

Temporary migration projects, special rights and social dumping

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Abstract

It is often argued that in order to prevent migration from having social dumping effects, a strict enforcement of equal labour and welfare rights for both migrants and local workers is required. However, we claim that the specific circumstances of those migrants who engage in temporary migration may require a regime of special rights and labour standards that protect and further their distinctive interests and needs. We defend this claim by appealing to the principle that labour and welfare rights should accommodate the life plans of workers and we show that not only these special arrangements are fairer to the migrants involved, but they could also help to prevent social dumping.

The free circulation of workers is often seen as a potential source of "social dumping" — which we define as the effects of deregulation of social and welfare protections granted to workers for the sake of a short-term competitive advantage of market actors— especially when it concerns geographical areas that offer different levels of income and welfare provisions. In this paper, we do not address the general issue of the relation between social dumping and labour migration, but we focus instead on a normative conundrum that arises in relation to a specific kind of migration pattern, which is on the rise worldwide. In this migratory pattern, workers move for a limited span of time, with the purpose of collecting resources to employ for the advancement of personal or family projects back home, by

exploiting the opportunity of accumulation that is offered by the wage differential between the receiving country and the country of origin.¹

Arguably, these temporary migration patterns are an important determinant of social dumping. This is because the transient nature of the engagement with the receiving society induces the migrants involved to opt out of the existing system of welfare provisions and work protections mandated in the local labour market, thus undermining such system. On the other hand, the fact that these migration patterns are inscribed in rational and sensible life plans justifies the accommodation of the special needs and circumstances of these workers. It is arguable, in fact, that work and welfare protections should take into consideration not only the requirements of the specific trades involved, but also - indeed, in the first place - the needs and interests of workers, given their life plans and family circumstances. Thus, we argue that these migration patterns offer a principled reason for departing from a strict enforcement of equal working standards and regulations that is often seen as the only possible defence against social dumping. Moreover, we want to suggest that recognising the need for special and differential rights for temporary migrants could help to curb the disruptive effects that their migratory patterns can have on the welfare system of the

¹ It is important to note that we are not necessarily referring here to migrants who hold temporary visas or migrate under temporary migration programs, although they may sometimes do so. What defines the migratory patterns we describe is the intention of the migrants themselves to remain temporarily. Moreover, arguing that many migrants aim at temporary rather than permanent migration does not imply that temporary migration programs are desirable as congenial to this type of migratory plans. In fact, quite apart from their often exploitative and demeaning character (Bridget Anderson, 2010. Migration, immigration controls and the fashioning of precarious workers. *Work, employment & society*, 24 (2), 300-317; Patti Lenard and Christine Strahele, 2012. Temporary labour migration, global redistribution, and democratic justice. *Politics, philosophy and economics*, 11 (2), 206-230.), these programs are clearly usually designed to serve the labour market needs of the receiving countries and to prevent permanent settlement, rather than the plans of migrants. This means that for example, many migrants may be forced to return at a time that is highly unsuited to their overall plans (Christian Dustmann, 2003. Return migration, wage differentials, and the optimal migration duration. *European economic review*, 47 (2), 353-367.).

receiving countries. Insisting on equal work standards might be not only unfair to migrants, but also ineffective as a tool for preventing social dumping.

Our argument proceeds as follows. In the first section of the paper we recall the normative salience of the issue of social dumping in relation to migration and then we focus, more specifically, on the effects of social dumping determined by patterns of temporary and circular migration. In the second section, we argue that labour protections should address the context of a person's overall life plan and emphasize that work can have different roles and meanings in different life plans, as the case of the migrants who engage in temporary migration clearly illustrates. In the third section, we argue that addressing the needs and goals of temporary migrants would require the establishment of special or differential labour and welfare rights, which, in some cases, require departing from strict equality in welfare provisions. In the fourth section, we respond to the worry that establishing such a special regime might reinforce and institutionalize the effects of social dumping of this kind of migration. In fact, we argue that quite the opposite is the case.

Social dumping and temporary migration

In the public debate on immigration, the term "social dumping" often refers to the consequences of heightened competition in the job market due to the sheer increase in the supply of workforce. Migrants, according to this understanding of social dumping, come to "steal" the jobs of local workers, and by doing so they obviously worsen their condition. This is a legitimate worry, but it is not especially relevant from a normative point of view, because it is just a common and acceptable consequence of the operation of a market economy, which can be addressed by compensatory measures.

However, the term "social dumping" has also a technical meaning which concerns the effects of deregulation of social and welfare protections granted to workers for the sake of a

short-term competitive advantage of market actors.² A firm, for example, can cause social dumping by trying to bypass social protections in order to lower the cost of labour, thus gaining an advantage on its competitors. Migration can cause "social dumping" in this second sense, then, to the extent that migrant workers fall out of the existing frame of rights and benefits, thus undermining the whole system of social protections in the receiving society.³

Social dumping, on this understanding, is much more problematic from a normative point of view than the mere relative and temporary scarcity created by the access of new workers to local labour markets. Its effects, in fact, are long lasting and structural, since they amount 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.⁴

Much of the literature on social dumping as the consequence of free movement and labour migration within the EU, for example, is concerned exactly with these systemic effects, and with the disruption of the so-called "European social model" that may ensue.⁵ The European model is conceived as a principled balance between the operation of market competition on the one hand, and social protections and constraints on the other, where the latter are needed for such competition not to degenerate into a "race to the bottom".⁶ Adequate regulations on working conditions, a set of rights for reconciling work with familial

² Daniel Vaughan-Whitehead, *EU Enlargement versus Social Europe? The Uncertain Future of the European Social Model* (Cheltenham: Edward Elgar, 2003).

³ Magdalena Bernaciak, *Introduction*, in M. Bernaciak, ed., *Market Expansion and Social Dumping in Europe* (Abingdon: Routledge, 2015), pp. 1-22.

⁴ Wolfgang Streeck, "Beneficial Constraints. On the Economic Limits of Rational Voluntarism," in R. Boyer and J.R. Hollingsworth, eds, *Contemporary Capitalism. The Embeddedness of Institutions* (Cambridge: Cambridge University Press, 1997), pp. 197–221

⁵ Claus Offe, "The European Model of "Social" Capitalism: Can It Survive European Integration?" *The Journal of Political Philosophy* 11, no. 4 (2003), pp. 437–469; Carl-Ulrik Schierup, Peo Hansen and Stephen Castles, *Migration, Citizenship, and the European Welfare State* (Oxford: Oxford University Press, 2006).

⁶ Nathan Lillie and Ian Greer "Industrial Relations, Migration, and Neoliberal Politics: The Case of the European Construction Sector," *Politics and Society* 35, no. 4 (2007), pp. 551–581.

needs and life outside work, and institutions that promote collective bargaining in labour relations are a guarantee against the depletion of the workforce, which in the end promotes a more efficient and sustainable economic system. Social dumping, according to this model, is a game at which everybody, in the end, loses. Workers suffer the worsening of their working conditions and lose essential protections and guarantees, and the system as a whole becomes less efficient.

Although the perverse effects of social dumping should be obvious to everybody, the incentives to bypass social protections are always at work, on the side of employees as well as employers, since in the short run doing so lowers the costs of work, producing a (unfair) competitive advantage. However, some argue that such tendency is strongly increased in a context of free mobility between countries in which very different levels of social protection and income exist. According to this common sense approach, migrants from those countries are doubly exposed to conditions that make them willing to accept substandard work conditions and protections. First, they have little to lose, coming from social environments where decent standards are not guaranteed in any case; secondly, they often do not enjoy the same rights and protections as citizens, and therefore they hold a vulnerable position in the job market. This last condition, of course, is further worsened in the case of undocumented and irregular migrants. The presence of newcomers in the job market, then, is often seen as facilitating the creation of a whole range of atypical, informal and short-term jobs,⁷ or even utterly unregulated and illegal contractual arrangements. This, in turn, produces a general worsening of the working conditions and welfare protections for local workers, that is, social dumping.

⁷ Bridget Anderson and Martin Ruhs, "Migrant Workers: Who Needs Them? A Framework for the Analysis of Shortages, Immigration, and Public Policy", in Martin Ruhs and Bridget Anderson, eds, *Who Needs Migrant Workers?* (Oxford: Oxford University Press, 2012), pp. 15-52.

According to this account, the only way to prevent such effects while still allowing immigration is to insist on a strict enforcement of equal labour standards for local workers and migrants.⁸ This is the approach advocated by trade unions and political parties that accept liberal migration policies but are concerned with the welfare protections and work conditions of local workers. Insisting on such strict equality, according to this view, not only serves to counteract the pressures towards the deregulation of the job market coming from employers and other market actors, but also creates a strong incentive for migrants to not surrender to suboptimal work conditions.

A full analysis of this approach to the relation between migration and social dumping exceeds the purposes of this paper. Our aim, instead, is to bring attention to one specific pattern of migration that may challenge the assumption that strict enforcement of labour and welfare standards for local and migrant workers is always the appropriate response both in terms of efficacy and fairness.

In this migration pattern, which is on the rise worldwide,⁹ people move from lower-income countries to higher-income countries with the purpose of residing and working there only for a limited period of time, in order to collect the material resources to further goals, family needs and projects that are based in their country of origin. Typical examples are the many forms of circular or "shuttle" migration of women from Eastern European countries and South America who work in the domestic care sector in Italy, Spain and Greece;¹⁰ the

⁸ Jon Erik Dølvik, and Jelle Visser, "Free Movement, Equal Treatment and Workers' Rights: Can the European Union Solve Its Trilemma of Fundamental Principles?" *Industrial Relations Journal* 40, no. 6 (2009), pp. 491–509.

⁹ Graeme Hugo, "Best Practice in Temporary Labour Migration for Development: A Perspective from Asia and the Pacific," *International Migration* 47, no. 5 (2009), pp. 23-74. Valerie Preston and Brian Ray, "Migration: International," in Douglas Richardson, Noel Castree, Michael F. Goodchild, Audrey Kobayashi, Weidong Liu, and Richard A. Marston, eds, *International Encyclopedia of Geography* (New York: John Wiley & Sons, 2017), pp. 4389-401.

¹⁰ Helma Lutz (ed.), *Migration and Domestic Work: A European Perspective on a Global Theme* (London: Routledge, 2016).

seasonal workers employed in agriculture in many Western countries;¹¹ and also workers posted through temporary work agencies to Northern European countries.¹²

In recent literature, these are described as forms of "liquid" migration, by extension of Bauman's account of the unboundedness experienced by individuals in contemporary societies.¹³ Liquid migration denotes migrants who feel unattached to any specific place and social context, have short-term and open plans and keep on the move indefinitely. However, this image of liquidity seems to fit only a portion of the migrants who engage in temporary forms of migration. Many of them, instead, have long-term plans, which involve the pursuit of important projects at home (building or buying a house, paying for the education of their children, saving money for a comfortable life after retirement, investing in a private business) through a limited period of work abroad. Their lives are very much structured and "rooted"; only, the relevant social context, structure, ties and roots, for these migrants, are in the country of origin.

It is also important to remark that in many cases these temporary forms of migration are not chosen simply because of the lack of alternatives, or because the path to permanent migration is too hard to pursue, as is shown very evidently when these forms of migration concern EU citizens who could choose a more permanent settlement in any EU country. Rather, they constitute first-choice strategies that very often are part of a broader rational life

¹¹ Jenna L. Hennebry and Kerry Preibisch, "A Model for Managed Migration? Re-Examining Best Practices in Canada's Seasonal Agricultural Worker Program," *International Migration* 50(s1) (2012), pp. e19 - e40.

¹² Linda McDowell, Adina Batnitzky and Sarah Dyer, "Internationalization and the Spaces of Temporary Labour: The Global Assembly of a Local Workforce," *British Journal of Industrial Relations* 46, no. 4 (2008), pp. 750–770.

¹³ Zygmund Bauman, *Liquid modernity* (Oxford: Polity Press, 1999); Godfried Engbersen and Erik Snel, "Liquid migration. Dynamic and fluid patterns of post-accession migration flows," in Birgit Glorius, Izabela Grabowska-Lusinska and Aimee Kuvik, eds, *Mobility in Transition. Migration Patterns after EU Enlargement* (Amsterdam: Amsterdam University Press, 2013), pp. 21-40.

plan. In order to stress the voluntary and planned nature of these migration patterns, we have called them "temporary migration projects".¹⁴

Still, what is important for our purposes is that as voluntary and embedded in long-term life plans as these forms of temporary migration may be, their effects on the incentives to opt out of the system of social and work protections in the receiving country are still very strong and detectable.

These migrants, in fact, have a powerful incentive not to invest any social, economic or emotional resources in the country of work and temporary residence, since they aim at employing such resources, as much as possible, towards the pursuit of the life projects and social bonds they cherish at home. This life strategy, although rational, does not give these migrants any incentive to significantly improve their work conditions and seek career advancements or major gratifications from their work experience while abroad. It also deprives them of the social and motivational resources that would be essential to the forms of mobilisation and activism that would place them in a stronger bargaining position in the job market. Moreover, even if they did manage to gain the highest protections and benefits that are granted in the country of residence, these would often prove useless or unfit to the specific needs and vulnerabilities they possess as transnational migrant workers. This explains why these migrants tend to fall out of the existing schemes of social protections and contribute to the emergence of a whole new range of substandard - or sometimes utterly irregular - jobs and contractual arrangements that significantly depart from the treatment reserved to typical forms of work in the receiving countries.

These forms of temporary migration pose a serious dilemma in relation to social dumping. On one hand, they provide strong incentives and conditions for falling out of the existing frame of social and work protections in the receiving countries. To this extent, they

¹⁴ *** Reference omitted.

may be seen as a major factor of social dumping. On the other hand, these projects are part of rational and meaningful life plans. Thus, to the extent that we believe that work conditions and social protections should have in view the lives of workers, rather than just the functional requirements of the capitalist market, social utility or economic efficiency, we have a principled reason for accommodating them. In the fourth section of this paper we consider how this dilemma should affect our normative consideration of the problem of social dumping. First, though, we need to pause and consider more closely the principle that work conditions and social protections should accommodate people's life plans and the implication of such principle for the case of migrants engaged in temporary migration projects.

Labour Rights and Life Plans

There is, of course, disagreement over the nature, scope and justification of labour rights, but we want to concentrate here on the idea that labour rights ought to be formulated to facilitate and fit with a person's overall life plan. One of the distinctive features of liberalism, in all its manifold declinations and varieties, is the idea that people should not be merely treated as passive bearers of needs and interests, but as bearers of a "life plan". People have a life to lead, a conception of the good to pursue, and a perspective on what would make them happy and their life worthy of being lived. Liberal civil and social rights are typically built around this way of understanding that people have a conception of the good; they do not ensure that people's goals are achieved, but ensure that people have the adequate means and freedom to achieve them through their own actions and decisions. This is true also of labour rights, which ought to be structured to make this possible for individuals.¹⁵

¹⁵ This essential role of labour rights in people's lives helps explain why they are listed among the fundamental human rights. Virginia Mantouvalou, "Are Labour Rights Human Rights?" *European Labour Law Journal* 3, no. 2 (2012), pp. 151-172.

Thus, one important thing that labour rights do is define and delimit the space that work takes up in the life of workers. This aim is recognised in a number of welfare provisions that make it possible for workers to reconcile their various pursuits with their working life, for example, 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.).¹⁶ This structure of labour and welfare rights shows how labour rights should be and are understood not in isolation, but within the context of workers' life plans and are meant, together with other liberal rights and protections, to make it possible for people to pursue their goals. Labour rights, then, ought to enable workers to pursue work activities within the context of their overall life plans and are organised to make this conciliation of different goals possible.

This is not to say that labour rights do not, and ought not, to protect interests specific to labour, or that the function of work in a person's life is always to be understood as instrumental to other pursuits. In fact, many theorists have discussed a right to "meaningful work". Meaningful work has been variously understood, but it is taken to be the kind of work that allows for the exercise of judgment, initiative, and intellect on the part of workers and that gives them the opportunity for self-realization¹⁷ as well as recognising to the importance of control over one's work environment and activities.¹⁸ This kind of right protects the

¹⁶ Jeanne Fagnani and Marie-Thérèse Letablier, "Work and Family Life Balance: The Impact of the 35-Hour Laws in France," *Work, Employment and Society* 18, no. 3 (2004), pp. 551-572.

¹⁷ See for example, Richard Arneson, "Meaningful Work and Market Socialism," *Ethics* 97, no. 3 (1987), pp. 517-45; Adina Schwartz, "Meaningful Work," *Ethics* 92, no. 4 (1982), pp. 634-46; Anca Gheaus and Lisa Herzog, "The Goods of Work (Other than Money!)," *The Journal of Social Philosophy* 47, no. 1 (2016), pp. 70-89; Jeffrey Moriarty, "Rawls, Self-Respect, and the Opportunity for Meaningful Work," *Social Theory and Practice* 35, no. 3 (2009), pp. 441-459.

¹⁸ See for example, Hsieh, Nien-hê, "Rawlsian Justice and Workplace Republicanism," *Social Theory and Practice* 31, no. 1 (2005), pp. 115-142.

interest of workers in enjoying the goods that are specific to work and make it worth pursuing in its own right as a source of meaning and self-realisation.

We support the general principle which inscribes labour protections within the context of a person's overall life plan, and we do not deny the importance of a right to meaningful work in this context. We do not accept, however, that this ought to mean that i) meaningful work has to be part of all life plans, nor ii) that all work, at any point in a person's life has to be meaningful work. To hold that every life plan ought necessarily to include meaningful work would require an essentialist view of the inherent value of work for all, which is difficult to reconcile with liberal principles of autonomy and neutrality and indeed the ideal of life plans themselves which centre around the pursuit of what the person herself values in the manner that the person sees fit. In fact, such is the diversity in what people might find to be meaningful in their lives that some disagree that it is actually possible to provide adequate general criteria that would enable us to define "meaningful" work at all. "Meaningfulness" is, according to this objection, too subject-dependent.¹⁹ Be that as it may, understanding labour rights in the contexts of protections that make it possible to pursue an overall life plan reveals how they will sometimes pertain to work that we would struggle to define as meaningful, whatever specific connotation we may give to this, or that the worker themselves do not find meaningful, but that is however functional to the pursuit of other goals in the worker's life. In fact, the kind of migratory projects that we have described above are an example of precisely such a strategy. For migrants engaged in temporary migration projects, the work they carry out in the host country is valuable because functional to the pursuit of their aims which are, as we have argued, centred in their home country. To them, therefore, labour rights are important mainly to the extent that they make such pursuit possible.

¹⁹ For a discussion of this objection see Adrian Walsh, "Meaningful Work as a Distributive Good," *Southern Journal of Philosophy* 32, no. 2 (1994), pp. 233-50.

But this is precisely what does *not* currently happen for temporary migrants. In fact, the majority of current labour and welfare legislation suffer from what we may call a “sedentariness bias”. In an interesting analysis, Boccagni identifies specific needs which he calls “*transnational migration-specific needs and risks*”, which are caused by the migrants’ continued engagement with their home communities, by their transnational life-styles, recurrent mobility and long-term return projects, but also by the vulnerabilities and care needs of those left-behind (i.e. children, spouses, older parents). These needs and risks are aggravated by the lack of social protections afforded by both sending and receiving countries to the specific needs of the migrants, because these provisions are shaped by the needs of the sedentary population. What follows is a mismatch between the rights and protections instituted by the receiving and sending states and the effective needs and circumstances of the migrants.²⁰ What we see here is a tension within the regime of labour rights. These are meant to provide strong and equal protections to all workers but also to allow conciliation of the protection of goods and needs specific to work with the overall life plan of the worker. The assumption here is that the different aims of labour rights would be compatible if not mutually reinforcing –i.e. that strong and equal protections in the labour market would also facilitate pursuing one’s life plan- but the case of temporary migration projects shows how these aims can come apart.

While there have been some attempts at addressing this situation, for example, with legislation aimed at ensuring the portability of certain entitlements, e.g. pensions, this mismatch is particularly evident in welfare legislation that has to do with care responsibilities and that assumes the presence of the persons cared for within the same spatial context as the carer. For example, provisions of affordable or free child care often have a residency

²⁰ Paolo Boccagni, "Addressing Transnational Needs through Migration? An Inquiry into the Reach and Consequences of Migrants’ Social Protection across Borders," *Global Social Policy* (2016): DOI: 10.1177/1468018116678523.

requirement and laws such as the Legge 104/1992 in Italy which mandates various benefits, including time off, for the relatives of people with severe disabilities have similar restrictions. This mismatch, caused by a failure to take into consideration migrants' overall life plans, invalidates many of the protections that are instead afforded to sedentary workers.

Special rights for temporary migrants

Considering work and social protections through the lens of the life plans of migrants who engage in temporary migration projects, we realise that the enforcement of equality in work-related rights would be out of focus. For these migrants existing social regulations provide protections that are not needed, while leaving important needs and vulnerabilities unaddressed.

Conversely, social regulations appropriate for these migrants would be a scheme of special or differential rights. The specific content of such a scheme might depend on the context and needs of different groups of workers and different labour sectors. However, notwithstanding these specificities, it is possible to offer here some examples of how these specific provisions may depart from those needed by sedentary workers.

For our purposes, we can distinguish three main categories of social protections for workers. The first category comprises work conditions and terms of employment, such as those concerning minimum wages, safety regulations, workload and number of work hours, and the environment in which work takes place. Here, some general requirements that are essential in the regulation of the employment of sedentary workers should definitely apply also to those engaged in temporary migration projects, while others might prove useless. For no matter how temporary their condition may be, it is rational for temporary migrants to seek the same protections provided to other workers under the national legislation of the receiving country - and the highest protections possible - as far as safety and health regulations are

concerned. Dangerous and unhealthy work conditions risk undermining any possible life plan one might have, since health and physical integrity are essential resources for anybody. This also extends to protections against demeaning, humiliating or exceedingly stressful work conditions, because they are potential sources of traumas and permanent adverse psychological consequences, which are of course extremely detrimental to the pursuit of any life project.²¹

Other protections, though, do not seem to fit the life plan of temporary migrants. This is the case, for example, of the requirement that workers should be provided a suitable path for career advancement, skill development and lifelong learning, which is often stated as a fundamental principle of fair and non-discriminatory labour conditions.²² Such a requirement does not serve the purpose of workers who are planning to stay in a job abroad only for a limited span of time and might not intend to be employed in the same sector once back home.²³ The same can be said for the provisions that ensure an adequate balance of work and leisure. For migrants engaging in temporary migration projects a significant amount of leisure time is not the highest priority. Indeed, since the centre of their interests, of their personal affections and of their social life is in their home country, it is rational for them to maximize the time employed earning a wage while they are abroad. Strict limits on their work time - like the 35-hour week - might be detrimental to such maximisation strategy. This need is reflected, for example, in the Italian national contract for domestic workers, which for live-in

²¹ Christine Straehle, "Conditions of Care: Migration, Vulnerability, and Individual Autonomy," *International Journal of Feminist Approaches to Bioethics* 6, no. 2 (2013), pp. 122-39.

²² See ILO's Recommendation concerning *Human Resources Development: Education, Training and Lifelong Learning* (n. 195 of 2004), and *European Social Charter*, Part II Article 1(4).

²³ Rutvica Andrijasevic and Devi Sacchetto, "From labour migration to labour mobility? The return of the multinational worker in Europe," *Transfer* 22, no. 2 (2016), pp. 219–231.

caregivers sets a maximum of 54 hours of work per week and displays a fair amount of flexibility as far as the organisation and schedule of such time is concerned.²⁴

What about minimum wages and equal pay? It should be kept in mind that the main way in which temporary migrants may fall out of the standard treatment received by local workers is by the development of atypical forms of work contracts and whole new sectors of low-skilled jobs.²⁵ Therefore, the real issue is whether such developments should be allowed or whether certain forms of contract and jobs should be banned altogether. A paradigmatic case is represented by the low-skilled jobs in some agricultural sectors that have come to heavily depend on the massive hiring of seasonal workers.²⁶ Another sector that has been at the centre of many debates on the role of migrants in high income societies is the field of domestic care, which requires, at least nominally, very little qualifications that do not compare to those required by professional nurses;²⁷ a large number of these jobs are filled by migrants. Again, if we look at the issue from the point of view of the life plans of temporary migrants, we may realize that although of course they may have an interest in receiving the highest possible pay per hour, the lower level of their wages as compared to local workers is associated to the relative poverty of the skills required by these jobs, and is not a problem *per se*. In fact, low-skill jobs mean little investment in personal resources, high turnover rates and significant work mobility, all features that are indeed congenial to the project of working abroad for a limited span of time and then invest the resources so collected at home, where the cost of life is appreciably lower.

²⁴ Contratto Nazionale Collettivo Colf e Badanti. 15 January 2016.

²⁵ Schierup, Hansen and Castles, *Migration, Citizenship, and the European Welfare State*.

²⁶ Alessandra Corrado, Carlos De Castro and Domenico Perrotta, *Migration and Agriculture. Mobility and Change in the Mediterranean Area* (London: Routledge, 2016).

²⁷ Bridget Anderson, "A Very Private Business: Exploring the Demand for Migrant Domestic Workers," *European Journal of Women's Studies* 14, no. 3 (2007), pp. 247–64; Lutz, *Migration and Domestic Work*.

A second group of work related protections are those meant to reconcile work with other dimensions of workers' life. These are, for example, the protections afforded by maternity leave, day care services, paid holidays, pensions and unemployment compensation. As already mentioned, here is where the lack of adequate provisions to cover the special needs of those engaged in temporary migration projects are more evident. A striking case is the lack of assistance and care for the children and other dependants of migrants who need to spend long periods of absence from home.²⁸ A case can be made for the establishment of specific welfare measures to be funded through bi-lateral agreements between sending and receiving countries.²⁹

Another field in which temporary migrants fall into a grey area of welfare protections concerns retirement pensions. This is most clearly evident with migrants moving from countries with which no portability agreements exist with the destination country. In these cases, those migrants who will never collect a retirement pension in the country where they have been working are made to pay for benefits that obviously do not fit their life plans and needs. Here a regime of exportability of benefits³⁰ and partial exemption from contributions seems to be the only way to take these plans into consideration, although this significantly departs from the principle of mandatory contributions that has been a pillar of the modern welfare state.³¹ However, also in the case of temporary migrants who formally benefit from full portability of retirement pensions, the local welfare regimes may impose residency requirements that cannot be met by migrants who engage in circular and transient forms of migration, leaving these migrants as well in the unfair position of contributing to a system

²⁸ Paolo Boccagni, "Caring about Migrant Care Workers: From Private Obligations to Transnational Social Welfare?" *Critical Social Policy* 34, no. 2 (2014), pp. 221–240.

²⁹ Anca Gheaus "Care Drain: Who Should Provide for the Children Left Behind?" *Critical Review of International Social and Political Philosophy* 16, no. 1 (2013), pp. 1-23.

³⁰ Robert Holzmann and Johannes Koettl, *Portability of Pension, Health, and Other Social Benefits: Facts, Concepts, Issues*, IZA, Discussion Paper No. 5715, May 2011.

³¹ Maurizio Ferrera, *The Boundaries of Welfare* (Oxford: Oxford University Press, 2005), p. 144.

which is alien to their interests and needs.³² Moreover, in the case of these migrants setting up special funds to be collected upon return home - by diverting part of the welfare contributions to which they might otherwise be subject - may be an important way to ensure an effective "exit option" from the vulnerable position they occupy in the host society by providing an incentive and additional means to resettle in their home country.

Finally, a third group of work related protections concern associational rights and other institutional means through which workers may defend and enhance their bargaining power on the labour market, such as the right to organise or join a trade union. Here the principle that work conditions should fit the life plans of migrants suggests that temporary migrants should enjoy these rights to the same extent as sedentary workers. There is no better way, indeed, to make sure that the work conditions fit their needs and purposes than leaving them the power to directly bargain for them. However, even though in many countries trade unions have come to be more inclusive towards migrants, temporary migrants are difficult to organise at the national level. In order to enhance such collective bargaining power the role of transnational workers' organisations, bi-lateral agreements between unions based in different countries, and a more service-oriented model of unionism might prove necessary.³³ All of these modes of labour organisation depart from the conventional trade unionism that has developed at the national level in the receiving societies. Moreover, it is important to stress that the measures devised to provide temporary migrants with effective exit options may prove especially useful also in order to enhance their bargaining power. In fact, unlike sedentary workers, temporary migrants can count on their geographical mobility and

³² Jenna Hennebry, "Falling Through the Cracks? Migrant Workers and the Global Social Protection Floor," *Global Social Policy* 14, no. 3 (2014), pp. 369-88. Boccagni, "Addressing Transnational Needs through Migration".

³³ We have reviewed these new forms of organisation *** reference omitted; see also Torben Krings, "A Race to the Bottom? Trade Unions, EU Enlargement and the Free Movement of Labour," *European Journal of Industrial Relations* 15, no. 1 (2009), pp. 49-69; Jane Wills, "Making Class Politics Possible: Organizing Contract Cleaners in London," *International Journal of Urban and Regional Research* 32, no. 2 (2008), pp. 305-323.

unattachment as an additional source of bargaining power, literally "voting with their feet" in search of better deals elsewhere if the work conditions are deemed unsatisfactory.³⁴ But this implies conceiving both mobility and temporariness as a resource rather than a liability and rethinking contractual provisions in this light.

In sum, the social protections that fit the life plans of those who engage in temporary migration projects may be different to those needed by sedentary local workers, and in some cases they may imply lower standards of pay and benefits, the opting out from collective schemes of welfare, or unconventional and *ad hoc* forms of labour organisation.

It is important to stress that focusing on the life plans of those engaged in temporary migration projects, unlike other popular justifications of diminished rights for temporary migrants, provides a principled reason for this departure from strict equality in labour standards and protections.

For example, a well-known argument for accepting lower standards for temporary migrants is based on the claim that if the work and welfare standards were raised, then fewer migrants would have the chance to be hired, since their appeal on the job market of the receiving society lies (solely) in the relatively low cost of their labour and their vulnerable position.³⁵ In this "rights vs numbers" approach, fewer rights are a price to pay in order to grant access to higher numbers of migrants. The argument for differential rights we propose, instead, is not grounded on such short-term, utility-maximizing considerations and on the actual bargaining position of migrants on the job market. Rather, it is centred in the

³⁴ Jane Hardy, Moira Calveley, Julia Kubisa, and Steve Shelley, "Labour Strategies, Cross-Border Solidarity and the Mobility of Health Workers: Evidence from Five New Member States," *European Journal of Industrial Relations* 21, no. 4 (2015), pp. 315–333; Gabriella Alberti, "Mobility Strategies, 'Mobility Differentials' and 'Transnational Exit'," *Work, Employment and Society* 28, no. 6 (2014), pp. 865–81.

³⁵ Daniel Bell, *Beyond Liberal Democracy: Political Thinking in an East Asian Context* (Princeton, N.J.: Princeton University Press, 2006); Martin Ruhs and Philip Martin, "Numbers vs. Rights: Trade-Offs And Guest Worker Programs," *International Migration Review* 42, no. 1 (2008), pp. 249–65.

recognition of the interests of migrants as defined by their life plans, which is an instantiation of the more general normative principle that working and welfare conditions should fit the overall plans, projects and way of life people chose for themselves.

Moreover, our argument for differential rights is principled also in the sense that it refers to an overarching and clearly defined principle, which is the good of migrants conceived as the pursuit of their life plan. This marks a difference, for example, from Joseph Carens' account of what is due to the migrants who participate in temporary migration programs.³⁶ Carens endorses the utility-maximizing rationale that grounds the rights vs. numbers approach, but places some firm limits on the treatment that migrants can suffer, arguing for example that after a given time they should have access to permanent residence if they wish to remain, that they must be able to have their family join them, and that safety and health standards should be respected.³⁷ However, these reasonable limits seem to be grounded on a diverse set of humane considerations and internal normative standards of the receiving society, rather than being inspired by a general conception of the interests of migrants. The principle that work conditions should reflect and be conducive to the advancement of people's life plans, on the contrary, offers an account of what is due to migrants that points to their specific needs. In doing so, while allowing for the lowering of certain standards and the development of forms of work contracts that are suboptimal from the point of view of the local workers, it also acknowledges the need to set up additional and special rights for those whose central life interests are displaced in a different social and geographical space than the one where they temporarily work and reside.

³⁶ Joseph Carens, "Live-in Domestic, Seasonal Workers, and Others Hard to Locate on the Map of Democracy," *The Journal of Political Philosophy* 16, no. 4 (2008), pp. 419–445.

³⁷ Carens, "Live-in Domestic".

It is with these considerations in mind that we can turn now to the worry that a differential regime of social protections for temporary migrants may have social dumping effects.

Special rights and social dumping

The concerns about social dumping may appear to represent a powerful objection against our argument for special rights for migrants engaged in temporary migration projects. For, from this perspective, the establishment of special rights would seem to be nothing more than the institutionalization of the disruptive effect of the migrants' behaviour on labour protections, the dismantling of the equal and strong protections for all workers by the introduction of differentiation and segmentation. In fact, one might argue that stressing the importance of labour rights as functional to individual life plans gives us another powerful way of capturing the injustice of such disruption. For it is obviously not only migrant workers' life plans that matter, but the life plans of all individuals, including obviously local workers. Therefore, the injustice of social dumping effects can be described precisely as the disrupting effect on local workers' life plans that have been devised and developed assuming their current level of protections and freedoms, all of which may be disrupted by the institutionalization of special rights for migrants engaged in temporary migration projects. The solution, it could be therefore argued, is in fact the opposite, namely, the full inclusion and protection of migrants within the host states' existing worker population, normalizing migrants' labour and therefore preventing social dumping effects.

This objection is strengthened by a further consideration that seems to invalidate what we have argued is a principled reason for accommodating temporary migration projects, namely, the need to take the migrants' life plans seriously. It could be argued that the same conditions of structural injustice that engender social dumping effects also explain temporary

migrants' own behaviour in the labour market. That is to say, the different economic conditions between the sending and receiving countries makes it expedient for a migrant to accept, for example, lower wages - thereby producing social dumping effects- because the money earned is anyway sufficient to pursue the migrants' ends back home. In other words, 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.

In response to these worries, we need to point out an important fact about the relation between structural injustice and life plans. It is correct to say that liberal rights, including labour rights, aim at recognising and accommodating the life plans made by individuals, as the result of voluntary choices, and that some migratory experiences fall below the threshold that would allow us to categorize them as voluntary migrations. This is the case, for example, when migration is the only option open for an individual to sustain herself and her family.³⁸ But 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 as becomes obvious when we consider that this standard disqualifies all life plans ever envisioned and pursued from counting as voluntary and, therefore, from a claim to accommodation. Thus, if it is true that the regime of special rights we are advocating serves the purpose of accommodating and recognizing choices that are made in non-ideal conditions, this is also true of the majority of rights that similarly serve the purpose of protecting choices and interests that are made and exist against background conditions of injustice. This means that being devised in conditions of structural injustice does not make the plans of temporary migrants - to the extent that they are still voluntary - any less

³⁸ We have discussed the conditions to be met for migration to be considered voluntary in *** Reference omitted .

deserving of accommodation. Thus, even if we recognise the underlying structural injustice behind these migrants' projects, we still have a principled reason for instituting a set of special rights to accommodate them.

Yet what of the social dumping effects? We argue that the rationale that provides us with a principled reason to institute special rights provides us also with a prudential reason to do so. In other words, special rights may also better address concerns about social dumping than other solutions.

This is because the lack of special rights 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. It is predictable that such a black market would arise when we reflect that the kind of protections made available to workers ought to be, as we have argued, a good fit for their life plans. In other words, the benefits and protections provided must be *valuable* for their beneficiaries (i.e. valuable from the perspective of their life plans). It is clear that otherwise there is no incentive for those who engage in a temporary migration project to avail themselves of those benefits and protections.

There is, in fact, also a further point of fairness to make here: acquiring protections in the labour market ought to be no more burdensome for migrant workers than it is for other workers. But this is precisely what happens when the rights instituted are not a good fit for some workers, but they are for others. Think here for example of the kind of care provisions we have mentioned above that migrants' taxes support equally but of which they cannot avail themselves. Given these considerations, it would seem unfair to address social dumping by only legislating migrant labour, and effectively act to deter and discount temporary migration projects. Rather, the whole regulatory framework around welfare and work rights should be taken into consideration to minimize social dumping effects. Failing to provide rights and

protections that are a good fit for the migrants' life plans is therefore both unfair and unwise. They deserve protections that are appropriate to their circumstances and that are, for this very reason, more likely to remedy social dumping effects than inappropriate protections that are, as a consequence, likely to be ineffective.

However, a similar but broader objection could still be raised. One could say that the willingness of migrants to accept less attractive job opportunities does not merely have immediate social dumping effects, but prevents the development of improved, more rewarding, better remunerated and professionalised job opportunities in the same fields which is damaging for all workers, including migrant workers. For example, an argument along these lines could be advanced in relation to the care market in Southern Europe, which, as we mentioned, is being filled by low-skill jobs usually taken by migrants who often move on a temporary basis. This model fits and reinforces established trends in Italy and Spain, which are often described in the literature as possessing "familistic" welfare systems whereby the family plays in the provision of care and welfare for children and dependent individuals while governments provide very minimal support.³⁹ It could be argued that in addition to being poor options for migrants, these jobs also prevent a proper reform of the welfare system to happen and thereby the creation of better support for families and better job opportunities for carers. Accommodating this kind of migration therefore means wronging the migrants but also engendering greater societal harms.

However, these counterfactual accounts are epistemically suspect and normatively unjustified. In the case of the welfare regimes we just mentioned, for example, we cannot know what would have happened had these migratory patterns not eventuated; it is not at all clear that better options would have been instituted by the state, better jobs created and adequate care provided. It is in fact entirely possible that a worse constellation of

³⁹ Margarita León and Mauro Migliavacca, "Italy and Spain: Still the Case of Familistic Welfare Models?" *Population Review* 52, no. 1 (2013), pp. 25-42.

circumstances could have resulted from the lack of migrant labour. The negative comparison with current circumstances is based, in other words, on an imagined ideal situation that we cannot know would have eventuated.

From a normative perspective, it must be noted that the familial welfare model is not necessarily inherently problematic. In some cultural contexts, a welfare system that allows for care in the home including the employment of migrant labour may be the best solution. What is problematic is the lack of public expenditure to support families and the current lack of specific protections for the migrants engaged in care work in this context, not the model itself. The introduction of special rights to protect migrants engaged in this kind of migratory projects is meant precisely to address such vulnerabilities.

Conclusion

In this paper, we have argued that migrants engaged in what we have called temporary migration projects ought to be protected by a set of special rights that are a good fit to their life plans which are centred on the sending country's social space. We have argued that this is also true of labour rights, which should take into consideration not only the requirements of the specific trades involved, but also the needs and interests of workers, given their life plans and family circumstances. 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. The central objection to this proposal that we have considered in the paper is that the creation of such a regime of special rights may reinforce and institutionalize the effects of social dumping of this kind of migration. We have answered the objection by arguing that an appropriate regime of protections that fits the migrants' life plans is more likely to address both the migrants' vulnerabilities and the social dumping

effects than their full inclusion and protection within the host states existing worker population, which is the position more generally advocated in the literature.