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Live-in Domestics, Seasonal Workers, and Others Hard to Locate on the Map of Democracy*

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SHOULD liberal democracies be able to admit people to live and work in their societies without putting them on a path to citizenship and without granting them most of the rights that citizens enjoy? Most contemporary theorists who have addressed this question have focussed on long-term residents and have answered in the negative.[1] Both the inner logic of democracy and a commitment to liberal principles require the full inclusion of the entire settled population. My own version of the argument emphasizes 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.

Political practice in democratic states reflects this view. The most famous case perhaps is the transformation of those admitted to Germany as "guestworkers" during the 1950s and 1960s into permanent residents with most of the rights of citizens apart from the right to vote or hold public office. Other European states had similar policy developments. People who had originally been admitted under terms which explicitly limited their rights and foresaw their eventual departure nonetheless acquired the status of permanent residents, most of the rights of citizenship, and often access to citizenship itself. As time passed, European states acknowledged that the original terms of admission were simply no longer relevant and could not be enforced. More recently, the European Union has issued a directive that explicitly codifies the significance of the passage of time. It recommends that third country nationals (that is, people from outside the EU) be granted a right of permanent residence if they have been legally residing in a single EU state for five years.[2] In North America, too, where access to citizenship

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[1]Walzer 1983; Carens 1989 and 2002; Baubock 1994; Rubio-Marin 2000.

[2]European Council Directive 2003/109/EC.

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itself has traditionally been easier, the rights that settled immigrants enjoy grew enormously in the second half of the twentieth century.[3]

The focus on long-term residents in discussions of immigration and citizenship is illuminating in some respects but leaves other categories of entrants in the dark. In practice democratic states contain all kinds of people who are neither citizens nor long-term residents. What are the claims of non-citizens who are present on the territory of a state but who are not permanent residents? Does the normative map of democracy have room for them? Is it even acceptable any longer to admit people to democratic states without access to long-term residence and without granting them most of the rights of citizens?

The answer to the last question is clearly "yes," if by "admit" we mean "permit to enter." Every liberal democratic state admits tourists and other short-term visitors. Such visitors enjoy most of the civil rights that citizens enjoy, and this fact alone challenges the view that stable and secure rights always rest upon and are derived from citizenship.[4] Nevertheless, no one who thinks that it is acceptable for the state to control admissions in the first place challenges the moral right of the state to exclude tourists and short-term visitors from the labour market, to deny them access to most social programs, and to require them to leave within a specified period. These policies draw distinctions between visitors and citizens/residents, but almost no one would describe these distinctions as discriminatory in a way that is morally indefensible. So, it seems relatively easy to add such people to the map of democracy. Their presence under restrictive conditions is not normatively problematic.

What is more puzzling is where people who are neither visitors nor part of the settled population fit on the map—people admitted for work or other purposes (such as study) but with restrictions on how long they can remain and what they can do while they are present. Unlike visitors, these are people who have permission to set up residence in the territory, but unlike permanent residents, they do not enjoy a right to stay on indefinitely and they are often subject to more restrictive conditions than residents.

From an empirical perspective, it is clear that there are lots of such people present within democratic states in Europe and North America, people who do not fit neatly into either the category of citizen/permanent resident or the category of tourist/temporary visitor. Despite the demise of the original European guestworker programs, many democratic states still admit people for work purposes on a temporary basis and impose limits on them that are not imposed on other immigrants to the same state. The United States, for example, has dozens of lawful immigration statuses besides that of resident or tourist. Most of these statuses provide an authorization to work, but one that is limited in various

[3]Schuck 1984.

[4]This view is often expressed by quoting out of context Hannah Arendt's famous remark that citizenship is the "right to have rights." (Arendt 1958, p. 256) Arendt is talking about the vulnerability of stateless people during the inter-war years.

ways. Ireland has a program (in which my own son participated) that permits people (from certain countries) to come and work for a year, with the clear expectation that they will leave at the end of that period. Many other states have similar arrangements. Many democratic states admit seasonal workers for the agricultural harvest but require them to work only at that task and to leave at the end of the season. Canada has a program that admits people as live-in caregivers and requires them to stay in that occupation for two years before they gain access to permanent residence and the rights that go with it (such as family reunification, access to the general labour market). Every democratic state admits some foreign students to its universities as undergraduates and postgraduates, but most states limit students' access to the labour market—some quite severely—and require them to leave soon after the completion of their study.

What can be said for and against such arrangements? Where should we locate them on our normative map of democracy? Are some or all of such practices to be criticized and eliminated if possible, or should some (or all) be accepted and even applauded? What principles can guide our judgments on these questions? The central argument of this article is that democratic states may legitimately admit people to work while limiting the duration of their stay, but that other sorts of restrictions are morally problematic because they violate the state's own understanding of morally acceptable conditions of employment. I consider complications and objections as I develop the argument.

I. TWO PRESUPPOSITIONS

In what follows, I implicitly presuppose the legitimacy of liberal democratic principles, but not any particular interpretation of them. Providing such an interpretation is one of the tasks of the article. In pursuing this interpretive task, I will often start with intuitive responses to actual policies (or hypothetical variations on these policies). If we can articulate why some arrangements seem intuitively acceptable while others do not, we may succeed in identifying the underlying principles more fully and adequately.

Second, as may already be apparent, I will bracket normative questions about the general right of states to make admission decisions. Some (I among them) have challenged the conventional view that democratic states enjoy a largely unfettered moral discretion with regard to admissions.[5] I will not explore those issues here, however, because I think it is more fruitful to explore questions about temporary workers within the framework of the conventional view. As Michael Walzer's famous discussion in *Spheres of Justice* illustrates, one can be a strong defender of the view that states have a right to control initial admissions, while being a strong critic of guestworker programs.[6] So, I will simply assume that democratic states

[5]Carens 1987; 1992; 1999.
[6]Walzer 1983, ch. 2.

are not obliged to admit migrants to work or study for a temporary period. The question is whether it is morally permissible for states to do so, and if so under what conditions or with what sorts of restrictions. I should emphasize that I am primarily interested in the question of whether or not admitting temporary workers is compatible with liberal democratic justice, not with the question of whether it is prudent for any particular state to adopt such a policy. There are many policies that are morally permissible but foolish, just as there are others that might be advantageous economically but are unjust. On this democratic map, I am trying only to sketch in the contours of justice, not those of wisdom.

II. TEMPORARY ADMISSIONS OF WORKERS

Is it legitimate for a democratic state to admit people to work for a limited period of time and to require them to leave at the end of that period? If we accept the principle that the longer one stays in a society, the stronger one's claim to remain, it follows that the shorter one's stay, the weaker one's claim to remain (other things being equal). So, if people admitted to work on a temporary visa have no other moral claim to residence than their presence in the state, it is normally reasonable to expect people who have only been present for a year or two to leave when their visa expires.[7] On the other hand, if a temporary visa of this sort is renewed, it ought at some point to be converted into a right of permanent residence. That is also the implication of the principle that the longer the stay, the stronger the claim to remain.

When do workers admitted on a temporary basis acquire a moral right to remain permanently? Philosophical reflection can provide no clear general answer to that. Identifying a specific moment after which the right to remain is indefeasible inevitably involves both a contestable interpretation of the rate at which the claim to remain grows over time and an element of arbitrariness in setting a particular demarcation point for recognizing the growing moral claim as a legal right. As I noted previously, the EU has recently issued a directive saying that non-EU citizens who are legally present for five years in an EU state should be given permanent residence status.[8] This is clearly an attempt to implement the more indeterminate moral principle that the moral claim to remain grows over time, along with a recognition that some threshold must be established beyond which the right to stay is indefeasible. Why five years rather than four or six? No one can pretend that the answer to this question entails any fundamental principle. It is more a matter of the social psychology of coordination, given the need to settle on one point within a range. But if one asks why five years rather than one or ten, it is easier to make the case that one is too short and ten too long,

[7]I say normally to leave open the possibility of something happening during their stay that gives them a different moral claim to remain, but I will not pursue that complication here. I am also assuming that they have been notified of this constraint at the time of admission.

[8]See note 2.

given common European understandings of the ways in which people settle into the societies where they live.

III. THE RIGHTS OF TEMPORARY MIGRANTS

Suppose people are admitted to work for only a limited period. What rights should they enjoy while they are present? As I noted above, even visitors and tourists enjoy most civil rights (such as security of person and property, freedom of opinion and of religion, and so on). So, I will just assume that temporary migrant workers are entitled to those rights as well.

A. Family Unification

One of the most important questions to ask about temporary migrant workers is whether they have a right to have their immediate family with them, as citizens and permanent residents normally do. States that want temporary workers but also want to make sure that the temporary workers go home worry about granting migrant workers rights to bring their families in because the presence of family members is one of the major factors in turning temporary migrants into permanent ones, as the experience with European guestworkers shows. Families tend to generate social contacts, especially when the families include children. This leads people to sink roots into the community where they are living. Moreover, if the entire family has moved, an authorized temporary migration may easily evolve into an irregular, permanent settlement. By contrast, temporary workers who have left their families at home have stronger incentives to go back themselves. In addition, families often have greater needs for social programs than single individuals. So, states have an interest in preventing family (re)unification in their territory.

On the other hand, the right of immediate family members to live together is recognized as a fundamental human right in many international documents. Liberal democratic states find it difficult to justify overriding this right merely for the sake of narrow economic advantages. Here, too, time matters. It is one thing to ask people to be away from their family for weeks or even months, quite another to ask them to be away for years. So, it would not be justifiable to create a temporary migrant worker's program that required people to live apart from their family for an extended period.

How long is too long? As with the earlier question about when a temporary resident must be granted a permanent right to stay, a philosophical analysis cannot supply a determinate answer. I would suggest that denying people the right to have their families with them for more than three months would be harsh and for more than a year would be unconscionable. I recognize that these markers are contestable, but, as with the earlier question, the parameters for this are not infinitely expandable.

Let me pursue this issue just a bit further by considering a possible objection. The work that some citizens and residents do may require them to be away from their families for extended periods. This is true of highly paid professionals (including academics) and ordinary people like soldiers, commercial sailors, long-distance truckers, or travelling salespeople. Indeed sometimes people accept jobs that will keep them away from their families even when they have reasonable economic alternatives that would not. The state does not try to regulate these choices by its own citizens and residents.

Why not think of a temporary workers program that requires migrants to come without their families (while perhaps permitting them to return home for visits) as something comparable? No one forces anyone to join such a program. If some people choose to do so, knowing the implications for their family life, why is not that choice just as morally acceptable as the choices that some citizens and residents make to live apart from their families?

This way of posing the question neglects the role of the state in setting constraints on the capacity of people to live with their families. Having a right to family life (as the European Convention puts it) does not require people to undertake any particular pattern of family and work life. It simply enables them to make choices about how they want to live, while recognizing that living with one's immediate family members is a fundamental interest for many people and so ought to be protected against state interference. Citizens and residents may choose to take up occupations the nature of which precludes them from being with their family for extended periods (for example, doing research in the Antarctic, working on a commercial ship) or they may choose to live apart for other reasons. However, political authorities may not tell people that they are not permitted to live with their families. That is precisely what the state does in the hypothetical migrant program we are considering. It is not permissible for a state to require people to forego a fundamental human right as a condition of entry and residence, even temporary residence.[9]

B. Economic and Social Rights

Now what about economic and social rights? Visitors and tourists do not enjoy most of these rights. Where do temporary migrant workers fit in this picture? On the one hand, they clearly differ from tourists and visitors in being entitled to participate in the workforce. Does that mean that they should have the same bundle of economic and social rights as citizens and permanent residents? On the

[9]I can think of no actual case in which an employer requires employees to live apart from their families for an extended period, that is not connected to the intrinsic nature of the work. We could perhaps construct some imaginary example of a case in which an employer does this in order merely to get the employees to concentrate more on their work, but I think that any democratic state would prevent employers from exercising that sort of authority over their employees. Again, that is part of the point of asserting the right to family life as a fundamental human right.

other hand, they are only permitted to be present for a limited period, and, in that respect, they resemble visitors more than residents. Does that mean that it is morally acceptable to give them a more limited package of economic and social rights?

In thinking about this question, it is helpful to distinguish among three general areas: working conditions (which include things like health and safety regulations and laws regarding minimum wages, overtime pay, and paid holidays and vacations), social programs directly tied to workforce participation (which include things like unemployment compensation and compulsory pension plans), and other social programs (which include income support programs, health care, education, recreation, and anything else the state spends money on for the benefit of the domestic population). I will argue that temporary migrants should enjoy the same rights with respect to working conditions as citizens and permanent residents, that they are entitled to either the same rights as other workers or to a refund of their contributions with respect to social programs directly tied to workforce participation, and that their claims with regard to other social programs depend on the nature and purpose of the program.

i. Working Conditions

Consider first the conditions of work. Every contemporary democratic state sets limits to the operations of the market within its jurisdiction. While the development of the global economy has made it more difficult for individual states to regulate economic activity, every democratic state sets some public policy constraints to employment contracts, limiting the terms to which workers can agree. These constraints reflect a political community's understanding of the minimum standards of acceptable working conditions within its jurisdiction. Therefore, the policies should apply to temporary migrants as well as to citizens and permanent residents.

I deliberately say nothing here about how any particular state should regulate working conditions, despite the fact that this is an important question for democratic theory and economic justice. In practice, the content of the minimum standards varies greatly from one liberal democratic state to another. For example, the United States places fewer and weaker restrictions on the conditions of work than Scandinavian countries. Other democratic states fall somewhere in between.

People disagree sharply about the merits of these policies, both within any given state and across different states. I want to prescind from these debates, however, because in this project I want to keep the focus on immigration related issues. For the purposes of this article, the question is not whether particular safety standards are appropriately or inappropriately designed, whether health requirements are too stringent or too lax, whether the minimum wage is set too high or too low, or even whether it is acceptable to have different standards in any of these areas for different categories of workers when the categories are not

related to immigration (for example, excluding workers in family businesses or young workers from rules that apply to others). The question is whether such policies may set different standards for some workers rather than others, simply in virtue of their immigration status.[10]

The answer seems clear. The purpose of the rules and regulations is to set the minimum acceptable working conditions within a particular democratic community based on the understanding of what is acceptable that is generated by the community's internal democratic processes.[11] However the state regulates working conditions for citizens and residents, it should regulate them in the same way for temporary migrants.

By and large, the practice of democratic states follows this principle. There are some programs in which temporary migrants are restricted to particular jobs and in which they are subject to conditions not imposed upon other workers, and I will discuss such programs below. Apart from such programs, temporary workers generally are subject to the same legal standards regarding working conditions as citizens and residents.

ii. Work-related Social Programs

Now consider social programs directly tied to workforce participation. These programs are intended to provide a form of insurance protection, often against hardships that will predictably fall upon some subset of workers. Typical examples are programs to provide income if workers become unemployed, programs to provide compensation for industrial accidents, and compulsory pension plans. Often these programs are based directly on the principle of reciprocity, and designed as contributory programs in which the state imposes a tax on workers and/or their employers for a specific purpose. You pay in and you receive a benefit if you need it. Even citizens are normally not entitled to the benefits of such programs unless they have participated in the workforce, paid the appropriate tax (where that is required) and, sometimes, passed a certain waiting period.

Temporary migrant workers should either be included in such programs or compensated for their exclusion. In many cases, simple inclusion is the better solution, but as I will show below, there is sometimes an acceptable alternative.

When programs are designed as contributory schemes, the injustice of excluding temporary migrant workers from them is especially obvious. It is blatantly unfair to require people to pay into an insurance scheme if they are not

[10]It is important not to be formalistic about this, however. If a sector of the economy is overwhelmingly occupied by temporary migrant workers (for example, certain kinds of agricultural or domestic work) and that sector is subject to fewer legal constraints than other sectors, this may simply be a way of establishing different legal standards for temporary migrants from those established for citizens and residents without acknowledging it openly.

[11]I recognize that these internal processes involve more than a deliberative debate about the merits of alternative views. They are also—and more profoundly—shaped by conflicting interests and powers. But that is true of all democratic legislation.

eligible for the benefits. This violates an elementary principle of reciprocity. But the basic principle of including temporary migrant workers in the programs or compensating them for their exclusion does not rest solely on the method by which the program is financed. So long as the rationale of the program is intimately linked to workforce participation, it should include all workers, temporary migrants or not.

In this area, practice varies from one state to another, but in some it diverges much more sharply from the principle of equal treatment that I have outlined than in the area of working conditions. Temporary migrant workers are often required to pay into pension plans with no reasonable expectation of actually collecting a pension. They may be required to pay unemployment insurance but they are not eligible to collect benefits. Those practices are clearly unfair. Sometimes there are alternative arrangements that would be more defensible. States may have legitimate reasons for wanting to exclude temporary migrants from some contributory programs, and, if they are not expected to make the relevant contributions, it might be acceptable to exclude them from the programs.

Take the question of pensions. Historically, most state pension programs have included an element of redistribution from those of working age to the elderly. In that sense, state pension plans are not pure insurance schemes and not exclusively based on the principle of reciprocity (although this practice has become less viable with demographic changes and the aging of the populations in Europe and North America). For reasons I will explore below, temporary migrants do not have the same claims on redistributive social programs as on other programs. It might be justifiable therefore for a state to exclude temporary migrants from the benefits of the normal pension plan, but only if the state does not collect money from the worker and the employer for the state pension plan. On the other hand, simply failing to collect this money at all would mean that temporary migrants would be getting a higher net pay at a lower cost to the employer than citizens and residents doing the same work. This is politically unattractive and does nothing to address the need temporary migrants will eventually have for pensions in their home states. So, it would clearly be preferable to collect the same level of taxes from all workers and employers and to put the taxes collected from migrant workers in a separate fund to be disbursed to them either upon their return home or upon their retirement. The migrants would then receive less pension income than they would have if they had been participants in the general pension plan with its redistributive component, but they would not have been deprived of the benefits of the monies collected for their pensions. This presupposes, however, that the pension plan is funded from a specific tax rather than from general revenues. If funded from general revenues, the migrants should simply be included in the plan, and the conditions of eligibility should not require such an extended period of workforce participation that most temporary migrants would be excluded.

Now consider unemployment compensation. These programs are designed in different ways in different states, but the underlying principle of all of them is to provide working members of society with some income security in the face of the changes generated by the market. Temporary migrants are workers but not yet full members of society. If they lose their jobs, should they be entitled to the same level of income support as citizens and residents would receive under similar conditions? I have already established the principle that it is unreasonable to expect them to pay into a program for which they are not eligible. So, the question is whether there is any compelling normative reason to choose one of the following two options: (1) making them pay the tax and including them in the normal program, subject to normal constraints on eligibility; (2) excluding them from eligibility for the program, while either not collecting the tax at all or collecting it (so that the cost of hiring a temporary migrant worker would be the same as hiring a domestic one) and putting it in a special fund to be paid out upon the migrants' return.

In addressing this question, I confess to more ambivalence than I feel with respect to the preceding one and the one that follows. On the one hand, if a temporary migrant loses her job, she needs some alternative source of support for the same reasons that citizen and resident workers do. That argues for allowing temporary migrants to be eligible for the normal unemployment compensation programs. On the other hand, temporary migrants are only permitted to be present for a limited time anyway. Presumably they will not be eligible for unemployment compensation once they have left the country. (Otherwise, it would be economically advantageous for the migrants to become unemployed shortly before they return home.) So, if they were simply included in the normal program, as their exit date approached they would be paying into a program for which they were no longer fully eligible. Moreover, from the state's perspective, the whole point of admitting migrants on temporary work visas is to gain the advantage of their contribution to the economy. Migrants who have lost their jobs and cannot readily find new ones will have stronger incentives to return home early if they are not receiving unemployment compensation. It is arguable that they are not being unfairly treated, even though they are treated differently from citizen and resident workers, so long as they have not had to pay taxes to support an unemployment compensation program for which they are not eligible, and so long as they are permitted to stay and try to find a new job while living on their savings.[12]

Pensions and unemployment compensation provide examples of cases where it would be justifiable to exclude temporary migrants from social programs linked to workforce participation so long as the migrants were not bearing the costs of

[12]This issue would become more complicated if the society provided no direct link between workforce participation and income support for those who have lost their jobs, but instead simply guaranteed an adequate level of basic income for all members of society.

the programs. Not all contributory social programs fit this model, however. Some compulsory contributory social programs are more akin to health and safety regulations in the sense that they simply establish minimum standards for morally acceptable working conditions in a particular democratic state.

Take workers' compensation programs. The structure of such programs is often quite similar to that of pensions and unemployment compensation programs. Workers and/or employers pay a tax, the monies go into a common fund, and workers who suffer a work-related accident or illness receive benefits from the fund. These programs are designed to address some of the inevitable risks that economic activities pose to workers. Even with good health and safety regulations in place, work often entails risks of injury or illness for the workers. Sometimes this harm is due to negligence on the part of the employer or the worker or both, sometimes it is an unavoidable accident. Democratic states have typically found it advantageous to limit litigation over responsibility for workplace accidents and illnesses and to establish instead programs to provide compensation for workers who suffer work-related injury or illness, often using standard formulas for establishing appropriate levels of compensation. The rationale for these sorts of programs are closely linked to the rationales for the health and safety regulations that they closely complement. Just as it would be wrong to permit temporary workers (but not citizens and residents) to labour under sub-standard working conditions with respect to health and safety, even if they were compensated financially for doing so, it would also be wrong to permit them to opt out of workers' compensation programs.

iii. Other Social Programs

In this section I will argue that temporary migrants should be included in most other social programs but that it is permissible (not required, nor necessarily desirable) to exclude them from programs whose primary goal is redistribution from better off to worse off members of the community. Every state provides a wide range of services to those within its territory. Some of these (police protection, emergency medical care) are, in principle, available to any person who needs it. For others, one must be a resident but any resident status will do, including temporary residence as a migrant worker. For example, to borrow books from the local library, one must normally show that one lives in the local area, not establish one's citizenship or one's immigration status. Similarly, one must sometimes prove that one is a resident to use local recreational facilities, but it would be hard to imagine the justification for excluding even temporary residents from such facilities. At a more serious level, any state that treats health care as a basic right—which is to say, every state in Europe and North America except the United States—is obliged to provide health care to temporary workers, and their families, too, if they are present. Every democratic state has a system of free and compulsory public education, and again, temporary workers have a right to this education for their children if their children are present.

So far I have been arguing that temporary workers should have access to the same social programs as citizens and permanent residents. Are there any exceptions to this principle?

In practice, the programs from which temporary workers are most likely to be excluded and the ones where the normative justification of the exclusion seems to me most plausible are programs that are financed by some general tax and that have as their primary goal the transfer of resources from better off members of the community to worse off ones. I have in mind things like income support programs (often called welfare in the United States) and perhaps other programs aimed at poorer members of society such as social housing. I am not suggesting that it would be wrong to include temporary workers in such programs. On the contrary, I think it would be admirable to do so, and some states do, especially with regard to social housing. I am simply suggesting that it is morally permissible to exclude temporary workers from programs that have redistribution as their primary goal. If such programs are not based directly on a contributory principle, excluding recent arrivals from them does not violate the principle of reciprocity. Since the goal of the programs is to support needy members of the community and since the claim to full membership is something that is only gradually acquired, exclusion of recent arrivals does not seem unjust (although it may be ungenerous). Of course, these programs are funded out of general tax revenues and temporary workers also pay taxes, but their claim to participate in a program based on redistributive taxation—taking from better off members of the community to benefit the less well off—is not as powerful as their claim to participate in a program whose benefits are directly tied to one's own contributions. Of course, the claims of temporary workers to a right to participate in redistributive programs grows over time, but, as we have seen, so does their claim to permanent, full membership.

Even if one accepts my argument about the permissibility of excluding temporary workers from redistributive programs, the overall picture remains unchanged. For the most part, temporary workers should receive most of the economic and social rights that citizens and residents enjoy.

IV. RESTRICTIVE PROGRAMS

So far, I have been discussing temporary worker programs in which the primary restriction placed on participants was the length of time they could stay in the country. What if we add further restrictions to this picture? How does that affect our evaluation? The most common sort of restriction is one that limits the temporary workers to a particular sector of the economy or a particular occupation or even a particular employer. The last sort of restriction is the most severe because it renders temporary workers highly vulnerable to abuses of power by their employers.

Normally in a labour market, the possibility of leaving one's employer and finding another job (often, but not always, one in the same field) limits the power that any given employer can exercise over employees.[13] One justification for this restriction in the case of migrants, however, is that temporary workers should be admitted only if they have an actual job offer. Since the employer has to invest a certain amount of resources in arranging for the entry of a particular worker, the argument goes, the employer should be able to count on not losing the prospective employee immediately upon arrival, even or perhaps especially to another employer in the same field. There are things to be said for and against this argument, but even if we accept it at face value, it would only justify a limited period during which the migrant could legitimately be tied to a particular employer. With all the usual caveats about philosophical analysis and specific time limits, I would suggest that something like three months would be a maximum, perhaps less, depending on how much the employer actually has to invest in the recruitment process (which can vary from one program to another). Even then, there ought to be an escape clause for abusive behaviour by the employer.

What about the common practice of limiting temporary workers to a particular occupation or sector? Here it is worth distinguishing between temporary worker programs for highly skilled workers and ones for unskilled or low skilled workers. The former (which are becoming more and more common in rich countries) involve the recruitment of highly trained professionals (for example, computer programmers, engineers, doctors, even academics). Highly skilled people have little incentive to look for work outside their field of expertise. So, there is not much point in restricting them to a given field. In addition, as Ruhs and Martin observe, there is such competition for these migrants that states have to offer them bundles of rights comparable to the ones enjoyed by citizens and residents in order to have much hope of inducing them to come.[14]

The real issue is with temporary worker programs for the unskilled. In my view, restricting migrant workers to a particular sector or occupation is always morally problematic. The usual justification for temporary worker programs for unskilled migrants is that employers cannot find enough workers within the domestic labour market because citizens and permanent residents are unwilling to do the work that potential employers want them to do at the wages that the employers are offering. In a market economy, however, the normal response to labour shortages is to allow supply and demand to adjust to one another. As the wage offered for a given sort of work rises, more workers will be willing to

[13]The effectiveness of this check on power varies, depending on the alternatives available to the employee. So, the degree of tightness in the relevant labour market, the kinds of social support available to workers who quit their jobs, and related factors determine whether this is a significant check or only a nominal one.

[14]Ruhs and Martin 2006.

undertake it and fewer employers will find it worth their while to hire. In that sense, shortages should always be temporary, a matter of normal market adjustment, especially for unskilled jobs which, by definition, do not require long periods of training before a person can do the work.

People sometimes say that in affluent states with strong welfare provisions, citizens and residents will simply not take up jobs that are dirty, dangerous, demeaning, and demanding. That is misleading, however. There are no jobs for which workers cannot be found if the pay is high enough, even in rich states. What is really meant is that citizens and residents will not take up such jobs for the minimum wage or for a relatively low rate of pay, especially when the state ensures that they will not starve or be homeless if they decline the work. But this is a perfectly normal function of a regulated market in a democratic society.

The point of many social welfare provisions is precisely to create background conditions that shift the relative bargaining power of workers and employers. Other things being equal, jobs that are unpleasant in one way or another should pay some sort of premium. So, when people speak of a persistent shortage of unskilled labour, what they really mean is that some employers would like to have unskilled work done at a price that is below the market price for unskilled labour (or for a particular kind of unskilled labour) in a given state (accepting social welfare provisions simply as background conditions affecting labour supply, rather than seeing them as intrusions into the working of the market).

The whole point of a temporary workers program that restricts people to a given sector or occupation is to find workers who will do the job at below the market rate (that is, the price that would be required to attract people from the domestic workforce into this sort of activity), because the conditions under which these temporary workers are admitted leave them with no effective alternative within the receiving state but to take these jobs at the pay that is offered. So, one might say that the state's use of restrictions on the economic activities a temporary worker can undertake involves a deliberate element of exploitation or a deliberate element of unfairness, because it forces foreign temporary workers to perform tasks for wages that are lower than they could command if they were free to compete on the entire labour market.[15]

[15]My formulation is designed to avoid prejudging the debate about the moral legitimacy of normal market transactions. I use the term "deliberate" to modify "exploitation" because some people are of the view that the normal workings of the market itself generate a certain level of exploitation, either in relation to all workers or in relation to some subset, such as the ones with the worst pay and working conditions. That pattern might then be described as intrinsic or spontaneous or unintentional exploitation, in contrast to deliberate exploitation. Others would see the normal workings of the labour market as generating fair outcomes. From that perspective it is unfair to deliberately restrict some workers' options so that they cannot receive the full income that they would get from the normal workings of the market. For a complementary analysis of the exploitative character of guestworker programs which I encountered after completing this article, see Attas 2000. For a critique of this perspective, see Mayer 2005.

V. THE CANADIAN LIVE-IN CAREGIVERS PROGRAM

Let me illustrate these abstract points with a concrete example: the Canadian Live-in Caregivers program.[16] Canada has an extensive immigration program under which people who meet certain standards (age, education, work experience, knowledge of French or English) are able to come to Canada, gain permanent residence upon arrival, and have immediate access to virtually the entire Canadian labour market. In addition, however, it has a special program under which about 1500 to 2000 foreigners per year who do not qualify under the normal requirements (or are far back in the queue) can come to Canada if they agree to work for 2 years as domestic caregivers.[17] Those working under this program are overwhelmingly female and come primarily from the Philippines. They usually work as nannies, caring for children, but sometimes they provide help to the elderly or the sick. They are required to live in the homes of the people for whom they work. As currently constructed, the program requires the foreign workers to have a job offer before they are admitted and to continue to work as live-in caregivers for two years after admission. They have the right to change employers after arrival, but they must continue to work as live-in caregivers. During this period, they do not have the right of family reunification. They are protected by most of the normal labour legislation regarding minimum wages, overtime, holidays, vacations, and other working conditions, with regulations limiting what they can be charged for room and board and what they must be provided in terms of living space and amenities. At the end of the two years, they are entitled to transfer their status to that of a normal permanent resident with rights of access to the general labour market and rights of family reunification.

The living-in requirement is the crucial element of the program. There is no "shortage" of nannies and other domestic caregivers who live in their own homes and come to work on a daily basis. Domestic caregivers who live in their own homes do receive higher gross wages than those who live in, but, of course, they have to pay for their own room and board. The net cost to the employer does not seem significantly different between having a live-in caregiver and one who lives out, if the cost of providing room and board is taken into account (although it does affect cash flow, and people tend to discount the cost of providing a room if they already have a house with sufficient space, seeing that as a fixed cost).

The program exists primarily because middle class and upper middle class families want live-in caregivers, either because they see this as a less expensive way of getting child care than hiring someone who lives out (discounting the costs of room and board for the reasons just mentioned), or because they want the advantages that come from having the caregiver in the house (for example, in

[16]For discussions of this program, see Bakan and Stasiulis 1997; Langevin and Belleau 2000; Macklin 1992.

[17]In this section, the term 'domestic' refers to work performed in the home. In the rest of the paper, the term 'domestic' is used in contrast to 'foreign' (as in domestic labour force or domestic labour market).

terms of flexibility of coverage) but do not want to pay the very high premiums required to get people from the Canadian labour force to live in their homes. The premiums are needed because there is a general reluctance on the part of those engaged in domestic caregiving to "live-in." The reluctance is understandable, given modern social norms regarding personal independence and given the ways in which living in one's employer's home opens the door to various forms of abuse.

No one can really pretend that this program is essential to the economy. If it were abolished tomorrow, supply and demand would adjust. Some families who hire people under this program would spend more money and hire live-in caregivers from the Canadian labour force. Others would settle for caregivers who come in on a daily basis or would make other arrangements. The program exists primarily because it serves the interests of a politically influential group for whom this issue matters greatly. Still its defenders say that it serves the interests both of the Canadians who hire people under it and of the workers who enter Canada.

The program illustrates perfectly the exploitative or unfair element in restrictive conditions that I identified above. Relatively few of those admitted under the program continue to work as *live-in* caregivers after the required two years are up, although many continue to work as domestic caregivers. (This illustrates, by the way, that the reluctance to live-in is not just a product of North American or European culture.) Once they have other options, they make other choices. They live-in, at those wages, only because that is the sole labour market option in Canada open to them.

Does that mean that Canada should abolish the program? I must say that I feel conflicted about my answer to this question. On the one hand, I do not think the program meets the standards of justice. On the other hand, its restrictions are limited and it provides an opportunity for a couple of thousand disadvantaged people a year to gain entry to Canada who would otherwise have no chance of admittance. In that sense, its defenders are right that it serves the interests of the workers who are employed within it.

Over the years various Canadian NGOs have become involved with this program and through public criticism and political mobilisation they have introduced a number of reforms that have improved the lives of the women working in the program. For example, they have managed to shorten the time in the program from three years to two; they have eliminated prior requirements that those in the program take courses and save money before gaining permanent residence; they have improved the financial terms of the program for the workers; they have strengthened the protections against abuse by employers and made it easier to change employers.

Now, however, there seem to be few further feasible reforms. The problems that emerge at this point are almost always tied to the fact that these workers live in the homes of their employers and that this condition renders them vulnerable

in various ways (for example, overwork, lack of autonomy, sexual assault). But the living-in requirement is clearly the one non-negotiable element of the program since it is the fundamental rationale. Some of those in the NGO community would prefer to see the program abolished, while others would prefer to keep it for the reasons I mentioned above. They are divided among themselves on this issue for the same reasons that I find myself ambivalent about it. Is it worth sacrificing a bit of what justice requires for the sake of the improved well-being of those suffering the injustice?

I see no point in trying to resolve my ambivalence in this article. If I can draw a general lesson from the case, however, it is this: Any departures from the norm of equal treatment for temporary workers beyond those discussed above are morally problematic. Significant departures should not be permitted.

VI. FOREIGN SEASONAL WORKERS

Foreign seasonal workers are people who come to a state to live and work for part of the year, but have their permanent residence in another country. Some come for only a month or two, others for several months. Some seasonal workers return year after year, while others engage in this activity only intermittently or for a few years. These temporal differences matter morally because they affect the extent to which the workers have a claim to membership in the political community where they are working.

The general principle enunciated above applies here as well. The longer the stay, the stronger the claim to membership. In this case length of stay refers not only to the number of years one spends in a state but also to the number of months within each year. Someone who spends several months a year for ten or twenty or thirty years working as a seasonal labourer in a country has a much stronger claim to be seen as a member than someone who does this work for a few summers while on vacation from school. As we have seen before, the principle does not provide precise demarcation points. The extremes will be clear; the middle will be fuzzy.[18]

Whether distinctions among categories of foreign seasonal workers matter much will depend primarily on the sorts of distinctions we draw between the rights of foreign seasonal workers and the rights of other workers. I argued above that foreign temporary workers should enjoy most of the social and economic

[18]One illustration of a clear extreme can be found in Switzerland's policy (in years past) of admitting the same people (mainly from Italy) year after year under the category of "seasonal workers," even though these people were essentially full-time workers living in Switzerland who only returned to their country of origin for a month or so once a year both for vacation and to satisfy the legal requirements of immigration authorities. Critics called these workers *faux-saisonniers* because their inclusion in this category was clearly designed to permit the Swiss state to evade the wider range of legal commitments it would have had to people it acknowledged to be permanent residents. In the end, the Swiss government had to modify this policy and accept most of these workers as permanent residents. As this story illustrates, it is wrong to use the category of "seasonal worker" as an excuse to evade responsibilities to permanent members of the workforce.

rights that permanent residents possess (apart from the right to remain and access to redistributive social programs). The same arguments largely apply to foreign seasonal workers, and for the same reasons. So, working conditions (minimum wages, health and safety regulations, etc.) should be the same for foreign seasonal workers as for domestic ones, and work related social programs (compensation for illness or injury, pensions and so on) should be the same or equivalent, as discussed above. As I observed above, some sectors can be composed overwhelmingly of foreign workers, and it is particularly important not to establish lower standards for working conditions or work related social programs in those areas as a disguised way of discriminating against foreign workers.

There are two areas where we need to explore further the legitimacy of restrictions on the rights of foreign seasonal workers: family unification and restrictions on choice of work. I argued above that liberal democratic states that wanted to prevent temporary migration from becoming permanent would be especially concerned about the entry of families, but also that they could not legitimately prevent the families of temporary workers from joining them for any extended period. I suggested that three months would be an appropriate maximum threshold. Using that standard, one might argue that it would reasonable for states to deny seasonal workers the right to bring their families with them so long as the workers themselves were to be present for three months or less. Even if they returned each year, their state of origin would remain their primary place of residence. Most foreign seasonal workers come because they can make much higher wages abroad than at home. They are often housed at low cost, and they would normally not want to incur the costs of dislocation and the much higher living expenses that they would face if they moved their families for a short period to the rich country where they are engaged in seasonal work. This makes the restriction on family unification less burdensome.[19] As the time spent in seasonal work lengthens, however, the interest in having one's family present increases (even if there remain countervailing cost considerations). A "seasonal" worker who spends seven or eight months a year in another country, year after year, looks a lot like a permanent resident.

Consider now restrictions on the type of work that foreign seasonal workers can do. As the term "seasonal" suggests, there is a specific type of demand for labour that foreign seasonal workers are supposed to meet, one that is not constant throughout the year. I argued above that any restrictions on the type of work that foreigners could do entails an element of exploitation. That is true with respect to the recruitment of foreign seasonal workers as well. The mere fact that there are seasonal fluctuations in the demand for certain kinds of labour does not

[19]If the workers have an interest in keeping their families at home, why not just leave it up to them? Recall that most rich liberal democratic states want to minimize the incentives and opportunities for seasonal workers to become permanent unauthorized migrants. Keeping the workers' families at home makes that more likely.

establish that there is a need for foreign seasonal workers. Every state's economy has seasonal fluctuations in supply and demand in some areas, and, for the most part, it is the domestic labour force that responds to these fluctuations. For example, many states have some sort of tourist industry in the summer. This requires a considerable expansion of the local workforce in tourist areas. In many cases, most of these seasonal workers come from the domestic labour force. Fishing is a seasonal industry to a significant extent, but most of these seasonal workers come from the domestic labour force. Being a ski instructor is also a seasonal occupation, but not one dominated by foreigners in most cases. Retail stores have seasonal fluctuations in sales and in the size of the labour force. In all these cases and many more, normal market forces lead to the mutual adjustment of supply and demand, without much recourse to foreign workers.

Where do we find foreign seasonal workers? One place where they are especially prominent is in agriculture. Why? As in the case of live-in caregivers, it is misleading to say that there are no people in the domestic workforce willing to do this work. Again, what is meant is that there are no people (or not enough) willing to do this work at the level of pay that is offered. If the pay were high enough, workers would come forward (and farmers would find it worthwhile to invest in more labour-saving machinery). Of course, in the absence of countervailing subsidies, this would lead to higher prices and reduced demand for domestic agricultural products. Again, this is part of the normal dynamics of the market, even or especially a market in a regulated, welfare state economy where various social and economic rights protect ordinary workers against the need to accept work under any terms or face hunger and deprivation.

So, why do so many rich states use foreign seasonal workers, either openly or covertly, to harvest their crops? Hiring such workers helps to satisfy a powerful and widespread desire among the population for making domestic agricultural products available at "reasonable" prices. As with the live-in caregivers, the agricultural workers may be quite willing to accept the terms offered. They may well see them as a wonderful opportunity compared with the options available at home (where they might be forced by economic necessity to do the same sort of work under worse conditions and at a fraction of the pay).

Canada has a Seasonal Agricultural Workers Program that is considered by many a model of well managed temporary immigration (like its Live-In Caregivers program).[20] It is a bilateral program, negotiated with Mexico, that brings Mexican workers to Canada for several months a year, grants these workers most of the rights that Canadian workers enjoy (including workers compensation and access to the Canadian health care system, but not the right to bring their families with them and not the right to settle in Canada permanently, even after many years of participation in the program). Many more workers

[20]For a description and critical evaluation of this program, see Basok 2002. I am also indebted to an unpublished paper by Sonali Thakkar (2004).

apply to come under this program than can be admitted, and those who do participate often return year after year and have a relatively privileged economic position in their home villages as a result. Canadian NGOs and academics have criticized some aspects of the program, such as the excessive power given to employers to approve or disapprove workers' ongoing participation in the program and the fact that workers are not adequately informed about their rights or given effective opportunities to exercise them. Even if the critics' wish list of reforms were adopted, however, we would face at the end of the day the tension between the fact that the program is exploitative for the reasons laid out in the arguments above and, at the same time, highly beneficial to those who participate in it, given their alternatives. As with the Live-In Caregivers Program, I am ambivalent about the desirability of continuing this sort of foreign seasonal workers program.

In sum, the use of foreign seasonal workers is always morally problematic in liberal democratic states, but there is a case to be made for tolerating such programs so long as they provide the foreign workers (during their presence) with most of the social and economic rights that domestic workers enjoy and so long as their presence is truly seasonal in character. Moreover, programs for foreign seasonal workers should provide workers with the right to change employers and should find some ways of reflecting the moral claims to a sort of partial membership that workers acquire when they return year after year to the same state to work.

VII. DEMOCRATIC JUSTICE FOR WHOM?

So far, I have been arguing that temporary workers are entitled to most of the rights of membership, apart from the right to stay on permanently, and that they acquire that right too, if they are present long enough. Programs that limit the rights of temporary workers beyond this, such as Canada's live-in caregiver program and most foreign seasonal workers programs, build in an element of exploitation that is morally problematic, although such programs may be tolerable if their departures from the norm of equal treatment are very limited. Now let me consider a fundamental challenge to this whole way of thinking about temporary workers.

The approach that I have outlined creates a deep puzzle. States normally want to create temporary migrant worker programs because they see such programs as economically advantageous. As the costs of the temporary workers rise, the economic advantages of bringing them in decline. As Ruhs and Martin put it, there is a fundamental tradeoff between rights and numbers.[21] The larger the package of rights that we establish as due to temporary workers, the more costly bringing these workers in will be to employers and to the state, and so, the

[21]Ruhs and Martin 2006.

weaker will be the incentives to recruit and admit them. The net effect of insisting on granting temporary workers most of the same rights as citizens and residents is that many potential temporary workers will never be able to gain legal admission at all. Some will be stuck at home, facing conditions of work that are far worse in every respect than those they would face in a rich country even if their rights were much more restricted than the rights of members. They may well be producing goods that the people in rich states will consume and may even be doing the same sort of work that they would be doing in the rich states. Thus, they will still be working for people in rich states, just indirectly and for less pay and under worse conditions. Others will enter the rich countries without legal authorization and hence without any effective protections at all.

The workers themselves would often settle for less, much less, than I have argued is required as a matter of justice. So, if states respect the requirements of justice but otherwise act in their own interests, they will sometimes not create temporary worker programs, even though they would create such programs if they did not have to provide such an extensive bundle of rights to the temporary workers and the foreign workers who would be admitted under such more restrictive programs would much prefer to have admission with a more limited bundle of rights than no admission at all. How can this make moral sense?

This line of argument has been developed most fully by Daniel Bell, using the cases of Hong Kong and Singapore as illustrations.[22] In contrast to states in Europe and North America, Hong Kong and Singapore admit huge numbers of foreign domestic workers on temporary permits (150,000 in Hong Kong and 140,000 in Singapore). The workers are almost all women and come mainly from the Philippines, though increasingly from Indonesia and other countries of Southeast and South Asia. They have no opportunity to gain a right of permanent residence, much less citizenship, no matter how long they stay. It is not unusual to find workers who have been present for fifteen years or more. In Hong Kong, workers must exit the territory within two weeks if they leave their employers and do not find another job, and in Singapore they have to return home if they quit or are fired. They are not allowed to bring their families to live with them. In Singapore, they are prohibited from marrying or cohabiting with a Singaporean citizen or resident and are expelled if they do so or if they become pregnant. Workers in Hong Kong have better legal protections than those in Singapore, but in both cases the protections for foreign domestic workers are much more limited than the ones extended to citizens and residents. The normal working hours are extremely long. Many foreign domestic workers in Hong Kong work 14 to16 hours a day, 6 days a week. The hours are even longer on average in Singapore. In short, foreign domestic workers in both places face very difficult working conditions.

[22]The most recent version of Bell's argument can be found in Bell 2006. An earlier version, co-authored with Nicola Piper appeared in Bell and Piper 2005.

Bell defends these policies, despite the conditions faced by the workers. Indeed, while there are significant differences between Hong Kong and Singapore in their treatment of domestic workers, Bell does not emphasize these differences in his evaluative analysis or argue that Hong Kong's policies meet standards of justice while Singapore's do not. Instead, he focuses on the contrast between the East Asian approach to migrant workers and the approach in Western states. He sees a deep conflict between liberal democratic demands for equal treatment of migrants and citizens and the actual needs and interests of migrant workers.

Bell has a complex multilayered argument for his view. I want to focus on three interrelated components of that argument: (1) consent; (2) inevitability; (3) global justice.[23]

A. The Consent Argument

Bell claims that it is morally preferable to let migrants choose for themselves whether or not they are willing to come under whatever terms states are willing to offer. Insisting on an extensive package of rights for temporary workers, as I have done, fails to respect the agency of the migrants themselves.

The problem with this element of Bell's argument is that it ignores the parallel between the treatment of foreign workers and the treatment of local workers. In both cases, states adopt policies that limit the agency of potential workers. Within the state, potential employers have no obligation to offer anyone a job, but if they do offer someone a job, they must provide that person with a minimum package of rights and benefits (minimum wage, pension, etc.). So, there is nothing intrinsically puzzling about the idea that the state has no obligation to admit immigrants in the first place but that it must provide them with certain rights and benefits if it does admit them. States limit the agency of local workers for various reasons such as to solve collective action problems, to avoid negative externalities, to protect human dignity, to prevent workers from choosing under duress or out of ignorance, and even sometimes to prevent them from making unwise choices (parentalism). I do not have the space here to explore these rationales, but most of them apply to foreign workers as well. Of course, one can object to such limitations on the choices of local workers as well, but, as I have said many times, I am simply accepting those (variable) policies as given for the purposes of this paper.

B. The Inevitability Argument

A second objection that Bell poses to the pursuit of equal rights for foreign temporary workers is that the presence in rich states of large numbers of foreign

[23]Bell has other components to his argument, but I do not have the space to pursue those here.

workers with fewer rights is inevitable. The only choice is whether they will be present legally with limited rights or illegally with none.

This is an important challenge, and one that has been echoed by many of those who advocate some sort of guestworker program with limited rights.[24] I agree that it is morally problematic to adopt policies that meet the formal requirements of justice but in practice harm the people they are supposed to protect.[25] Nevertheless, we should not leap too quickly to the conclusion that we face an inevitable choice between legal migration with very limited rights and unauthorized migration with no rights. Even more importantly, we need to distinguish between the question of what course of action is the best one available to us in a given set of circumstances and the question of whether that policy is morally legitimate at a deeper level.

We need to distinguish between an inevitability due to external factors beyond the power of a state to control and an inevitability due to political realities internal to the state. Some versions of the inevitability argument remind me of the old joke about the man who killed his parents and then threw himself upon the mercy of the court on the grounds that he was an orphan. They ignore the fact that the dilemmas the state faces flow from the fact that the state is not willing to do what it should in the first place. Take the claim in the inevitability argument that the only alternative to legal guestworkers with limited rights is irregular migrants with no effective rights at all. Why do these irregular migrants come? Why do they have no effective legal rights after they have arrived? If states respond to migration pressures by implicitly tolerating or even encouraging irregular migration, as many states have done, especially with respect to seasonal workers in agriculture, they can then hardly eschew responsibility for the irregular migrants on their territory.

Even if they do not play this double game, they still have obligations towards irregular migrants. I pursue the details of those obligations elsewhere. Suffice it to say that irregular migrants are morally entitled to a range of legal rights, many of which are not now respected in practice. They are not respected primarily because any attempt by irregular migrants to claim their rights exposes them to the authorities and to deportation. That fact is not a natural necessity, however. It is a social choice. It would be possible, and I would argue that it is morally required, to create a firewall between the enforcement of immigration rules and the enforcement of other laws, so that irregular migrants could exercise their rights without risking deportation. If this policy were adopted it would eliminate

[24]For example, Ruhs and Martin (2006).

[25]Bell suggests that liberal democratic states prefer to "accept substantial harms in the social world for the sake of preserving laws that conform to liberal democratic principles." (2006, p. 300) This is misleading. It may be an accurate description of how liberal democratic states behave, but it is not a good account of how they ought to behave from the perspective of liberal democratic principles. Whether the focus is on the treatment of migrants or on the intersection between their treatment and the democratic character of a society, there is little to be said, from a principled perspective, for a purely formalistic approach to rights that implicitly tolerates substantial harms.

much of the rationale for guestworker programs with very limited rights because the alternative of irregular migration would not be as horrible as the inevitability argument assumes it must be. That would in turn make it more attractive to grant those arriving legally a much fuller set of rights.

I recognize that none of this is politically realistic in most democratic states. I also recognize that those who have to act in the world—legislators, NGOs, activists—have to make judgments about what alternatives are politically feasible and have to make tradeoffs between feasibility and desirability. But normative reflection of the sort I am undertaking in this article is not reducible to the question of what policy we should choose among those available to us, all things considered. If we are forced to choose among the lesser of two evils, it is important that we recognize that it is an evil we are choosing. If, further, the inevitability of that choice flows from the fact that the state is not willing to do what justice requires (perhaps because it is a democratic state and the democratic majority want the state to pursue a course that serves their interests but conflicts with justice), then it is essential that we recognize and criticize this choice, as a choice, even if we have no realistic hope of affecting the outcome. It is always easier to get individuals and states to act morally when what morality requires coincides with self-interest. Often enough it does. But we should not redefine justice and morality to fit the requirements of self-interest. The fact that liberal democratic states behave in a certain way does not establish that this way of behaving is compatible with liberal democratic principles of justice.

C. The Global Poverty Reduction Argument

The final challenge I want to consider is the claim that programs that admit temporary workers with limited rights are morally desirable because the remittances that foreign domestic workers send home transfer money from people in rich states to people in poor states, thus reducing global poverty, and that the only way that states will agree to admit significant numbers of temporary workers is if their rights are limited. From this perspective, the moral gains from the redistributive effects of the remittances far outweigh the moral costs of the temporary workers enjoying fewer rights.

Again, I do not want to dismiss this argument altogether, but I also want to raise caution flags about the ways in which this sort of argument can serve to conceal and even legitimate injustice, if it is not presented from a sufficiently critical perspective. If someone suggested that the best way to address problems of poverty and unemployment in a domestic political context was to encourage the rich to hire more servants, we would be sceptical. Yet this is precisely what it means to endorse policies of importing large numbers of temporary foreign domestic workers as a way of addressing the problem of global poverty.

At the outset of this article, I adopted as a presupposition what I called the conventional view on immigration, namely the view that states have a largely

unfettered moral discretion with regard to immigration. Are those (like Bell) who argue that expanded guestworker programs are morally desirable working within the same framework or do they mean to challenge the initial presupposition? Let's consider both options.

First, let's explore the argument within the conventional presupposition. Within this perspective, by definition, states have no moral duty to admit temporary workers. The fact that workers' remittances help to reduce poverty abroad may make admitting such workers a morally admirable thing to do, but it remains something discretionary rather than something required as a matter of justice. On any conventional understanding of morality, agents (including states) are not normally free to pursue what would otherwise be a morally admirable course of action by means that violate the requirements of justice. Robin Hood notwithstanding, it is normally thought to be wrong to rob from the rich to give to the poor (assuming, for this argument, that the rich are entitled to what they have). For that reason, democratic states would not be morally free to use the effects of workers' remittances on international poverty as a justification for overriding their duties to treat foreign workers within their jurisdiction justly. So, if the arguments I presented in the first half of the article about how democratic states ought to treat temporary migrants are correct, democratic states would not be morally free to depart from these standards because doing so would help to relieve poverty abroad.

I do not mean to be an absolutist about this line of argument. There are degrees of injustice. As I noted in my discussions of the Canadian Live-In Caregivers program and of seasonal workers programs more generally, it might make sense to put up with a small, temporary injustice for the sake of a substantial positive consequence overall for those subject to the injustice. But this would not justify significant departures from standards of treatment required by democratic justice.

Within the conventional assumption, states have no obligations to admit any temporary foreign workers at all, but if they do admit such workers they must treat them in accordance with their own standards of democratic justice. The fact that some potential workers are not admitted as a result of states having high standards for the treatment of workers is morally irrelevant precisely because the potential workers have no moral claim to admission. There is a clear analogy with respect to the local workforce. Employers normally have no obligation to hire any workers, but they have legal (and moral) obligations to those whom they do hire. They are not entitled to set aside these obligations in order to hire more workers.

Consider now the second alternative, namely that advocates of admitting temporary migrant workers with limited rights intend to challenge the conventional view about the state's moral right to control immigration. They mean to argue that rich states are obliged, as a matter of justice, to admit as many temporary foreign workers as possible because that is the only feasible way to

transfer resources to poor states, and that admitting as many as possible entails limiting their rights.

This seems to be Bell's position. He says that we have to "consider our obligations to relatively deprived people in foreign lands." He goes on to argue that insisting on equal rights for foreign domestic workers harms those it is intended to help by reducing the numbers whom states will be willing to admit. At the same time, he insists that "The trade in migrant workers is founded on global injustice" and that "the global economy is thoroughly unjust."[26] So, what Bell is advocating, as he clearly acknowledges, is a second best approach, a way of responding to the reality that states and their citizens—even, or especially, liberal democratic states and liberal democratic citizens—will not do what justice really requires: change the rules of the international economic order, provide significant aid in ways that foster development, or even, perhaps, admit large numbers of temporary foreign workers with a full package of equal rights.

This line of argument shifts the terrain of the analysis. Within the conventional presupposition, we could focus only on the moral claims of those whom the state chose to admit. Now we have to consider a much wider set of claims.

In principle, as I said at the outset of the paper, I am very sympathetic to this wider framework. Any plausible theory of domestic justice must ultimately be set within some account of global justice and what is owed to those outside one's own political community.

Notice, however, that Bell's approach risks reducing questions of moral analysis to questions of political strategy. We must distinguish, especially in this sort of academic reflection, between the claim that a course of action is the best one to pursue under a particular set of circumstances, all things considered, and the claim that a course of action is morally justifiable in some deeper sense. If a policy is a regrettable necessity, we must keep the regret in view so as to alter course when more favorable circumstances emerge.

In sum, the consent, inevitability, and global justice arguments do not provide any compelling reason to change the conclusion that democratic justice requires us to provide temporary workers with most of the rights enjoyed by citizens and residents.

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[26]Bell 2006, p. 304.

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