legal' and 'temporary migration' will:

'be capable of responding promptly to fluctuating demands for migrant labour in the labour market.' (European Union, 2014)

The Directive also aims to offer a vision of 'development' to countries of origin (Commission, 2010: 4). This is presumably based on the notion that seasonal migrants will return remittances and/or savings to their home countries as well as potentially other skills. However, while the wage differential between Spain and Morocco, for example, is significant, González and Reynés suggest that the differential is not sufficient to be able to contribute any significant changes to living standards and nor are the numbers of workers admitted (which is left to the discretion of Member States) significant enough to have a developmental impact, for example via remittances (2011: 25). At least 20 Member States already had specialised and widely diverging admission schemes for seasonal workers prior to the passing of the Directive (Fudge and Olsson, 2014: 445).

Spain already makes use of programmes such as that foreseen by the Directive to hire seasonal agricultural workers in their countries of origin as noted above. These problems have significant specific ethical problems of their own, particularly regarding selection criteria. As charted by the study by Gonzalez and colleagues, the programme undertook a rapid turnaround from 2004 to 2005 going from one extreme to the other. In 2004 60 per cent of those who entered Spain under the programme overstayed their Visas partially due to corruption in the selection process (González and Reynés, 2011: 8) following this the selection process was revised and Spain established that in order to ensure that workers would not overstay their visas they should be mothers of dependent children in their home State (González and Reynés, 2011).

The ethical questions raised here in the context of examining the Directive itself therefore appear likely to multiply in relation to the specific ways in which each Member State goes about transposing the Directive into national law. This is related to the observation of Olsson and Fudge who highlight how many of the clauses in the Directive regarding labour rights use the term 'will' rather than the stronger term 'shall' indicating that some of the provisions in the Directive may be weakened when it comes to be applied in national law (Fudge and Olsson, 2014, p.441). In this context, the ongoing

attention to how such programmes progress and how the Directive is transposed in the coming months and years is vital.

Conclusion

In this article I have considered the experiences of farmers and workers in counter-seasonal agricultural production in El Ejido. Drawing on these experiences I have argued that the Seasonal Workers Directive is likely to fail on its own terms.

The definition of Seasonal Work has been criticised by NGOs as being vague (ENAR, 2013). Within this vague definition however, the EU aims to meet the needs of the European economy for Seasonal Workers from third countries. Drawing on the experiences of farmers and workers in El Ejido I have shown how their unmet demands do not correspond to the programme of circular migration outlined by the Directive. The assumed nature of seasonality which goes unexplored in the Directive or its impact assessment is met with a programme of work permits for ‘third country nationals’ for periods of several months. Yet, in the context of intensive industrial agricultural production, seasons may be year-round and therefore there the assumed inherent seasonality of the sector is largely unsubstantiated. Rather, seasonality appears to function more as a legitimising factor for a new system of temporary labour migration which aims to control unauthorised migration whilst ensuring sectors such as horticulture may continue to attract low-paid migrant workers. However, due to the nature of unmet seasonal labour demand as has been illustrated in the case of watermelon production in Almeria, is unlikely to be met by policy approaches such as outlined in the Seasonal Workers Directive for circular migration.

Perhaps most seriously, the Directive meets the challenges of undocumented migrants who already carry out seasonal work in agriculture with no options. While options were included during the drafting process for third country nationals already present in the EU to be able to apply under the Directive, these were turned down. This therefore leaves undocumented migrant workers in Europe no further forward and potentially further marginalised as their employers have more options to contract workers from outside of Europe for the more stable periods of seasonal work. While this approach could be interpreted as a firm discouragement for undocumented workers to arrive in areas such as El Ejido in search of work, it is not clear that such an approach will do any such thing. The scenario that I have discussed as ‘the watermelon dilemma’ is likely to persist, therefore the extremely casual and unattractive short term work is likely to continue to be open to undocumented workers.

Finally, in rejecting the hard binary between documented and undocumented workers (or legal and illegal migrants) I have highlighted how the labour and residency status protections for new third country workers entering Europe under such programmes do not sufficiently protect them and therefore leave them vulnerable to falling into the same pool of undocumented workers resident in the region and looking for ever-more scarce employers ready to take them on without a contract or assist them in the administrative struggle to gain ‘papers’.

In sum, rather than bringing in a new set of common rights for workers, this policy approach outlines a concerning differential approach to the rights of temporary workers in relation to EU workers. Social actors should therefore remain as alert as ever to the ongoing need for further efforts to protect migrant workers, particularly those undocumented workers outside the scope of this Directive.

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**Global governance/politics,
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