

Labour Migration, Temporary Worker Programmes and Global Justice

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Abstract

The increasingly relevant link between migration and development combined with a variety of economic and demographic factors has led to the recent revival of temporary worker programmes (TWPs). As the key policy dilemma concerning labour migration and TWPs in particular concerns the rights of migrants, this raises some essential conceptual problems in global justice theory that have not been sufficiently addressed. In order to tackle these problems, I examine cosmopolitanism and Society of States approach, which are the two key approaches concerning international distributive justice. While these two doctrines have evidently contrasting views on labour migration and obligations of states towards migrants, there are certain irreconcilable dilemmas even within these approaches that parallel the difficulties in policy-making. On the one hand, cosmopolitan commitment to equal liberty and redistribution can accommodate opposing views on the scope of rights granted to migrants. On the other hand, the ‘two-level game’ within the Society of States approach poses questions about the state obligations towards ‘outsiders’. This examination of labour migration and TWPs with regards to global justice sheds light on the importance of holding some fundamental ethical views when dealing with such a sensitive issue as labour migration that involves movement of humans across borders.

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INTRODUCTION

Social and economic transformations that have been triggered by globalization have had a significant impact on flows of migration, as well as creation of differentiated migration regimes. As a result of various demographic and economic factors, there have been increasingly vocal efforts by the international community for schemes concerning labour migration management in general, which also resulted in the recent revival of temporary worker programmes (TWPs). While the old development paradigm saw migration as a problem and relied on foreign aid, the development discourse has shifted towards seeing migration as a development contribution. With remittances being labelled as the new ‘development mantra’ and circular migration described as ‘triple win’, the link between migration and development inevitably raises important questions concerning global justice.

Overall, we could say that the central policy dilemma concerning labour migration and TWPs in particular concerns the scope of rights granted to migrants. On the one hand, labour migration can be seen as a tool for a more just global redistribution; on the other hand, many labour migration schemes lead to exploitation of migrant workers. The question of workers’ rights therefore becomes of the key importance. Due to fact that problems in policy-making are also sign of underlying conceptual problems, I have chosen to examine issues in labour migration in relation to global justice theory. There the key theoretical problems concern equal liberty, global redistribution and the role of the state in labour migration management. As these have not been sufficiently addressed in relation to labour migration, I aim to confront these problems on the subsequent pages.

In order to do so, I will examine a set of competing normative insights regarding principles of global justice provided by cosmopolitans and Society of States advocates, and scrutinize these ideals with regards to labour migration and especially temporary labour migration. To introduce the policy issues inherent in temporary labour migration, I will first examine past guest worker programmes in Europe and the US and consider their overall impact as well as rationale. I will then move on to the current trends in temporary labour migration, with a particular focus on the situation in the EU and the shift in perspectives on labour migration. Having established the contextual background of the migration debate in the first section, the second and the third part will be devoted to a conceptual evaluation of two competing approaches – cosmopolitanism and Society of States. I have chosen to examine these two particular schools as these are the most commonly referred to approaches in relation to international distributive justice.¹ While cosmopolitans state that principles of distributive justice should operate globally, Society of States advocates believe that such an approach violates state sovereignty and distributive principles should operate only on the domestic level.² These principles reflect the cosmopolitan commitment to the justice of individuals and the Society of States' focus on the justice of societies. Besides the fact that these two doctrines clearly have contrasting views on labour migration and obligations of states towards migrants, there are certain irreconcilable dilemmas even within these approaches that parallel difficulties in policy-making. These regard the amount of rights granted to migrants and the obligations of the state towards them.

The cosmopolitan account will start with the debate establishing the right to migrate as a basic human right, and provide an argument for open borders in the name of a more efficient global redistribution. Yet these principles are challenged with regards to vulnerability of temporary

¹ Simon Caney, "International Distributive Justice", *Political Studies* Vol. 49 (2001), 974.

² Ibid, 974.

migrants, which raises questions about obligations of liberal societies towards migrants and brings out the key cosmopolitan dilemma concerning the scope of rights granted to non-citizens. In contrast with the cosmopolitan account, the Society of States approach does not recognize the right to migrate as a basic human right and thus allows for substantial restrictions on immigration. The central dilemma in the Society of States camp concerns the ‘two-level game’ that differentiates between ‘insiders’ and ‘outsiders’. This becomes problematic with regard to the rights of migrant workers and the obligations of the state towards them. This dilemma is coupled with the overall scepticism about global redistribution via labour migration.

Due to fact that the central part of my examination concerns theoretical debates concerning global justice, one objection could be that this type of conceptual analysis might be too distanced from the ‘real world’, which might pose significant limitations to establishing ‘ideal’ solutions. However, even if we accept that the value of justice is constrained by what is feasible - so that a truly unfeasible requirement cannot be a requirement of justice,³ it is still important to keep in mind that it may be important to ask what justice would require in the absence of the relevant feasibility constraint.⁴ Consequently, I believe that this shows the importance of theory for policy making, as we need to hold some fundamental views in order to be able to make policy in such a delicate field as labour migration where the key feature is the movement of humans across borders.

As for the methodology I use in my analysis, the first section comprises mostly secondary literature concerning various policy aspects of past and present TWPs. In addition, I used the

³ David Miller, “Political Philosophy for Earthlings”, in *Political Theory: Methods and Approaches*, ed. D. Leopold and M. Stears (Oxford: Oxford University Press, 2008), 29-48.

⁴ Alan Hamlin and Zofia Stemplowska, “Theory, Ideal Theory and the Theory of Ideals,” (2011), 12.
https://www.academia.edu/235979/Theory_Ideal_Theory_and_the_Theory_of_Ideals Accessed May 21, 2014.

statistics by OECD to illustrate migration trends in the recent decades and to show the scope of the temporary labour migration debate. In the second, conceptual section, I have relied both on primary and secondary literature by key authors in the global justice debate, both on the cosmopolitan and the Society of States side. As for the primary sources, most of the theoretical assumptions are derived from my analysis of Rawls's *Theory of Justice* and his *The Law of Peoples*, as well as Miller's *National Responsibility and Global Justice*. In addition, I used a broad variety of secondary sources to outline the conceptual dilemmas in the global justice theory and their application on the subject of temporary labour migration.

1. OVERVIEW OF LABOUR MIGRATION AND TEMPORARY WORKER

PROGRAMMES (TWPs)

Before I examine the cosmopolitan and the Society of States approaches towards labour migration and temporary migration in particular, I will first point out the policy challenges in these fields. I will do so by providing an overview of guest worker programmes in the 20th century and the consequences they generated. These emerged after World War II and lasted until the early 1970s. After World War II, all fast-growing Western European economies imported labour, mainly for low-skilled sectors. Besides the mostly unmanaged flows of migrants, there were also attempts to regulate their movement more systematically. However, many guest worker programmes failed to meet their objectives and led to various negative consequences, such as non-return and eventual settlement of guest workers as well as a widespread denial of workers' rights. In addition, several temporary migration programmes have in effect been permanent, with migrants later being allowed to remain permanently in the destination country. In order to look at the challenges inherent in temporary worker programmes, I will examine the guest worker programmes in Germany and the US, which were the most notable pioneers of a systematized labour recruitment. I will then juxtapose these with the new temporary worker programmes, by using the example of the new EU Directive on seasonal work. As the new programmes include safeguard clauses imposing strict limitations on workers' stay grant them a broad spectrum of rights, this increases their potential for a more efficient economic redistribution and protection of workers.

1.1 PAST GUEST WORKER PROGRAMMES

One of the biggest guest worker programmes was the *Gastarbeiter* in Germany, which gained momentum in December 1955 when the first Gastarbeiter Treaty between Italy and Germany was signed.⁵ The programme was based on a high degree of state involvement as well as bilateral cooperation with the countries of origin. The work permit issued allowed workers to stay only for a limited period of time, they could work only in certain sectors, and their residence and family reunion rights were rather limited.⁶ This scheme was supposed to provide a ‘mobile labour potential’ and, in the words of Castles and Kosack, was meant to “import labour but not people.”⁷ The programme was based on the so-called rotation principle and recruited mostly male migrants for a period of one to two years which were then required to return home to make room for other guest workers. In 1960, the number of migrant workers reached 686,000, or 1.2 percent of the total German population, with most workers being from Italy. After the construction of the Berlin Wall in 1961, West Germany intensified its recruitment of guest workers and by 1973, when the programme ended, the number of foreigners amounted to four million, and their share of the population reached 6.7 percent of Germany's total population. By this time, the most important country of origin was no longer Italy, but rather Turkey, which accounted for 23 percent of all foreigners.⁸

As the Oil Crisis developed in the early 1970s, the German guest worker programme, as well as other Western European schemes regarding temporary labour recruitment, came to an end.

⁵ Anja Burkhardt and Markus Seifert, “The history of the German Gastarbeiter – an argument for Australia to keep the door open for her guest workers?” Submission No. 504 (February 29, 2012).

⁶ Stephen Castles, “Back to the Future? Can Europe meet its Labour Needs through Temporary Migration?” *International Migration Institute*, Working paper No. 1. (2006), 2-3. <http://www.imi.ox.ac.uk/pdfs/wp/wp1-backtothefuture.pdf> Accessed May 21, 2014.

⁷ Stephen Castles and Godula Kosack, *Immigrant Workers and Class Structures in Western Europe* (London: Oxford University Press, 1973).

⁸ Veysel Oezcan, “Germany: Immigration in Transition” (July 1, 2004). <http://www.migrationpolicy.org/article/germany-immigration-transition> Accessed May 26, 2014.

However, there were other, more essential factors that contributed to their termination, namely the fact that temporary workers were being recruited to meet permanent labour demand and that many of them stayed and became permanent settlers.⁹ The programme ended at the times marked not only by the economic stagnation and soaring unemployment, about also when social and cultural consequences of migrant workers were becoming evident. Nowadays, about 7 million foreigners currently live in Germany, and nearly 16 million others have an immigrant background.¹⁰

The American equivalent to the *Gastarbeiter* was the *Bracero* programme that lasted from 1942 to 1964, which was established as an agreement between the US and Mexico to meet the US food supply needs during World War II. The original aim of the programme was to import agricultural workers on seasonal basis, which later evolved into recruitment of workers for railway companies too. The size of the Bracero Program in the United States fluctuated: 35,345 workers were admitted in 1948; 445,197 in 1956; and 177,736 in 1964.¹¹ The average number of Mexicans employed during one year accounted for about 0.7 per cent of the farm work force; thus they made up a very small proportion of the national farm labour force. However, bracero employment was much more significant in States where they were concentrated, as it comprised about 95 per cent of total farm work force of labour in the States of Arizona, Arkansas, California, Colorado, New Mexico, Michigan, and Texas.¹²

As for the problematic features of the programme, there was not only a widespread exploitation of workers and but also the withholding of 10 per cent of workers' wages were

⁹ Stephen Castles, "Back to the Future? Can Europe meet its Labour Needs through Temporary Migration?", 3-4.

⁹ Stephen Castles and Godula Kosack, *Immigrant Workers and Class Structures in Western Europe*.

¹⁰ Anja Burkhardt and Markus Seifert, "The history of the German Gastarbeiter," 1.

¹¹ John C. Williamson, "The Bracero Program and its Aftermath" (April 1, 1965).

http://content.cdlib.org/view?docId=kt4n39n6zx&&doc.view=entire_text Accessed May 26, 2014.

¹² Economic Research Service, U.S. Department of Agriculture, "Agricultural Economic Report No. 77: The Termination of the Bracero Program" (June 17, 1965) <http://naldc.nal.usda.gov/download/CAT87201767/PDF> Accessed May 26, 2014.

rarely given back to them once they returned back to Mexico.¹³ Furthermore, the rule enforcement mechanism was rather weak. Also, as Meissner asserts, one important lasting effect of the programme was has been that it spawned and institutionalized networks and labour market relationships between Mexico and the United States, and these ties became the foundation for today's illegal migration from Mexico.¹⁴ As noted by Meissner, the combination of these failings brought the programme to an end as it was no longer reconcilable with the era of civil rights movement in the US that shaped the way people should be treated in a democratic society.¹⁵

Overall, both of these guest worker programmes failed to meet their objectives and led to various negative consequences, such as non-return and eventual settlement of guest workers¹⁶ as well as a widespread denial of workers' rights. Many temporary migration programmes have in effect been permanent, with migrants later being allowed to remain permanently in the destination country. For example, the *Gastarbeiter* programme saw migrants predominantly from Turkey (but also from Greece, Italy, Morocco, Portugal, Spain, Tunisia and Yugoslavia) arrive initially for a period limited to two years. However, this two-year time limit was removed soon after the establishment of the *Gastarbeiter* programme.”¹⁷ As for the economic impact of these programmes, the evidence remains mixed. On the one hand, foreign workers played a major role in fuelling post-World War II reconstruction in Europe by holding down wages and maintaining high rates of profit, investment and growth.¹⁸ On the

¹³ Doris Meissner, “U.S. Temporary Worker Programs: Lessons Learned” (March 1, 2004) <http://www.migrationpolicy.org/article/us-temporary-worker-programs-lessons-learned> Accessed April 23, 2014.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Martin Ruhs, “The Potential of temporary migration programmes in future international migration policy”, *International Labour Review*, Vol. 145 (2006), No. 1-2, 7.

¹⁷ Eurostat. “Migrants in Europe: A statistical portrait of the first and second generation” (2011), 14.

¹⁸ Martin Ruhs and Ha-Joon Chang, “The Ethics of Labour Immigration Policy,” 77. [http://www.compas.ox.ac.uk/fileadmin/files/People/staff_publications/Ruhs/MR2_The%20Ethics%20of%20Labour%20Immigration%20Policy%20-%20IO%2058%20\(Feb%202004\).pdf](http://www.compas.ox.ac.uk/fileadmin/files/People/staff_publications/Ruhs/MR2_The%20Ethics%20of%20Labour%20Immigration%20Policy%20-%20IO%2058%20(Feb%202004).pdf) Accessed May 21, 2014.

other hand, mass influx of immigrants might have negative effects on welfare recipients in the receiving country in case when migration is fiscally induced due to differences in social entitlement programmes.¹⁹

To sum up the historical overview of labour migration schemes, it is evident that these programmes generated many negative consequences, such as permanent settlement of guest workers and abuse of their rights. Yet it appears that the creators of the recently revived labour migration regimes are aware of the malfunctions of the past programmes and try to limit their negative impact, which I will illustrate in the following section.

1. 2 TEMPORARY WORKER PROGRAMMES TODAY

Despite the previous negative consequences generated by guest worker programmes, it is important to highlight the fact that temporary labour migration may be a positive force in the development process for both recipient and destination countries. For example, the fact that people are able to access foreign labour markets opens the door for improving migrants' living conditions, or that of their families. The international community has recognized these positive impacts of migration and acknowledged the need to establish a more coherent political response to the phenomenon. This was put into effect by the establishment of various institutional bodies, such as the *Global Commission on International Migration*, the *UN High Level Dialogue on International Migration and Development* and the *Global Forum on Migration and Development*.²⁰ The global trend towards increased temporary labour migration demonstrated itself through temporary or seasonal migrant worker programmes that

¹⁹ Martin Ruhs and Ha-Joon Chang, "The Ethics of Labour Immigration Policy," 77.

²⁰ José Antonio Alonso, "International Migration and Development: A review in light of the crisis," Background Paper No. 11(E) for The UN Committee for the Development Policy (December 2011), 1.

have been introduced in a number of countries, including Germany, Netherlands, Norway, Ireland, Belgium, Sweden, Greece, Italy, Spain and the UK.²¹ As noted by Lenard and Straehle, many developed countries have seen a renaissance in immigration regimes.²² This was particularly evident between 2003 and 2007, when the number of temporary foreign migrants labouring in OECD countries rose by 7% per year.²³ Similarly, Ruhs and Martin, recognize that voices in both high-income and lower-income countries are nowadays calling for more temporary labor migration through new guest worker programs.²⁴ The press release accompanying the World Bank's Global Economic Prospects report for 2006 argued that more "managed migration programs, including temporary work visas for low-skilled migrants in industrial countries... would contribute to significant reductions in poverty in migrant sending countries."²⁵

On the one hand, this system is supposed to create benefits for sending countries in the form of remittances, and via assuring that migrants will return back home with new skills and know-how. On the other hand, receiving countries are supposed to benefit from TWPs because these will bring only temporary workers into their country, which therefore reduces fiscal and social costs of immigrant inflow. Consequently, it appears to be a win-win situation for both sending and receiving countries, which is the reason why migration is often view as the new 'development mantra'.

²¹ OECD. Trends in International Migration: Annual Report (Paris: OECD, 2004).

²² Patti T. Lenard and Christine Straehle. "Temporary Labour Migration: Exploitation, Tool of Development, or Both?" *Policy and Society* 29 (2010): 283-94.

²³ OECD. International Migration Outlook Paris: OECD, 30. The number of temporary labour migrants in OECD countries has, however, declined since the 2008 financial crisis, leading some to consider the long-term impact of recessions on labour migration. See for example Philip Martin, "Recession and migration: A new era for labor migration?" *International Migration Review*, 43 (2009): 3.

²⁴ Martin Ruhs and Philip Martin, "Numbers vs. Rights: Trade-Offs and Guest Worker Programs," 249.

²⁵ Ibid, 250.

Overall, we could say that the rationale for the shift in attitudes towards labour migration and the recent revival of TWPs is twofold. The first reason is based on demographic developments. As noted by Castles, the major demographic factor was the fact that total fertility rates have fallen so far in many European countries that populations are beginning to decline. Eurostat statistics demonstrate that the population of EU25²⁶ is likely to fall from 457 million in 2004 to 450 million by 2050 (a decline of 1.5 per cent). Yet the decline will be much sharper in Germany (9.6 per cent), Italy (8.9 per cent) and the 10 mainly Eastern and Central European states which joined the EU in 2004 (11.7 per cent).²⁷

In addition, the share of the population of working age (between 15 and 64) in the total population is expected to decrease strongly in the EU25, from 67.2% in 2004 to 56.7% in 2050, which is a fall of 52 million inhabitants of working age. The share of the population aged between 0 and 14 will also be reduced, from 16.4% in 2004 to 13.4% in 2050.²⁸ This decline in population growth implies that there will be fewer young people, they will expect better educational opportunities, and few of them will accept low-skilled jobs. In Germany, these demographic developments caused that the number of local workers available for employment actually declined, and similar declines are forecasted for other European countries. These developments render the future contribution of migrant workers all the more important.

The second reason for the change in attitudes towards labour migration is based on the economic rationale. Recently, a European study showed that immigration plays an important

²⁶ 25 Member States of the EU following the accession of 10 new members in May 2004

²⁷ Stephen Castles, "Back to the Future," 7.

²⁸ Eurostat, "Population Projections 2004-2050", STAT 05/48, April 8, 2005. http://europa.eu/rapid/press-release_STAT-05-48_en.htm Accessed June 1, 2014.

role in improving labour market efficiency, as some types of work are avoided by natives.

These include

Dirty, difficult and dangerous jobs, low-paid household service jobs, low skilled jobs in the informal sector of the economy, jobs in sectors with strong seasonal fluctuation, e.g. farming, road repairs and construction, hotel, restaurant and other tourism-related services.²⁹

Furthermore, developed countries could not export all low-skilled activities to low-wage countries, as some sectors, such as construction industry, hotels and restaurants and services in general, have to be where their customers live.³⁰ These realizations have demonstrated the need for foreign low-skilled workers to fill in labour shortages in the developed countries. For example, Lenard and Straehle recognize a strong case for expansion of TWPs, as they allow for the coincidence of national self-interest and global justice. They point out that this is because TWPs allow governments in developed countries to fill labour shortages and to do so without increasing rates of permanent migration.³¹ Consequently, labour migration from poor to rich countries could also be regarded as a response to *mutual needs*. On the one hand, poor countries have a ‘need’ to export its surplus of young people who cannot be employed in the economically weak local labour markets; on the other hand, rich countries with do not have enough young people to fill the positions on their labour market, and therefore they *need* to import labour.³²

Besides that, the growing support for new labour immigration policies has been motivated by global economic inequalities. In 1970s, the ‘advanced countries’ received 68 per cent of the world income, the ‘rest of the world’ got 32 per cent. By 2000, the ‘advanced countries’ received 81 per cent of world income, while ‘rest of the world’ got 19 per cent), which

²⁹ Stephen Castles and Mark J. Miller, *The Age of Migration*, 4th edition (Basingstoke: Palgrave Macmillan, 2009), 222.

³⁰ Stephen Castles, “Back to the Future,” 7.

³¹ Patti Lenard and Christine Straehle, “Temporary labour migration, global redistribution and democratic justice” (2011), 206. <http://ppe.sagepub.com/content/11/2/206.full.pdf+html> Accessed May 21, 2014,

³² Stephen Castles and Mark J. Miller, *The Age of Migration*, 222.

illustrated that inequality can be as a powerful force driving migration.³³ In addition, there are notable disparities in the level of democracy and human rights between Europe and many less-developed countries, as well as evidence of the growth of the informal economy.³⁴ Overall, as has been summed up in the recent Global Commission on International Migration (GCIM), we could say that the great forces driving mobility of people across border as ‘development, demography, and democracy.’³⁵

To give one example of a recent TWP that was created as a response to demographic and economic challenges faced by the EU today, I will now briefly look at the Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment³⁶ that was adopted by the European Council on February 17, 2014.³⁷ In the first decade of the 21st century, the EU has faced considerable challenges regarding migration, as it has encountered large waves of migration from both within the EU and from outside it. The inflow in that decade appears to have peaked in 2007, with about 4 million people migrating to and between the EU-27 Member States.³⁸ According to some estimates, there are approximately 100,000 seasonal workers in the EU annually, which also includes irregular migrants.³⁹ In its 2011 Communication on the Global Approach to Migration and Mobility, the European

³³ Stephen Castles, “Back to the Future,” 8.

³⁴ Ibid.

³⁵ Global Commission on International Migration, “Migration in an Interconnected World: New Directions for Action” (Geneva: Global Commission on International Migration, October 2005), 12.

³⁶ European Commission. “Proposal for a Directive of the European parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment,” (Brussels, July 13, 2010)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0379:FIN:EN:PDF> Accessed May 21, 2014.

³⁷ Council of the European Union, “Council adopts directive on third-country seasonal workers” (Brussels, February 17, 2014) http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/141044.pdf Accessed May 27, 2014.

³⁸ Eurostat, “Migrants in Europe. A Statistical portrait of the first and second generation”, 2011 edition, 16. http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-31-10-539/EN/KS-31-10-539-EN.PDF Accessed May 21, 2014.

³⁹ European Commission, “Proposal for a directive establishing common entry and residence conditions for third-country seasonal workers” (July 13, 2010) [http://europa.eu/rapid/press-release MEMO-10-323_en.htm](http://europa.eu/rapid/press-release_MEMO-10-323_en.htm) Accessed May 21, 2014.

Commission indicated that European countries are facing labour market shortages and vacancies that cannot be filled by the domestic workforce in specific sectors, e.g. in health, science and technology.⁴⁰ Furthermore, the ageing of Europe's population is expected to halve the ratio between persons of working age (20-64) and persons aged 65 and above in the next fifty years. Migration is already of key importance in the EU, with net migration contributing 0.9 million people or 62 % of total population growth in 2010. All indicators show that some of the additional and specific skills needed in the future could be found only outside the EU.⁴¹ Consequently, the ability of the EU to attract migrants to counter the aging of the population and filling labour shortages has become one of the key challenges that is to be partially tackled by the new Directive.

Having thus established the rationale for the change in attitudes towards labour migration and TWPs in particular, it is also important to note the differences between the old approach (guest worker programmes) and the new one (TWPs). Castles argues that the current approaches differ significantly from the old guest worker programmes in three ways. First of all, the new TWPs differentiate between highly-skilled and lower-skilled workers. Secondly, they strictly determine the extent and duration of TWPs in order to avoid permanent settlement of migrant workers. Finally, these programmes claim that there is an intention of linking migration to the development of countries of origin.⁴²

Most of the features mentioned by Castles have been incorporated in the EU Directive on seasonal employment, which is aimed at a very specific category of workers. These should be non-EU nationals residing outside the EU (not the ones that are already on the territory) who

⁴⁰ European Commission. "The Global Approach to Migration and Mobility," (November 18, 2011), 2-3. http://ec.europa.eu/home-affairs/news/intro/docs/1_EN_ACT_part1_v9.pdf). Accessed May 21, 2014.

⁴¹ Ibid.

⁴² Stephen Castles, "Back to the Future," 1.

want to work in seasonal jobs, which automatically implies their low-skilled status. The Directive also imposes a strict limitation on the duration of stay (six months). This should ensure that seasonal workers from outside the EU are actually employed for work that is genuinely seasonal, which would therefore contribute to the creation of circular migration beneficial for both sending and host countries. In order to eliminate exploitation of workers that used to be an inherent part of the past guest worker programmes, the EU Directive provides temporary workers with a broad set of rights and protections. We could therefore say that, on the first sight, the EU has shown a commitment to meeting Europe's labour demands while showing awareness of the challenges inherent in the sectors which employ temporary, low-skilled workers from non-EU countries. Yet as the numerous negative consequences generated by TWPs in the past demonstrate, the problematic nature of temporary labour migration makes us question the extent to which can the new TWPS, such as the new EU Directive, truly addresses the challenges inherent in temporary labour migration.

To place the role of temporary worker programmes such as the EU Directive on Seasonal Workers into a broader conceptual context, we could say that due to the increasingly pertinent link between migration and development, the most relevant conceptual debates concern the potential of TWPs to deliver greater social justice and more fair wealth redistribution. Even though the new TWPs are aware of the malfunctions of the old guest worker programmes and are trying to eliminate the potential negative impact of temporary migration schemes, this often remains problematic. The trade-off that tends to occur between the rights and numbers of temporary workers shows a deeper conceptual dilemma between equal liberty and redistribution. Furthermore, the question of state obligations towards temporary workers remains problematic as well. As the problematic nature of TWPs reflects not only inadequate policy designs, but also deeper theoretical dilemmas concerning international distributive

justice that have not yet been sufficiently addressed, I will examine the latter in the following sections.

2. COSMOPOLITAN PERSPECTIVES ON LABOUR MIGRATION

The first of the two theoretical perspectives I have chosen to examine with regards to the global justice debate is cosmopolitanism. The main arguments of cosmopolitans concerning principles of international distributive justice are that these should operate globally, and that the key concern should always be the individual. According to the contemporary leading cosmopolitans such as Barry, Beitz and Pogge, the central notions of cosmopolitanism are that (1) individuals have equal moral worth, (2) their natural moral worth generates moral reasons that are binding on everyone.⁴³ Consequently, people's culture, ethnicity and nation are rendered morally irrelevant. The cosmopolitan principles would also accommodate free movement of people across border and the right to migrate as a basic human right. Due to fact that the individual is the fundamental unit of observation, this implies the cosmopolitan understanding of world inequality as calculated across all individuals over the world and as reflecting true world income distribution.⁴⁴ In order to address the issues that arise from the cosmopolitan doctrine concerning global justice principles, I will now provide a brief overview of the fundamental tenets of cosmopolitanism. These include the egalitarian notions of liberty, redistribution, equal moral worth, which then lead to the issue of obligations of liberal societies in response to individual vulnerability. I will then apply these principles in my analysis of labour migration and temporary worker programmes (TWPs) in particular.

⁴³ Simon Caney, "International Distributive Justice", *Political Studies*, Vol. 49 (2001): 974-997.

⁴⁴ Branko Milanovic, *Measuring International and Global Inequality* (New Jersey: Princeton University Press, 2005), 8.

2.1 COSMOPOLITANISM

As one of the cosmopolitan assumptions regarding principles of justice concerns the notions of equal liberty and equal opportunity of individuals, I will examine Rawls's *Theory of Justice* where he elaborates on these issues by setting up the principles of justice. These principles are based on the choice that people make 'behind the veil of ignorance', which represents a hypothetical situation of equal liberty where people are ignorant of their place and value in society, and state the following:

1. Everyone will have an equal right to the most extensive basic liberties compatible with similar liberty for others
2. Social and economic inequalities must satisfy two conditions: they are to be to the greatest benefit of the least advantaged members of society (the *difference principle*) and they are to be attached to positions open to all under conditions of fair *equality of opportunity*.⁴⁵

As the first principle assumes the overall priority of liberty, this outlines the notion of certain basic liberties for all citizens. Rawls argues that the capacity for moral personality is a sufficient condition for being entitled to equal justice,⁴⁶ from which we could derive the claim that every world citizen is entitled to equal justice. Because membership in a just society must imply the same basic rights for all members, this suggests that all liberties of membership in this society are required to be equal by the first principle.

On the other hand, the *difference principle* states that certain inequalities are justified if social benefits and burdens are distributed so that the position of the least well-off is as good as it can possibly be. According to this principle, institutions are to be arranged so that any inequalities of wealth and income work to the advantage of those who are the least well-off. Furthermore, the difference principle also suggests that natural endowments are undeserved.

⁴⁵ John Rawls, "Justice and Equality" in Louis P. Pojman and Robert Westmoreland (eds.), *Equality: Selected Readings*, (Oxford: Oxford University Press, 1997), 185.

⁴⁶ Ibid, 189.

With regards to the second condition by which Rawls justifies inequalities, we could view his fair *equality of opportunity* as a means to an equal chance to leave the less fortunate behind in the personal quest for influence and social position.⁴⁷ As Rawls asserts, “in all parts of society there are to be roughly the same prospects of culture and achievement for those similarly motivated and endowed.”⁴⁸ This suggests that individuals that have the same talents and exercise the same level of effort should have the same access to resources regardless their birthplace.

In addition to Rawls’s egalitarian principles of justice concerning liberty and, there is also one underlying assumption derived from these principles that is in the centre of the cosmopolitan account. This is the notion of the equal moral worth of all individuals. This ‘fourth principle’ of justice invokes the question of rights of individuals and obligations of liberal societies towards them.

Even though Rawls himself discarded the idea of extending his principles of justice from domestic to global level (which is relevant for the Society of States approach as I am going to demonstrate in the following section), the cosmopolitan scholars argue for the opposite. This is what Pogge does in his work *Realizing Rawls*, where he defends, criticizes and extends Rawls’s principles of justice to the international level. Overall, Pogge believes that a criterion of global justice must be sensitive to international social and economic inequalities,⁴⁹ and suggests an instrument to control international inequality – the global resource tax (GRT). This would work in the following way: while each state owns and fully controls all resources

⁴⁷ John Rawls, “Justice and Equality,” 189.

⁴⁸ John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press of Harvard University Press, 1999), 44.

⁴⁹ Thomas Pogge, “An Egalitarian Law of Peoples,” *Philosophy & Public Affairs*, Vol. 23, No. 3 (Summer 1994): 195.

within its national territory, it must pay a tax on any resources it chooses to extract.⁵⁰ We could therefore understand the GRT as a tax on consumption that treats different kinds of consumption differentially. In addition, the tax would fall on goods and services roughly in proportion to their resource content in proportion to how much value each takes from our planet. Finally, the proceeds from the GRT would be used toward the emancipation of the present and future global poor, which would assure equal access to education, healthcare, means of production, land, and jobs,⁵¹ which would coincide with Rawls's fair *equality of opportunity* principle.

Rawls's principles of justice have also been extended to the global realm by Beitz. Beitz's reasoning is based on the claim that Rawls's principles of justice govern relations between individuals cooperating in a scheme for mutual advantage. Due to fact that we now live in a world marked by global economic interdependence and global civil society, these factors constitute a scheme of social cooperation and it follows that principles of justice should apply to individual participants in such a scheme.⁵² The originality of Beitz's work is based on his extension of Rawls in two particular ways. First, the Rawlsian principles should be 'globalized' within an international "Original Position", where nations (or 'peoples') as members would insist on a global distribution principle that would work the same way as the difference principle works in the domestic level. Beitz justified this by arguing that distribution of resources is arbitrary from the moral point of view and that access to sufficient natural resources is necessary for a society to become successful. The second extension would materialize in a cosmopolitan Original Position, where all individuals in the world would be

⁵⁰ Thomas Pogge, "An Egalitarian Law of Peoples, 200-201.

⁵¹ Ibid, 201.

⁵² Deen K. Chatterjee, *Encyclopedia of Global Justice*, (Springer, 2011)

http://books.google.sk/books?id=2swUg4ZKTgsC&pg=PA666&lpg=PA666&dq=beitz+extension+of+rawls&source=bl&ots=OqoC0FHVuB&sig=88u7r0AgNjU0NH0dPluTK5959cA&hl=sk&sa=X&ei=j6l_U9avLoWzywPzxYH4DQ&ved=0CGMQ6AEwBA#v=onepage&q=beitz%20extension%20of%20rawls&f=false Accessed May 24, 2014.

represented as individuals. This would lead to a global difference principle, which would be ultimately addressed to individuals, though states might play an important role of intermediaries.⁵³

Due to fact that the Rawlsian notions of equal liberty and egalitarian distributive justice imply the principle of equal moral worth of all individuals, this also raises questions concerning obligations of liberal states towards their subjects, which can include citizens as well as non-citizens. One understanding of such state responsibilities is based on the concept of vulnerability. According to Goodin, we should protect *all* those who are particularly vulnerable to our actions and choices, rather than restricting our attention to the narrowly circumscribed subset enshrined in conventional morality, which would only include our family, friends, compatriots etc.⁵⁴ To address this issue, Goodin says that

The same considerations of vulnerability that make our obligations to our families, friends, clients, and compatriots especially strong can also give rise to similar responsibilities toward a much larger group of people who stand in none of the standard special relationship to us.⁵⁵

This principle would extend the special obligations of liberal democracies also to foreigners. In response to vulnerability of individuals, Goodin outlines two basic prescriptions. First of them is the idea of preventing exploitable vulnerabilities. This means that no one should be forced into a vulnerable position insofar as this can be avoided, and if they find themselves in such a position, vulnerabilities should be reciprocal and symmetrical among all those who are involved.⁵⁶ Secondly, Goodin believes that we should not only prevent people from becoming

⁵³ Matthew Lister, "Four Entries for the Rawls Lexicon: Charles Beitz, H.L.A. Hart, Citizen, Sovereignty" (2012) https://www.academia.edu/1234565/Four_Entries_for_the_Rawls_Lexicon_Charles_Beitz_H.L.A._Hart_Citizen_Sovereignty Accessed May 27, 2014.

⁵⁴ Robert E. Goodin, *Protection of the Vulnerable: Reassessing Our Social Responsibilities* (Chicago: Chicago University Press, 1985), 206.

⁵⁵ Ibid, 11.

⁵⁶ Ibid, 206.

vulnerable, but also protect those who already are. This suggests that liberal democracies have a special responsibility to protect interests of the vulnerable.⁵⁷

Another important feature of the liberal state that stems from the cosmopolitan ideal of liberty is the promotion of autonomy. According to Colburn, the ideal of autonomy is to decide what is valuable, then live one's life in accordance with that decision, while bearing responsibility for the shape one's life takes.⁵⁸ Consequently, an autonomy-minded liberalism would imply that the state should promote autonomy, understood as a value which consists of an agent deciding for herself what is valuable and living her life in accordance with that decision.”⁵⁹

Overall, the very basis of the cosmopolitan doctrine is derived from the extension of Rawls's principles of justice to the global level. Egalitarian principles of liberty and redistribution are therefore considered key to delivering global justice. These principles also imply one key the underlying ideal, which is the principle of equal moral worth. As this inevitably raises questions about the obligations of liberal democracies towards individuals, cosmopolitans argue that protecting the vulnerable and allowing them to live autonomous lives should be one key aspect of state obligations towards individuals.

2. 2. COSMOPOLITANISM AND LABOUR MIGRATION

In the previous section, I have established the key cosmopolitan principles regarding global justice, namely the egalitarian principles of liberty, redistribution, equal moral worth and what these principles mean for state obligations in response to vulnerable individuals. I will now

⁵⁷ Robert E. Goodin, *Protection of the Vulnerable*, 206.

⁵⁸ Ben Colburn, *Autonomy and Liberalism* (New York: Routledge, 2010), 129.

⁵⁹ Ibid, 129.

examine these propositions with regard to labour migration and illustrate the way in which the cosmopolitan dilemma between equal liberty and redistribution allows for contrasting views on labour migration, particularly in terms of the rights granted to migrants.

As for the implications of Rawls's principles of justice, we could say that the first principle, which assumes the overall priority of liberty granting a set of basic liberties to all individuals, implies that freedom of movement can be one of these basic freedoms. Consequently, we could think of the right to migrate as one of the basic liberties, by which all migrants, whether permanent or temporary, grasp the opportunity to carry out their entitlement to equal life chances.

If we consider Rawls's *difference principle* and its focus on improving the position of the least well-off, we could say that liberal democracies should make up for the global economic inequalities by allowing migrants from the developing countries to improve their life situation by joining their more prosperous labour markets. Furthermore, with regards to the fair *equality of opportunity*, the cosmopolitan understanding of justice and equal moral worth of all individuals should allow all individuals to not only move freely across borders, but also and carry out their migration projects in order to improve their social and economic situation by getting access to foreign labour markets.

Furthermore, a more specific argument for open borders that based on the notion of equal moral worth of individuals and transposition of Rawls's principles to the global level is carried out by Joseph Carens in his *Aliens and Citizens: The Case for Open Borders*. Considering the fact is that the majority of labour migrants come from the non-Western world to the West, Carens argues that, the West should strive to open up its labour markets with respect to the idea of equal moral worth, which is a cornerstone of the Western liberal

principles.⁶⁰ This argument is not only compatible with the understanding of the right to migrate as a basic liberty, but also complies with the notions of global redistribution.

The central part of Carens's argument is based on the extension of Rawls's theory of justice to the global level. Consequently, the global version of the original situation 'behind the veil of ignorance' implies that the right to migrate should be one of the basic liberties, which reflects Rawls's first principle concerning liberty. This approach minimizes the effects of contingencies such as birthplace upon distribution of social benefits, as these are arbitrary from the moral perspective. Furthermore, as we assume the overall priority of liberty, economic and cultural arguments against free migration are rendered unfeasible as well.

Carens also uses the utilitarian arguments to justify his case, namely the economic consequences of open borders. Due to the prevailing consensus that free market economy is crucial to bring economic growth, the utilitarian principle of utility maximization would suggest free mobility of labour, which therefore implies open borders. As many developing countries have an abundance of low-skilled workers willing to travel and seek work in the Western labour markets, the notion of free borders would allow for a more efficient global economic redistribution, which reflects Rawls's *difference principle*. With regards to the notion of equal moral standing of all individuals, this certainly includes the preferences of migrant workers from the developed countries who come to the rich West in search of a better life and improvement of their economic situation.

However, there are certain inherent characteristics of migrant workers that pose challenges to the cosmopolitan notion of the equal moral worth and the kind of obligations it implies for

⁶⁰ Joseph Carens, "Aliens and Citizens: The Case for Open Borders," *The Review of Politics*, Vol. 49, No. 2 (Spring 1987).

liberal societies. While this implies that liberal societies hold a certain set of obligations towards their subjects, this becomes particularly urgent with regards to vulnerability and autonomy of labour migrants. As noted by Caney, there is a set of considerations that we standardly refer to defend redistribution of global resources that are possessed by individuals throughout the world.⁶¹ One of these considerations concerns individual autonomy. If we take into account Goodin's account concerning obligations of liberal democracies and their special responsibility to protect the vulnerable, we could say that these obligations also include responsibility to protect individual autonomy, as these two concepts are inevitably correlated. This is due to fact that Goodin's approach is based on the notion of the one common humanity and equal moral worth of individuals, which implies that we must recognize a much more extensive network of obligations and moral claims. In response to the issue of vulnerability and the type of obligations it implies for liberal states, Ottonelli and Torresi state that

The liberal state... owes something to those who will never be... full members but who nevertheless contemplate a period of residence and work within its society as an essential component of their life plans and pursuit of happiness.⁶²

We could therefore argue that with regard to the vulnerability of migrant workers that makes them compromise their individual autonomy, a cosmopolitan perspective would be that liberal democracies should widen their scope of obligations towards these workers and grant them an extensive set of rights that would compensate for their inherently vulnerable status.

It is, however, important to note that there is a strong tension between two key cosmopolitan notions, namely equal liberty and equal redistribution, which causes that cosmopolitans can

⁶¹ Caney, "International Distributive Justice," 977.

⁶² Valeria Ottonelli and Tiziana Torresi, "Inclusivist Egalitarian Liberalism and Temporary Migration: A Dilemma," *Journal of Political Philosophy* 20.2 (2012), 221.

grant migrants an extensive set of rights on the one hand, and considerably restrict their rights on the other. As restrictions on immigration as well as a variety of safeguard clauses is an inherent aspect labour migration, it is important to take into account the question of restrictions imposed on migrants and to what extent they can be justified, if at all. As my following examination of one such cosmopolitan account shows, even restrictions on workers' rights can be compatible with global justice, especially in the name of global poverty reduction based on Rawls's *difference principle*.

One such perspective is provided by Bell and Piper, who argue that restrictions on workers rights can be justified in the name of global poverty reduction. While basing their analysis on the defense of the TWPs in Hong Kong and Singapore, Bell points out the contrast between the East Asian approach towards migrant workers and the approach in Western states. Both Hong Kong and Singapore admit vast numbers of foreign domestic workers on temporary permits (150,000 in Hong King and 140,000 in Singapore),⁶³ while providing them with a very limited set of rights. For example, in Singapore, migrants employed in low-wage jobs are officially prohibited from co-habiting with or marrying a Singaporean resident, an effort to limit the costs of migrants by limiting settlement.⁶⁴ While workers in Hong Kong have slightly better legal protections than those in Singapore, protection of foreign workers remains much less extensive than the one related to citizens. However, Bell does not want to highlight the differences between these two countries, but rather emphasize a “deep conflict between liberal democratic demands for equal treatment of migrants and citizens and the actual needs and interests of migrant workers.”⁶⁵

⁶³ Joseph Carens, “Live-in Domestic, Seasonal Workers, and Others Hard to Locate on the Map of Democracy,” *Journal of Political Philosophy* 16 (2008), 439.

⁶⁴ Ibid, 257.

⁶⁵ Ibid, 440.

Since foreign domestic workers in Singapore and Hong Kong have no possibility to become equal members of these societies, Bell and Piper justify this arrangement by claiming that unequal rights between citizens and migrant workers may be justified if this framework

- a) Works to the benefit of migrant workers (as decided by themselves)
- b) Creates opportunities for people in relatively impoverished societies to improve their rights
- c) There are no feasible alternatives to serve the ends identified in (A) and (B).⁶⁶

While I do not believe that all of these arguments justifying restrictions on temporary workers' rights are defensible, it appears that the global poverty reduction argument concerning opportunities for people in poor countries to improve their rights and redistributing global wealth is feasible. In the light of this perspective, Bell argues that the moral gains from the redistributive effects of the remittances far outweigh the moral costs of the temporary workers enjoying fewer rights.⁶⁷ This implies that rich states are obliged to admit as many workers as possible because it is the only feasible way of transferring resources from rich countries to poor states, even if admitting as many as possible entails limiting their rights.⁶⁸ Such reasoning widens the scope of analysis and shifts the focus on moral claims of not only those whom states choose to admit, but also those outside their political community. As noted by Bell, we have to consider our obligations to relatively deprived people in foreign lands.⁶⁹ Yet Bell points out that sometimes, insisting on full rights for temporary workers could harm them rather than improve the overall situation, as it would reduce the numbers of workers states are willing to admit. Consequently, Bell advocates 'a second best approach' by arguing for feasibility of restrictions on workers' rights as way of responding to the reality of global economic inequalities.

⁶⁶ Joseph Carens, "Live-in Domestic," 14.

⁶⁷ Ibid, 440-442.

⁶⁸ Ibid, 443-444.

⁶⁹ Ibid, 444.

To sum up the cosmopolitan approach towards labour migration, we could say that all cosmopolitans agree on the claim that the right to migrate is a basic human right based on the idea of equal moral worth, which is the most fundamental point of departure. Open borders would further imply labour migration as a way delivering a more fair global redistribution that would correlate with Rawls's egalitarian principles of distributive justice. As for the implications of the key cosmopolitan principle of equal moral, we could say that this imposes an obligation on liberal societies to grant all migrants a full set of rights comparable to the one of their own nationals.

On top of that, the question of rights granted to migrant workers is the key point of tension within the cosmopolitan camp. This is because, as Bell and Piper show in their example of domestic worker programmes in East Asia, restrictions on rights could be justified in the name of global poverty reduction. Bell and Piper highlight the role of cultural specificities, arguing that special circumstances in East Asian societies might justify the grave limitations of workers' rights.⁷⁰ While I do not believe that cultural relativism can justify unequal rights in terms of ideal theory, the question that remains open is whether such an arrangement can be morally justifiable in relation to another principle of global justice (redistribution) as well as non-ideal circumstances such as specific cultural contexts and labour market needs.

Overall, we could say that Bell and Piper's argument highlights the key tension within Rawls's *difference principle*. This arises due to fact that the *difference principle* can justify open borders and the right to migrate as a basic right on the one hand, and allows for restrictions on workers' rights on the other. Yet as the principle of equal moral worth would inevitably be compromised in the name of a more fair global redistribution, I believe that restrictions on

⁷⁰ David Bell and Nicola Piper, "Justice for Migrant Workers? The Case of Foreign Domestic Workers in Hong Kong and Singapore", in Will Kymlicka and Baogang He, *Multiculturalism in Asia* (Oxford: Oxford University Press, 2005), 196-222.

migrant workers' rights would inevitably shatter the very foundations of the cosmopolitan commitment to the primacy of individuals as the central subjects in the global justice debate.

2.3 COSMOPOLITAN IMPLICATIONS FOR TEMPORARY LABOUR MIGRATION

Having examined the implication of the cosmopolitan principles for labour migration in general, I will now specify these findings in relation to temporary labour migration. With regards to Rawls's *difference principle* that provides a perspective on open borders as a way of achieving a more just global economic redistribution, we could say that TWPs might be regarded as a tool to enhance the global redistribution of wealth. One evidence for this is that temporary migrant workers send home remittances that that now often outweigh foreign aid in many developing countries.⁷¹ Temporary migration also brings out the problems related to the fair *equality of opportunity*, as we could question the fairness of the time limit imposed on their stay vis-à-vis other migrants and nationals on the one hand, and compare their position to the world's poor who are for whatever reason unable to get access to foreign labour markets on the other.

With regards to the obligations of liberal societies towards their subjects derived from the notion of the equal moral worth, the issues of vulnerability and autonomy become even more relevant in relation to temporary migrant workers. According to Ottonelli and Torresi, this is due to fact that the notion of the full inclusion of migrants only works for migrants who decided to settle in the host country permanently, not temporary migrants. This is because temporary migrants face a dilemma between equal status and pursuit of happiness, which

⁷¹ World Bank, "Remittance Data," Washington DC (2009).

often leads to the fact that they are willing to give up their rights and voluntarily face exploitative conditions. As Ottonelli and Torresi put it,

Temporary migration projects...create a dislocation of social and political spaces, and consequently of the social basis for self-respect, making it possible and rational for a person to trade her status as an equal member of the receiving polity for a chance to advance her aims in the pursuit of happiness.⁷²

Ottonelli and Torresi further point out two specific ways in which temporary workers face vulnerability. On the one hand, they are exposed to the losses deriving from the failure of their migration projects. When migrant workers move to another country, they are usually motivated by economic reasons and the relatives they leave behind often dependent on the success of their migration project. On the other hand, temporary workers also face a condition of subalternity and marginality and unequal position in the host country. These vulnerabilities are based on the fact that

Temporary migration means bracketing many essential components of one's life while living and working in the host society in order to advance an overall life plan and long-term goals that will be realised at another time and in a different social space.⁷³

Another perspective on vulnerability of temporary workers comes from Straehle, who highlights the fact that migrants, and temporary workers in particular, may negatively affect the conditions of individual autonomy because they create individual vulnerability.⁷⁴ Straehle claims that no migration programme can be justified from a global justice perspective that underlines the very basis of any egalitarian justice concern, which is to enable individuals to lead autonomous lives.⁷⁵

Straehle further differentiates between two sources of this vulnerability. The first of them are the *background conditions of vulnerability*. This is caused by the fact that migrant workers do

⁷² Valeria Ottonelli and Tiziana Torresi, "Inclusivist Egalitarian Liberalism and Temporary Migration: A Dilemma," 209.

⁷³ Ibid.

⁷⁴ Christine Straehle, "Global Justice, Temporary Migration and Vulnerability," *Global Justice: Theory, Practice, Rhetoric*, Vol. 5 (2012), 72.

⁷⁵ Ibid, 73.

not start from a strong position of autonomy in the first place, as the foremost reason why they migrated was due to a lack of opportunities in their home country. Furthermore, these workers usually come from poor countries, which are at the same time those countries whose citizens are particularly constrained when accessing labour markets in the developed world. On top of that, the skills of these workers are usually classified as low, which is the opposite of the type of skills usually sought for in most developed countries.⁷⁶

Secondly, Straehle recognizes *conditions of constraints* imposed by specific programmes as the second source of individual vulnerability of temporary workers. These consist of the inability of temporary workers to protect themselves from being exploited. In addition, workers are often willing to face these conditions because they have a more important goal to fulfil - namely their migration project and the goals that motivated their migration. Consequently, Straehle points out that these constraints on their lives render them unfree to object to the demands some employers may put on them, to the abuses and the lack of payment they sometimes suffer.⁷⁷

Consequently, if we take into account these two sources of vulnerability, it is evident that the possibility for leading autonomous lives in case of temporary workers is rather limited. Their background conditions as well as the limitations imposed by TWPs might cause that even giving them extensive rights might not enable them to live autonomous lives. As a result, this shows the limitations of the cosmopolitan commitment to the equal moral worth of individuals in the non-ideal conditions of the 'real world'.

⁷⁶ Christine Straehle, "Global Justice, Temporary Migration and Vulnerability," 77.

⁷⁷ Ibid, 78.

Overall, having now considered the key tenets of cosmopolitanism and their implications for labour migration and temporary migration in particular, the dilemmas within the cosmopolitan doctrine became evident. All cosmopolitans agree that the right to migrate is a basic human right, which implies open borders and opens up the possibility of a more fair redistribution via migration. However, the problems arise when it comes to the rights of migrants, as we must choose between the egalitarian principles of liberty and redistribution. If we prioritize the principles of equal liberty and equal moral worth of all individuals, this implies full rights for all migrants. On the other hand, if we argue for a more fair global redistribution in accordance with the *difference principle*, this can justify restrictions on migrants' rights. However, if we take into account the fact that the individual is the key concern of cosmopolitans, I believe that the justice of individuals should be the primary concern in the design of labour migration schemes. This means that a 'just' TWP would grant temporary migrants the most extensive set of rights possible, which is even more crucial when we consider the inherent vulnerability of temporary workers.

3. SOCIETY OF STATES PERSPECTIVES ON LABOUR MIGRATION

Having examined the cosmopolitan take on labour migration and temporary migration in particular, I will now move on to the Society of States perspective. Here we can see the priorities shifting from the justice of individuals to the justice of societies and the primacy of state interest. The Society of States doctrine defines international justice as requiring sovereign states to respect other states' independence. In the words of Caney, "a just global order is one in which there are states and the states accept that they have moral duties to other states."⁷⁸ Consequently, Society of States advocates justify restrictions on migration and do not recognize the right to migrate as a basic human right, yet they do admit that states have some moral obligations towards 'outsiders'.

Another way of defining Society of States approach vis-à-vis cosmopolitanism would be to see it as a 'two level game', with different 'rules of the game' being applicable to the domestic and global level. In fact, the 'two level' game becomes particularly problematic in relation to the treatment of migrants. This is because Society of States advocates differentiate between 'outsiders' and 'insiders', which raises competing views on the scope of rights granted to migrants that have already gained access to the territory. In order to address the issues that arise from the Society of States principles of global justice, I will now provide an overview of the basic tenets of the Society of States doctrine, which I will then apply in my analysis of labour migration and temporary worker programmes (TWPs) in particular.

⁷⁸ Simon Caney, *Justice Beyond Borders: A Global Political Theory* (Oxford: Oxford University Press), 10.

3.1 SOCIETY OF STATES

Overall, we could say that the Society of States' understanding of 'human rights' is the most fundamental distinction of this approach with regards to cosmopolitanism. Rawls points out that human rights do not depend on any particular comprehensive moral doctrine or philosophical conception of human nature, such as the cosmopolitan notion that human beings are moral persons and have equal worth or that they have certain particular moral and intellectual powers.⁷⁹ According to Rawls,

Basic human rights are to express a minimum standard of well-ordered political institutions for all peoples who belong...to a just political society of peoples. Any systematic violation of these rights is a serious matter and troubling to the society of peoples as a whole, both liberal and hierarchical.⁸⁰

Similarly, as Miller proceeds to justify basic human rights, he aims to set out a theory of basic human rights by identifying a list of rights that can specify a minimum that people everywhere are entitled to as a matter of justice, and therefore may impose obligations, especially on rich nations.⁸¹ In doing so, Miller relies on humanitarian justification that gives basic human rights an independent ethical basis by relying on the notion of basic human needs. In other words, the humanitarian strategy justifies human rights by fixing universal features of human beings that serve as a ground of these rights.⁸² According to Miller, these basic human needs need to be intrinsic needs, which refers to those items or conditions that are necessary for a person to have if she is to avoid being harmed⁸³ As Miller argues that harm has to be understood in physical or biological terms as well as the ability to lead a

⁷⁹ John Rawls, The Law of Peoples, *Critical Inquiry*, Vol 20, No. 1 (Autumn 1993), 57.

⁸⁰ Ibid.

⁸¹ Ibid, 166.

⁸² Ibid, 178.

⁸³ Ibid, 179.

minimally decent life,⁸⁴ we could say that the basic needs are to be understood by reference to the idea of decent human life.⁸⁵

Another core issue in the Society of States approach is the claim that only membership of a shared cultural community generates demands for egalitarian justice. According to this view, cultural communities create the contexts in which the value of resources is determined.⁸⁶ In addition, differences in national policies that arise from the state sovereignty, a lack of shared world identity and institutions are the issues that pose obstacles in carrying out the principles of moral equality of humans. These assumptions result in the so-called ‘two level game’ that implies that we have stronger obligations towards our co-nationals than we have towards non-nationals. This is based on the claim that while a principle of equality governs our obligations of justice within the state boundaries, our obligations towards non-nationals are governed by a weaker principle of sufficiency, according to which we are required only to bring about a decent minimum, where people’s basic needs are catered for.⁸⁷ This understanding of equality is derived from Miller’s perception of nation-states as cooperative ventures for mutual advantage whose members form communities based on shared identities.⁸⁸

Despite the ‘two level’ game and the divergent principles operating on the domestic and the global level, even Society of States advocates admit that people everywhere, regardless of their nationality, have certain vital needs. In response to this, Miller claims that one responsibility we have to foreigners is to protect their basic human rights. Miller argues that people’s poverty imposes obligations on us under the condition that basic human rights are unprotected. In such a situation, any agent who is able to help protect them may in principle

⁸⁴ David Miller, *National Responsibility and Global Justice*, 180-181.

⁸⁵ Ibid, 184.

⁸⁶ John Pearson, “National responsibility, global justice and exploitation: a preliminary analysis,” *Journal of Global Ethics*, 7:3 (2011), 321. <http://www.tandfonline.com/doi/pdf/10.1080/17449626.2011.635680> Accessed May 31, 2014.

⁸⁷ Nils Holtug, “The cosmopolitan strikes back: a critical discussion of Miller on nationality and global equality,” *Ethics and Global Politics*, Vol 4, No. 3 (2011), 147-163.

⁸⁸ David Miller, *National Responsibility and Global Justice* (New York: Oxford University Press 2007), 278.

bear *remedial responsibility*, which refers to agents having a duty or obligation to resolve a bad situation.⁸⁹ On the other hand, when dealing with the issue of entitlements that states have vis-à-vis people residing on their territory, Rawls believes that societies have claims to (a) the pursuit of their national interest regardless the impact on non-citizens; (b) the treatment of their own subjects as they see fit.⁹⁰

It is also important to point out that while the cosmopolitan claims are based on the transposition of Rawls's principles of justice from the domestic to global level, Rawls himself is against it. This is most evident in his work *The Law of Peoples*, which could be seen as one of the most pronounced advocacies of the Society of States approach. There, Rawls abstains from defenses of civil, political and economic rights that invoke the principal cosmopolitan claim of equal moral worth of all individuals or that they have certain moral and intellectual powers that entitle them to these rights. Instead, he claims that to argue in these ways would be only distinctive of Western political tradition and prejudicial to other cultures, as there are morally respectable forms of political societies other than liberal ones and they should be tolerated.⁹¹ According to him, the main problem with cosmopolitanism is that its ultimate concern is the well-being of individuals and not the justice of societies.⁹²

In order to examine Rawls's conception of global justice, it is first vital to define what he means by 'peoples'. By 'peoples', Rawls means "the actors in the Society of Peoples, just as citizens are the actors in domestic society."⁹³ The reason by Rawls does not call these actors simply 'states' is based on the changing understanding of state sovereignty and he also believe that this term is more suitable for explaining moral character and nature of these

⁸⁹ David Miller, *National Responsibility and Global Justice*, 83-4.

⁹⁰ John Rawls, *The Law of Peoples with 'The Idea of Public Reason Revisited'*, 25-27, 35.

⁹¹ Simon Caney, "International Distributive Justice," 984.

⁹² John Rawls, *The Law of Peoples with 'The Idea of Public Reason Revisited'* (Cambridge MA: Harvard University Press, 1999a), 110.

⁹³ *Ibid*, 23.

regimes. Rawls's peoples, then, share three fundamental features, with first of them being a reasonably just democratic constitutional government.⁹⁴ The second feature of peoples is that it consists of citizens united by what Mill called 'common sympathies'. Rawls recognizes the fact that the vast majority of today's states are not ethnically or culturally homogeneous, and therefore common sympathies based on the common language or culture would be unfeasible. Consequently, he understands 'common sympathies' as derived from reasonable cultural interests and needs of groups with diverse ethnic and national backgrounds.⁹⁵ The third, final aspect of Rawls's *peoples* is their moral character, which is based on their rational conduct that is constrained by their sense of what is reasonable, which allows for establishing fair terms of cooperation with other peoples.⁹⁶

As for the scepticism over the possibility of a more just global redistribution from the Society of States perspective, this can also be understood in terms of the very nature of the world economy that accommodates exploitative transactions. This is because no market economy is perfectly competitive and the question of whether the current holdings are fairly distributed is highly controversial. Being an omnipresent feature of the unjust distribution of resources across the globe, the idea of exploitation refers to an unfair final distribution of resources between exploiter and exploited that arose due to the exploiter's use of power of some special advantage that the exploited possesses. According to Miller, there are two basic features of exploitative transactions. First of them is that these are voluntary and non-coercive, meaning that both parties engage in them in the hope of some economic benefit that improves their overall situation. The second feature of exploitative transactions is that these are based on the

⁹⁴ John Rawls, *The Law of Peoples with 'The Idea of Public Reason Revisited'*, 24.

⁹⁵ Ibid, 24-25.

⁹⁶ Ibid, 25.

asymmetrical relationship between the exploiter and the exploited,⁹⁷ which is based on a deviation from some set benchmark of fairness.⁹⁸

In theory, the benchmark transaction should occur at equilibrium prices, as every commodity, including human labour, will gravitate towards a certain equilibrium price determined by factors of two kinds. First of these are natural facts about the world, such as the amount and type of labour needed, preferences of population, and availability and distribution of skills and interests. Secondly, an equilibrium price is derived from entitlements of individuals participating in the market, which is based on their personal assets.⁹⁹ Exploitative transaction occurs due to asymmetries in information (A causes B to have a false belief about that exchange) and asymmetries in bargaining power, which happens despite the fact that both parties have full knowledge of equilibrium prices as they stem from some objective features of the market.¹⁰⁰

Overall, the main assumptions of the Society of States doctrine are based on the understanding of human rights as not based on any moral doctrine, which marks the main departure with cosmopolitans who believe in the equal moral worth of all individuals. Furthermore, the ‘two-level game’ establishes a different set of rules for the domestic and the international level, with a particular focus on the justice of societies rather than individuals. However, the Society of States advocates admit that states have certain moral obligations towards citizens of other countries. Finally, the exploitative nature of the world economy makes the Society of States school sceptical about global redistribution.

⁹⁷ David Miller, *Market, State and Community* (New York: Oxford University Press, 1990), 176-177.

⁹⁸ David Miller, “Exploitation in the market” in *Modern theories of exploitation*, ed. A. Reeve, (London: SAGE, 1987), 160

⁹⁹ David Miller, *Market, State and Community* (New York: Oxford University Press, 1990), 187.

¹⁰⁰ *Ibid*, 189-190.

3.2 SOCIETY OF STATES AND LABOUR MIGRATION

The key question that arises from the Society of States doctrine with regard to migration and which marks the main point of departure between cosmopolitans and Society of States scholars is whether we should regard the right to migrate as a basic human need. While considering three potential arguments that could justify an unconditional right to immigrate, namely freedom of movement, right to exit from one's current state, and the right of free association, Miller argues that the right to migrate is not a basic human right.

As for the freedom of movement argument, Miller goes back to the understanding of human rights as linked to basic human needs necessary for a person to live a decent life. Miller states that a genuine human right requires that a person has an access to *adequate* range of options to choose between – a reasonable choice of occupation, religion, cultural activities, etc., while *adequacy* is defined in terms of human needs rather than interests.¹⁰¹ As Miller believes that all contemporary states are able to provide such an adequate range internally,¹⁰² he does not think that the right to migrate across borders in order to improve one's economic situation is a basic human right. While the right to exit from one's current state is widely recognized in international law, Miller asserts that the right to exit does not automatically entail the right to unrestricted entry to the state chosen by the emigrant; the right to migrate is thus contingent on finding partner states that are willing to cooperate in the exercise.¹⁰³ Finally, Miller also argues against the right of free association, according to which immigration restrictions violate the right of those who live on either side of the boundary to associate freely with one another, whether for the purposes of working or living together.¹⁰⁴ This is because the exercise of free association between A and B across boundaries is likely to affect the interests

¹⁰¹ David Miller, *Market, State and Community*, 207.

¹⁰² Ibid, 207.

¹⁰³ David Miller, *National Responsibility and Global Justice*, 208-209.

¹⁰⁴ Ibid, 205.

of many others besides A and B, which, according to Miller, suggest an unreasonably broad interpretation of the right to associate.¹⁰⁵

An argument against the right to migrate as a basic human right also comes from Rawls's *Law of Peoples*. According to Benhabib, Rawls ignored the movement of peoples across borders and the related global justice concerns due to his faulty analysis of peoples, by which he betrayed the Kantian heritage of liberal cosmopolitanism.¹⁰⁶ However, what is central to our understanding of Rawls's his state-centric perspective and its implications for migration could be observed in his reasoning about international justice in *The Law of Peoples*, where he states that

An important role of a people's government, however arbitrary a society's boundaries may appear from a historical point of view, is to be the representative and effective agent of people as the take responsibility for their territory and its environmental integrity, as well as for the size of their population.¹⁰⁷

Rawls adds in a footnote to this passage saying that "a people has at least a qualified right to limit immigration. I leave aside here what these qualifications might be."¹⁰⁸ According to him, there are two morally legitimate conditions for limiting immigration. First of these is the 'tragedy of the commons argument', which implies that there must be boundaries of some kind in order to avoid the depletion of resources. However, there is a vast amount of economic evidence proving this perspective wrong, as there is generally a strong correlation between free market and economic growth. Secondly, Rawls justifies restrictions on migration as a way of protecting people's political culture and its constitutional principles,¹⁰⁹ which contrast with his recognition of the fact that the vast majority of today's states are not

¹⁰⁵ David Miller, *National Responsibility and Global Justice*, 212-213.

¹⁰⁶ Seyla Benhabib, "The Law of Peoples, Distributive Justice, and Migrations," *Fordham Law Review*, Volume 72, Issue 5m Article 19 (2004), 1761.

¹⁰⁷ John Rawls, "The Law of Peoples," 38-39.

¹⁰⁸ Ibid, 39.

¹⁰⁹ Seyla Benhabib, "The Law of Peoples, Distributive Justice, and Migrations," 1771.

ethnically or culturally homogeneous, and refers to his ‘common sympathies’ argument in his definition of ‘peoples’.

The ‘two-level game’ inherent in the Society of States approach applies when we consider entitlements that states have vis-à-vis outsiders and insiders. From this we can derive two essential principles - the priority of the national interest regardless the impact on foreigners and the treatment of their own subjects in a way they regard suitable. When we examine these arguments in the light of labour migration, it is evident that the restrictions on migrants’ rights would be perfectly justified from the Society of States perspective, as the overall prerogative of state interest as opposed to the interest of migrants that could allow for an extensive limitation of their rights. This is I believe one of the most fundamental problems with the Society of States approach and along with its commitment to the worth of societies without taking into consideration their impact on persons. As Caney points out, why should we care for a society if it does not further interests of the people within it?¹¹⁰

While the ‘two-level’ game stands for a differential treatment of insiders and outsiders, the situation become problematic once the migrants are on the state territory of a host country. This is because the Society of States approach advocates the overall priority of the state interest as well as obligations towards non-citizens, which raises questions about the feasibility of restrictions imposed on migrants. Consequently, it appears that the one key condition posed by the Society of States approach is that the rights given to migrants must not infringe upon the state interest. One way this can translate into the realm of labour migration policy is through rules allowing admittance of migrant workers only if the jobs cannot be filled by nationals.

¹¹⁰ Simon Caney, *Justice Beyond Borders: A Global Political Theory*, 986.

The idea of state obligations towards non-nationals that is carried out through giving migrants a set of rights is also put forward by Miller, who suggests that states have responsibilities towards non-nationals based on the notion of basic human needs, and introduces the concept of *remedial responsibility*. This type of responsibility can thus justify labour migration, as it is the responsibility we may have, as individuals and as members of collective bodies, to respond to human deprivation, including global poverty.¹¹¹ Similarly, while Rawls is generally in favour of restrictions on immigration, he admits that basic human rights should be a minimum standard of well-ordered societies of peoples and that any systematic violation of these rights is a serious matter.

While labour migration inevitably raises questions about global redistribution of resources, the Society of States scholars remain sceptical about the potential of labour migration to deliver a more just redistribution. To illustrate this, Caney highlights some aspects of Rawls's state-centred approach that would impose serious restrictions on labour migration and diminish its potential for global redistribution. However, while Rawls rejects the notion of a more expansive global redistribution, his principles of justice include several notions that could, paradoxically, justify it. First of these is the preservation of equal standing of peoples. As pointed out by Beitz and Buchanan, given that independence requires material wealth, it is inevitable that political equality and independence require redistribution.¹¹² Secondly, with regards to Rawls's principle of preservation of self-respect, Beitz and Buchanan assert that "international inequalities can corrode self-respect,"¹¹³ and therefore global redistribution would appear to be a reasonable way of addressing this problem. Finally, as Rawls claims that

¹¹¹ David Miller, *National Responsibility and Global Justice*, 134.

¹¹² Charles Beitz, "Rawls's Law of Peoples," *Ethics*, Vol. 110, No.4 (July 2000): 693-4; Allen Buchanan, "Rawls's Law of Peoples: rules for a Vanished Westphalian World," *Ethics*, Vol. 110, No. 4 (July 2000): 708-10, 711-15.

¹¹³ Charles Beitz, "Rawls's Law of Peoples," 693; Allen Buchanan, "Rawls's Law of Peoples: rules for a Vanished Westphalian World," 708-9.

stability of states should be one of the principles for the society of peoples, this could also justify distributive principles to prevent that societies become disaffected with the Society of Peoples because of its low standard of living.¹¹⁴ We could therefore say that Rawls's arguments could incorporate much more cosmopolitan notions than the ones he advocates.

The scepticism over a more just redistribution of resources via labour migration is further stressed by Miller, who views this as a result of the very nature of the world economy that accommodates exploitative transactions. As the current distribution of resources across the globe is unfair, labour migration does not allow for establishing a benchmark transaction at an equilibrium price that would benefit both the wealthy receiving country and the poor sending country. Not only is the relationship between migrant workers and their employers asymmetrical, but also the price of human labour determined by needs of labour markets and by their personal assets, which largely places a significant disadvantage on low-skilled workers. Overall, we could say that the vulnerable position of labour migrants arises from the very nature of the world economy that accommodates exploitative transactions.

To sum up the Society of States approach vis-à-vis labour migration, we could say that the main point of departure with the cosmopolitans is that they do not view the right to migrate as a basic human right. While cosmopolitans justify the right to migrate by arguing for the equal moral worth of all individuals, Society of States thinkers make a distinction between the right to free movement and the right to migrate and conclude that the latter is not a basic human need with regards to the state prerogative to control its borders.

¹¹⁴ Simon Caney, *Justice Beyond Borders: A Global Political Theory*, 985.

In addition, the ‘two-level game’ expressing a differential treatment of insiders and outsiders raises the question of rights granted to nationals and non-nationals. On the one hand, there are those who say that in terms of justice, impact on non-citizens does not matter as a result of the state prerogative (Rawls). According to this view, human rights are perceived as a minimum standard that is not to be based on any moral doctrine, although he does admit that violations of basic rights is a serious matter for all societies. Still, Rawls claims that his principles of justice are not transferable from the domestic to global level and argues that the state has the ultimate right to limit immigration in the name of its national interest, whatever that might be. On the other hand, there are those who argue that treatment of non-nationals does matter as a result of *remedial responsibility* of wealthy states vis-à-vis poor societies (Miller). In the light of this argument, infringement on basic human needs is viewed as the moment when states should take responsibility over remedying injustices in other societies, which would endorse the argument of redistribution through labour migration.

However, the key dilemma arises when we apply the ‘two-level game’ to those non-nationals who are already on the state territory. On the one hand, the Society of State priority lies in the state interest, which could justify restrictions on migrants’ rights; on the other hand, there are also obligations states have towards other states, which include citizens of those states. As a result of these obligations, non-nationals that are on a foreign territory can enjoy a fairly extensive set of rights as long as these do not infringe upon the state interest or establish preference for foreigners as opposed to nationals.

Finally, the possibility of a more fair global redistribution through labour migration is generally viewed as unfeasible by the Society of States. This is due to the exploitative nature of the market that lacks an objective set of values to reach an ‘equilibrium’ between rich and

poor societies. Interestingly, while Rawls does not see a potential for a global redistribution through labour migration, several of his principles of justice could in fact justify it.

3.3. SOCIETY OF STATES AND TEMPORARY LABOUR MIGRATION

Having scrutinized the implications of the Society of States doctrine for labour migration more generally, with a particular focus on the dilemma arising from the ‘two-level game’ concerning the obligations of states towards migrants, I will now make my findings more specific in relation to temporary labour migration. On the one hand, the ‘two level game’ can allow for the trade-off between numbers and rights of temporary migrants; on the one hand, it can also justify giving them a relatively broad set of rights comparable with other ‘insiders’, albeit with some limitations arising from the priority of the state interest.

One way to think of the ‘two-level game’ is to keep in mind the priority of state interest and the treatment of the subjects of the state as they see fit, it is evident that the widespread practice of the trade-off between rights and numbers of migrants that often occurs in temporary worker schemes would be perfectly justified from the Society of States perspective. This is because as the overall prerogative of state interest as opposed to the interest of migrants that could allow for an extensive limitation of their rights. Yet in response to the Society of States’ advocacy of remedial responsibility and protection of basic human needs, we could say that if we regard temporary workers as vulnerable individuals whose lives depend on help of other individuals or states to supply them with resources, then these needs impose obligations of justice on all those who are able to help. However, in the context of TWPs, the principle of protecting only the very basic needs of temporary workers is clearly insufficient in preventing exploitation that sprouting from their immanent vulnerability.

If we imply the ‘two level game’ on those temporary migrants who are already in the host country and participate in the labour force, this shows the tension between the priority of state interest and obligations towards non-nationals. Consequently, we could say that temporary labour migrants should be granted a set of rights comparable with other ‘insiders’, despite the temporary nature of their stay. This argument is strengthened by the fact that temporary migrants participate in the labour force and therefore act in the interest of the host state. Yet the relatively extensive set of rights of temporary migrants has to be combined with rules allowing admittance of migrant workers only if the jobs cannot be filled by nationals.

I will now consider some key rights that should be granted to temporary workers that coincide with the criteria posed by the latter understanding of the ‘two level game’. As for the right of family unification, we could say that even the most restrictive Society of States perspective could justify it. This is because the right of immediate family members to live together is recognized as a fundamental human right in many international documents.¹¹⁵ The right to family life is thus a fundamental human right and no society should force families to live apart for an extended period of time. Similarly, as the Society of States advocates do not have any grounds for denying civil rights (such as security of person and property, freedom of opinion and of religion) to migrant workers, as these are also the rights enjoyed by tourists and visitors.¹¹⁶

In terms of economic and social rights that sprout from participation of migrant workers in the work force, we could say that temporary migrants could enjoy most of the same rights as citizens and permanent residents. More specifically, I agree with Carens who argues that temporary migrants should enjoy the same rights with respect to working conditions as

¹¹⁵ Joseph Carens, “Live-in Domestic,” 423.

¹¹⁶ Ibid.

citizens and permanent residents, that they are entitled to either the same rights as other workers with respect to social programs directly tied to their participation in the labour market, and that their claims with regard to other social programs depend on the nature and purpose of the program.¹¹⁷ The only morally permissible way of excluding temporary workers from some social programmes would be to deny them access to those programmes that have redistribution as their primary goal (such as income support programmes financed by some general taxes).¹¹⁸

Furthermore, the Society of States approach can also allow migrant workers enrolled in TWPs to change employers. This is because the most morally problematic type of TWPs are those which limit migrant workers only to certain sectors of the economy, occupation or employer, which creates substantial vulnerability or temporary workers.¹¹⁹ In the case of abuse, workers are not free to leave or change the employer, who is aware of their powerless position and the often desperate situation of financial hardship which motivated temporary workers to come to the host country in the first place.

However, when labour migration is temporary, a discussion concerning the rights granted to temporary workers once on the state territory must include one essential aspect of their status - the time limit imposed on their stay. One relevant debate refers to the moral importance of the passage of time: the longer the stay, the stronger the claim to full membership in society and to the enjoyment of the same rights as citizens, including, eventually, citizenship itself.¹²⁰ In the light of this argument, we could say that even though a Society of State perspective might allow for an extensive set of rights, the access to citizenship is not only theoretically

¹¹⁷ Joseph Carens, "Live-in Domestic," 430.

¹¹⁸ Ibid, 430.

¹¹⁹ Ibid, 434.

¹²⁰ Ibid, 419.

incompatible with the Society of States doctrine but also practically impossible, due to fact that temporary workers might be in the host country only for a couple for months.

Overall, the ‘two level game’ within the Society of States approach allows for different understanding of the rights of temporary migrants once they have gained access to the territory. This is due to the ambiguity concerning the treatment of ‘insiders’ and ‘outsiders’ and the state obligations towards non-citizens. Yet as we have to consider the overall priority of the state interest, it is important that even providing temporary workers with extensive rights must have some limitations.

CONCLUSION

As for the main findings of the two schools in relation to labour migration, cosmopolitans believe that the right to migrate is a basic human right, and argue for open borders in the name of a more efficient global redistribution. However, these ideals are challenged in relation to a particularly vulnerable situation of temporary migrants. This raises questions about obligations of liberal societies towards them and highlights the key dilemma concerning the scope of rights granted to non-citizens. This is particularly present in the cosmopolitan commitment to global redistribution, which can accommodate restrictions on migrants' rights. On the other hand, the Society of States approach does not recognize the right to migrate as a basic human right and allows for substantial restrictions on immigration. The 'two-level game' further that makes a distinction between 'insiders' and 'outsiders' shows the tension between the state obligations towards non-nationals and the priority of the state interest. It can therefore allow for the trade-off between rights and numbers that often occurs in TWPs, as well as accommodate a fairly extensive set of rights, while still keeping in mind the priority of the state interest. This dilemma is combined with the claims concerning unfeasibility of global redistribution through labour migration.

Since any attempt to analyse principles of global justice is concerned with the ideal theory by its very nature, it is interesting to examine these ideals vis-à-vis non-ideal circumstances of the 'real world', which is why I chose to examine ideals of global justice with regards to labour migration. If we look at the key cosmopolitan and the Society of States ideals in the light of labour migration and TWPs in particular, it is inevitable that the ideal concepts will face obstacles when confronted with different cultural contexts and various political developments. However, I believe that asking what would be the most *just* solution to the ethical dilemmas in theory might have a significant impact on policy-making. It is particularly

relevant to hold some fundamental ethical views when dealing with such a sensitive issue as labour migration that involves movement of humans across borders.

With regards to the cosmopolitan and the Society of States perspectives on labour migration, it appears that both of these doctrines provide some important insights that should be taken into account in designing labour migration schemes. As I mostly side with the cosmopolitan principle of equal moral worth of all individuals, this imposes obligations of the states towards migrant workers that should be reflected in a broad set of rights given to migrant workers. The focus on the individual as the key concern of a global justice theory is even more justified with regards the shifting views of state sovereignty and the diminishing pertinence of the nation state. Yet it is important to keep in mind that states are far becoming irrelevant units in the international arena, especially with regards to labour migration management, which is highlighted by the Society of States approach and their focus on the obligations of the state towards its subjects.

Consequently, the strengthening link between migration and development might render certain restrictions on workers' rights desirable from the view of a more just global redistribution. With regards to TWPs, this would imply denying access to citizenship and an effective enforcement of the temporary nature of their stay, as this is the only way to create 'circular' migration that would benefit both sending and receiving countries. Consequently, the role of migration as the new 'development mantra' will inevitably come with significant moral costs which render this policy approach ethically unfeasible. However, can we expect to find an ideal solution in the non-ideal world on the level of policy? While this might not be possible, starting with some basic conceptual assumptions behind global justice, such as the equal moral worth of individuals, might be a good place to start. Consequently, an 'ideal'

temporary labour scheme would grant migrant workers the most extensive set of rights, as I believe that the way towards achieving justice of societies must first start with delivering justice to individuals.

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