

# Democracy and the Representation of the Interests of Temporary Migrant Workers<sup>1</sup>

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## ABSTRACT

This paper argues that temporary migration projects of the kind discussed by Ottonelli and Torresi could pose problems for the democratic character of the states where those temporary migrants work, even if it were the case that denying political rights to those migrants were not an injustice to them. The denial of such rights might yet be an injustice to existing citizens both because of their entitlement to live in a democratic society and because demographic changes resulting from migration can change the balance of forces within the citizen body. Even if temporary migrant workers have no claim in justice to political rights, there is a case for granting them such rights because of the protective effects of democracy.

**Keywords:** migration, workers, alienage, semi-citizenship, representation, democracy.

## 1. INTRODUCTION

Valeria Ottonelli and Tiziana Torresi have produced a wonderful and original book in *The Right to Stay* (2022), and offer persuasive arguments that states should assign people who choose temporary migration projects a distinctive status and find new ways of protecting their interests within an international system that is based, as ours is, around the nation-state. One of the issues raised by temporary migration projects concerns democracy. First, it has long been argued, by theorists such as Michael Walzer (1984: 52-60), that the long-term presence of *Gastarbeiter* on the territory of democratic states risks undermining their democratic character. Second, insofar as temporary migrant workers are, because of their territorial presence, subject to the laws and the coercive power of the state, there is a question about whether they are entitled to a share of

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political power: in other words, whether they are entitled to political rights, including the right to vote. Ottonelli and Torresi argue that the presence of such workers in a state does not impugn its democratic character and that the interests of such workers are best represented other than by the granting of political rights. They make a case that the “liberal inclusion” model that sees these migrants as being on a path to democratic citizenship misunderstands their aims and interests.

I have two main concerns and a suggestion. My first concern is with the impact of temporary migration projects on the democratic character of the so-called “host” state, particularly given the changing demographics and ageing populations that we find within many wealthy countries. I shall argue that if migrants lack political rights, then this has an impact not only on them but also on other members of the workforce and electorate. This is both because the presence of large populations on the territory of a state who lack political rights starts to undermine the democratic character of the society and because the non-inclusion of some of those people can shift the relative weight of interests within the democratic process in ways that are bad for some types of citizens and may wrong them. My second concern is about the preference that Ottonelli and Torresi have for trade union representation over democratic representation to protect temporary migrants’ vital interests. In my view, they employ a somewhat heroic and idealized conception of the democratic citizen, to set a standard that the temporary migrant both cannot and will not wish to meet. However, if we adopt a more realistic view of democratic citizenship, we will see that this standard is also not met by the typical citizen. There is, though, another way of thinking about democracy, associated with Amartya Sen, that justifies it not as requiring a high level of collective deliberation and citizen engagement, but rather as being protective of interests. Adopting this protective conception of democracy makes temporary migrant inclusion more plausible. At the end of the paper, I also suggest that they could also have said more about protecting the interests of temporary migrant workers via international conventions, incorporated into domestic law, and forming the basis of potential legal challenges by exploited individuals.

## 2. THE IMPACT OF TEMPORARY MIGRATION ON THE DEMOCRATIC CHARACTER OF “HOST” STATES

There are many arguments about how the democratic character of a state might be eroded by temporary migration. For example, ethno-nationalists argue that giving temporary migrants the vote weakens the self-determination of the authentic members of the people. Others might argue

that to deny the vote to temporary migrants is undemocratic because they are then subjected to laws that they have not had a part in making, even indirectly. The first of these claims depends on premises about the character of political communities that I reject, but I will not bother to argue that point here. The second seems more plausible but, in the case of at least *short-term* temporary migrant workers, looks dubious. Many people believe that the length of time a person is present in a state and subject to its laws is important for judging whether they are entitled to political rights such as the vote, and nobody thinks that tourists and other visitors, whose principal residence is elsewhere, are wronged by being denied the vote, even if they happen to be present on a territory when an election is held. Though short-term temporary migrants have a deeper engagement with a society than tourists typically do, something similar may well apply in their case. For this reason, some economists who have advocated an expansion of temporary migration because of its beneficial effects on global poverty, but who are concerned about resistance to this idea from the citizens of wealthy states if too much is granted to those same migrants, have argued for time-limited visas so that these workers never get to a position where they have a plausible claim to political inclusion (see e.g. Rodrik 2012: 267-71; Milanovic 2016: 147-54).

I happen to agree with the claim that as temporary migrant workers spend more time on the territory of the state their case for political inclusion, which may also involve a claim to citizen status, is strengthened, but I am not going to argue for that here. What I want to focus on instead are other grounds to grant them political rights that do not rest on the truth or falsity of the claim that the denial of such rights is an injustice *to them*. Even if it were true that denying temporary migrant workers rights to vote or to run for public office did not wrong them in the sense of depriving them of something they are entitled to as a matter of justice, there may be other reasons to grant such rights, including that the denial of political rights to temporary migrant workers wrongs third parties and that the denial of political rights has bad consequences, including injustice, even when it is not unjust in itself.

I shall come to the second claim about consequences below, but first I want to discuss the claim about wrongs to third parties, which is somewhat anticipated by Ottonelli and Torresi in their book, but only in passing in chapter 3 of the book and, curiously, they do not return to it in their main discussion of democracy and democratic rights in chapter 7. So, briefly, in chapter 3 they note that:

... even if the condition of subalternity of temporary migrants was justified from the migrants' perspective, the habituation on the part of

citizens to the presence of a permanent class of second class members, despite the actual individuals in that class changing over time, would result in damage and corruption to the egalitarian and democratic ethos of the society (2022: 51-52).

Wrongs to third parties might take two forms. First, if the citizens of a state have a right to live in a democratic state, and the presence of large numbers of temporary migrants on the territory without a vote undermines the democratic character of that state, then it would follow that those citizens are denied something that they are morally entitled to, and therefore wronged. Second, if the presence of those migrants significantly changes the relative political power of different citizens so that some citizens find it harder to pursue and defend their interests in the political forum, then those citizens may have a claim to have been treated unjustly by being disadvantaged compared to others in the pursuit of their interests.

To illustrate the first form of putative wrong, take the example of states with a highly restrictive franchise such that only a minority of adults on the territory get to vote and enjoy other political rights. While those who are enfranchised in such societies have those rights of political participation and participate in a process that is democratic in form, they are not citizens of a society that is democratic in its substance. Historically there are many examples of societies that are defective in this respect: nearly all liberal democracies before women's suffrage were like this, as were states with hard-to-meet property qualifications, but also states that sought to restrict membership on racial or ethnic grounds such as the United States and the white Dominions of the British Empire. In the case of South Africa, the manifestly dishonest plan was to convert as much of the black population as possible to the status of temporary migrant workers relocated away from their "homelands". Insofar as such societies fail to be democratic in character, even those who have the vote do not enjoy the good of living in a democratic society, even if, for many of them, they have the compensation of an unjust share of political power.

Living in a democratic society is to some extent a matter of degree, such that in a society where nearly all of the adults on the territory have political rights, people in that society largely enjoy that good, whereas, conversely, in a society where nearly everyone is denied such rights, even the minority with political rights do not. The latter type of society fails to be democratic in its social character and members of the enfranchised minority are merely co-participants in an oligarchy. For example, in countries like the Gulf states today, where migrants without political rights make up the majority of the population, even the extension of democratic rights to all of the citizen population would not suffice to realize the democratic ideal, if

we understand that ideal to involve the vast majority of people on a territory deciding together, on the basis of mutual recognition as equals, on important questions facing society, either directly, or more usually through representatives. For most advanced “liberal democracies”, what is realistically at stake is not the wholesale loss of their democratic character but rather its dilution or erosion to the extent that a proportion of their adult population does not enjoy political rights. Some people may be disposed to reject this concern, perhaps insisting that if all those who are personally entitled to political rights have them, then we should not worry about this nebulous idea of society being democratic in character, and that while there can be specific entitlements to political rights, there is no right to live in a democratic society. I do not have a knockdown argument against such skepticism; here I merely seek to note that the aspiration of citizens to live in a democratic society seems to be thwarted in such circumstances, and that if there is a right to what they aspire to, then they may be wronged by a policy that excludes migrant workers from political rights.

The second form of wrong, which involves wronging existing citizens by weakening their comparative power within the political process, could take place within existing “liberal democratic” states such as the UK, France, Italy or the United States. Some of these societies have in recent years become increasingly reliant on migrant labor, much of it performed by people engaged in temporary migration projects. So, for example, in the UK, the share of the workforce who were born abroad doubled between 2004 and 2019, rising from 9 percent to 18 percent (Fernández-Reino and Rienzo 2021). In Germany, between 2014 and 2020, the non-citizen share of the workforce rose from 9.4 percent to 12.7 percent (International Labour Organization, no date). There is no serious prospect of migrants becoming a majority of the population of these countries, but what does seem possible is that migrant workers, including many engaged in temporary migration projects, will gradually become a higher proportion of the working-age population as the labor-force participation of the native-born population reduces due to ageing. If voting remains restricted to citizens, then this will have the effect, particularly as populations age, that working-age citizens as a bloc will be consistently disadvantaged electorally to the benefit of non-working elderly citizens. To put it another way, the interests of labor, of productive workers, will be consistently underrepresented within politics compared to the interests of those who do not work, but who live off the labor of others. So, if migrant workers lack political rights, then this will end up potentially disadvantaging not only those workers but also citizen members of the labor force, who will find that their interests as workers count for less in the eyes of politicians, who will prefer to court the votes of the non-productive instead.

Now, there are a lot of assumptions there, perhaps most importantly that of a commonality, or at least an overlap in interests between migrant workers, particularly those with temporary migration projects and citizen workers. Sometimes their interests may be opposed to one another. Indeed, this is often the assumption that states make in designing labor-market policies. But I am indeed assuming that there is such a thing as the interest of labor in society, and that insofar as it fails to secure democratic representation, that failure is a harm to all who partake of that interest, whether they be migrants or citizens. One illustration of this might be the United Kingdom's referendum decision in 2016 to leave the European Union. The vote was a narrow one, so the composition of the electorate was crucial to its outcome. Approximately three million citizens of the European Union were resident in the UK at the time, the vast majority of them economically active and younger in age than the typical British voter. Although some of them were eligible to vote because of the idiosyncratic nature of the British franchise (citizens of Ireland, and the British Commonwealth countries of Cyprus and Malta), most of them could not. If the vote had been a vote of the economically active members of society alone, then the UK might have stayed within the EU, but economically active members of the electorate were outvoted by a Leave bloc that was disproportionately elderly and retired. Had the franchise extended to EU citizens generally, including those engaged in temporary migration projects, the vote would have had a different outcome. The disenfranchisement of many migrants had the effect of weakening the representation of the economically active as a whole. This was a harm to their interests, but not all harms are wrongs. However, a systematic tendency to discount the interests of some types of people within a democracy may be a wrong.

### 3. HOW BEST TO REPRESENT THE INTERESTS OF TEMPORARY MIGRANTS

Let me now move on to my second line of criticism, namely that although it may not be a wrong to temporary migrants to deny them political rights, doing so may have bad consequences, and those consequences may involve greater injustice. Though Ottonelli and Torresi are not opposed to political rights for temporary migrants, they believe those rights are not going to be very useful in securing their vital interests, and that this task is better pursued by getting trade unions to act on their behalf. One thing to notice here is that although the book is not just about the non-ideal case, I take it that when we think about both the representation and, crucially, the

protection of interests, we had better be more realistic rather than less. So, while I am certainly open to discussing what the virtues of democratic citizenship look like in an ideal case, we should also have an eye to how real-world democracy (and trade union practice, for that matter) works, and how it protects vital interests to the extent that it does.

Ottonelli and Torresi have much to say, and not unreasonably so, about the fact that people engaged in temporary migration projects have neither the desire, nor the opportunity to engage in politics in the country where they work. This is because they are usually working hard and for long hours, they often have little connection to the ordinary resident population, they see their connection as short term, and they have their ambition and their self-respect indexed to their personal connections back in their country of origin. But it seems worth noting that although most citizens differ from temporary migrants in the location of their self-respect and ambition, they share many of these other characteristics: for instance, they are strapped for cash and they work long hours. In practice many of them are preoccupied with plans, projects and connections that have nothing very much to do with the wider society in which they live, and though, unlike temporary migrants, the location of their ambitions and self-respect is on the territory, they may actually see themselves (and be seen) primarily as members of much smaller networks of family, friends, and locality. It may be from these subnational connections that they get their sense of self-respect. What is going on in their city, region or in the national capital (let alone Brussels or Strasbourg) is not necessarily something they see as having much to do with them. They do not belong to a political party, campaign or pressure group. They are politically disengaged and apathetic, though they may very well have a tribal loyalty to one side or another. Their participation, if there is any at all, consists in voting in national elections.

All the same, there are some important differences between these citizens and temporary migrant workers. In explaining the politically inactive nature of many citizens we can, perhaps, make more of an appeal to choice rather than to a capacity beyond their control. (But perhaps we shouldn't exaggerate this difference, particularly if we are being realistic about the social and material obstacles people face to being involved, and in the light of the remarks about voluntary choices and responsibility that Ottonelli and Torresi themselves make in their chapter on that topic.) Still, even if they are not active and don't correspond to some republican ideal of the engaged citizen, democracy is not without instrumental value for these citizens. But its instrumental value is not the positive one that they will use their status to push for the things that they care about. Rather, it is the negative one that politicians, caring about their votes, will, at some limit,

refrain from pursuing policies that expose these people to great harms.

Here, my point of academic reference is Amartya Sen and his ideas about the protective function of democracy, first developed in his work on famines. As he puts it in *Development as Freedom*:

Authoritarian rulers, who are themselves rarely affected by famines ... tend to lack the incentive to take timely preventive measures. Democratic governments, in contrast, have to win elections and face public criticism, and have strong incentives to undertake measures to avert famines and other such catastrophes. It is not surprising that no famine has ever take place in the history of the world in a functioning democracy—be it economically rich or relatively poor. (Sen 2001: 17)<sup>2</sup>

People who lack political rights are exposed to the neglect of their basic interests and potentially to catastrophe in ways that others, who the powerful are forced to take account of, are not. To my mind this provides a powerful reason to include temporary migrants in the demos, even when they lack the participatory abilities and motivations that Ottonelli and Torresi give such weight to. They argue: “the most promising alternative ... is mobilization through migrant non-governmental organizations, trade unions and migrant workers’ organizations” (12). In many cases they may very well be right about this, but again we should consider not only ideal cases of well-functioning institutions, but also how things typically are in the real world. The reality varies from country to country. In some places, large proportions of the labor force are unionized and trade unions have strong legal protections and even an institutionalized role in the management of large corporations, and even government. In other places, rates of unionization are low and the political and legal environment is really quite hostile to organized labor. To be fair, they openly acknowledge this and write about the need for legal changes to make it possible for trade unions and migrant associations to act effectively on behalf of their members. But there does seem to be something chicken-and-egg here: where will the legal changes come from to facilitate trade unions being effective in this respect, if there is no incentive within the political process to represent the interests of migrant workers?

Finally, it is surprising to me that Ottonelli and Torresi do not also explore another possibility for the defense of the rights of temporary migrant workers, that is, the establishment of international standards via treaties and conventions and their incorporation into the domestic law of states. A number of philosophers and theorists, such as myself (Bertram

<sup>2</sup> With respect to temporary migrant workers in particular, see also Lenard and Straehle (2010).



2018), David Owen (2020) and, most recently, Gillian Brock in her *Justice for People on the Move* (2020), have tried to outline a position of state legitimacy respecting immigration control in which individual state legitimacy depends on upholding and promoting a just international order. Personally, I have some doubts about Brock's version of this, but it does seem to be in practice the best-adapted of these attempts to this task because Brock hangs her account not on some idealized just international order but on the upholding and development of the existing body of international human rights law, some of which makes specific reference to migrants and migrant workers. The idea would be, for example, that states adopt the *Global Compact for Safe, Orderly and Regular Migration* and then incorporate its various principles (which in turn include reference to other principles from the ILO and other bodies) into their domestic law. So long as migrant workers have reliable access to the domestic legal system and can bring cases for unfair treatment etc., then this would seem to represent a third path, alongside political representation and trade unions, to help secure their rights. I do have some doubts about all this, because the problem isn't just a matter of using international human rights law to protect the interests of migrant workers, but also of finding a way that they, as opposed to states, can have a voice in its development and formulation. But I do think this might be a promising avenue to explore.

#### 4. CONCLUSION

I have argued for three main propositions: first, that not representing temporary migrants within the political process can seriously damage the democratic character of a polity, and that one of the ways in which this might be so is when it skews the balance of votes in favor of the unproductive and against workers, whether citizens or migrants; second, that even if temporary migrants lack the capacity to engage actively with the political process, we should not forget the negative and protective function of democracy that arises merely from the fact that people have the vote, a fact that places limits on how far the state can neglect their vital interests; and third, that alongside political and trade union representation, we should not neglect the power of international treaties and conventions, such as the *Global Compact*, to effect change within domestic law, and consequently the possibility of legal challenges to secure temporary migrants' interests.

These arguments are intended to be suggestive and constructive rather than conclusive. Workers with temporary migration projects have an indispensable role in the modern world. They help contribute toward global distributive justice through the transfers they effect from wealthy

countries to their families, they allow many wealthy countries to function by supplying labor in sectors such as agriculture and construction where citizens are unable or unwilling to work themselves, and they realize through their choices valuable conceptions of life that migration gives them the resources to pursue. In a world where the nation-state form predominates, such people are both necessary and, by the very logic of that form “out of place”. My own view is that an ideally just world would have different logics of membership and governance, but in the world we have, Ottonelli and Torresi have advanced our understanding of how the vital interests of this key group can be progressed and protected.

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