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Temporary migration projects, special rights and social dumping

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The harm of social dumping

- “Social dumping” = deregulation in the field of social and welfare protections for workers, for the sake of a short-term competitive advantage of market actors.
- Workers are among the market actors that may seek short-term advantages by contributing to the dismantlement of social and welfare provisions (Bernaciak 2015).
- Migrant workers can cause “social dumping” to the extent that they opt out of or undermine the existing frame of protections in the receiving society.

- Social dumping is normatively problematic because its effects are long lasting and structural.

It amounts to the annihilation of the very institutions that provide fundamental guarantees to workers. This is a serious harm, which affects not only individual workers, but the social and economic system as a whole.

- In the context of the debate on migration in the EU, social dumping has been often associated to the 2004 and 2007 enlargements.

- There is a reason for this special focus: in the case of EU citizens, the institutional constraints that are at work for other migrant workers are not in place, but they still tend to fill the same positions in the job market.

Temporary migration projects

- We want to focus here on a specific migration pattern, which consists in the temporary mobility from lower-income to higher-income EU countries, in order to collect financial resources for pursuing important personal or family projects back home.
- Not just “liquid” migration. In many cases these migrants are very much rooted and connected with social institutions. Only, the relevant institutions are those of the country of origin.
- Their behaviour in the job market of the receiving country is explained by their lack of interest in investing emotional, financial and social resources there given their project of return.
- Non-EU migrants also engage in this pattern. However, in the case of EU citizens it appears obvious that this is not a second best, but a first-choice life strategy. This is why we call them “projects” (Ottonelli and Torresi 2012).

Dilemma

Temporary migration projects cause social dumping

BUT

They are part of meaningful and rational life plans. If work and welfare protections have to take into account should have in view the life of workers, we have a principle reason for accommodating them.

Labour rights as part of life plans

- Distinctive feature of liberalism: the idea that people should not be merely treated as passive bearers of needs and interests, but as pursuing a "life plan"
- Liberal civil and social rights to ensure that people have the adequate means and freedoms to achieve their aims through their actions and decisions.
- This is true also of labour rights, which ought to be structured to make this possible for individuals.
- Labour rights should and are understood not in isolation, but within the context of workers' life plans and are meant to make it possible for people to pursue their goals.

- This aim is shown by a number of welfare provisions that make it possible for workers to reconcile their various pursuits with their working life
- E.g. welfare provisions in support of the care work that workers may also need to carry out (publicly subsidized child care places, parental leave, provisions for the care of elderly, sick or disabled dependant adult relatives, etc.

“Sedentariness bias” of labour rights

- Specific needs of temporary migrants caused by
 - 1) migrants’ continued engagement with their home communities,
 - 2) recurrent mobility and long-term return projects,
 - 3) from the vulnerabilities and care needs of those left-behind (i.e. children, spouses, older parents).

- Lack of social protections in both sending and receiving countries to tackle the specific needs of the migrants, because these provisions are shaped by the needs of sedentary population.
- What follows is a “mismatch” between the rights and protections instituted by the receiving and sending states and the effective needs of the migrants, needs shaped by their migration projects inscribed within an overall life plan

Special rights for temporary migrants

Extending to these temporary migrants the protections that are in place for local workers would not accommodate their life plans.

What is needed, is instead a scheme of special or differential rights.

Three main categories of social protections for workers

- a. Conditions and terms of employment (minimum wages, safety regulations, workload and number of work hours per week, working environment). Same standards for health and safety, but differential standards for working hours, career development and pay.
- b. Conciliation of work with other dimensions of the worker's life (maternity leave, day care services, paid holidays, retirement pensions and unemployment compensation). Differential standards and special rights to address the "care deficit" for those left home, exportability of pensions and exemptions from mandatory contributions.
- c. Associational rights and other means to ensure a strong bargaining position in the job market. New modes of organisation and importance of the individual bargaining power provided by mobility.

Focusing on life plans provides a *principled* reason for departing from strict equality in labour standards and welfare provisions.

As opposed to

“Rights vs. numbers” (Ruhs and Martin 2008) and arguments for the short-term maximisation of utility (Bell 2006).

Carens’ balance between the above reasons and ad hoc limits dictated by the internal normative standards of the receiving society.

The social dumping objection against special rights

- As we have said, social dumping can refer to the effects of migrant workers opting out of the existing frame of rights and benefits that are granted to local workers, thus undermining the system of social protections in place in the receiving society
- If this is correct, it represents a powerful objection against our argument for special rights
- For the institution of special rights would seem to be nothing more than the institutionalization of the disruptive effect of migrants' behaviour on labour protections
- The solution, it could be argued, is in fact the opposite, that is, the full inclusion and protection of migrants within the host states' existing worker population

- Further, It could be argued that the same conditions of structural injustice that engender social dumping effects also explain the migrants' own behaviour in the labour market
- The migrants' behaviour in the labour market is as much a symptom of structural injustice as the social dumping effects themselves, and both ought to be remedied, not accommodated and institutionalised.
- Talking about life plans in this situation is a mystification that falsifies the reality of the migrants' experience.

- It would be wrong to categorize all life plans that happen against conditions of background injustice as involuntary, this is setting the bar of voluntariness too high and disqualifies all life plans ever envisioned and pursued from a claim to accommodation.
- The fact that these migration patterns are inscribed in rational and sensible life plans provides us with a principled reason for the accommodation of the special needs and circumstances of these workers

- Thus we have a principled reason for instituting a set of special rights, but this reason also provides a prudential argument that addresses the social dumping objection
- In fact, the lack of special rights and the poor fit of current regulations would most likely mean that the migrants' work would end up being carried out outside of any regulatory framework, but this lack of regulation is likely to make the effects of social dumping much graver.
- Failing to provide rights and protections that are a good fit for the migrants' life plans is therefore both unfair and unwise.