

Reply to Critics

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We are extremely grateful to our commentators for their thoughtful and challenging discussions of *The Right Not to Stay*. In the necessarily limited space of this response, it would be impossible to do full justice to the depth and variety of the issues they raise in their comments. In what follows, we aim to address the most salient objections and qualms, which can be sorted into three main categories. The first concerns the framework and target of our argument, namely the way we characterize the kind of temporary migration that is the object of our analysis, and our reasons for thinking that it raises distinctive normative issues. The second group of comments concerns our claim that the life plans of those who engage in temporary migration projects must be accommodated. The third group of comments concerns the impact that the special rights that we advocate to accommodate the life plans of temporary migrants have on the democratic character and internal equality of receiving societies.

1. THE FRAMEWORK AND TARGET OF OUR ARGUMENT

Lenard's criticism of our argument is, first and fundamentally, that in our discussion we miss what are the centrally important points and concerns about temporary migration. She enumerates a number of issues with the way we advance our argument, as well as how we define the group of migrants we discuss.

Lenard argues that the migrants we identify as engaging in temporary migration projects do not, contrary to our argument, voluntarily choose temporary migration. In her view, labor migrants engage in temporary migration because of a combination of factors having to do both with the difficult conditions in their country of origin and the lack of options for permanent migration into liberal democracies. Consequently, she also raises doubts about the work that the notion of voluntariness actually does in our argument, if temporary labor migration is indeed almost always forced by these combinations of adverse factors. Her key claim, then, is

that our argument misses the point in important and troubling ways because there are other classes of temporary migrants, which we fail to discuss, and whose situation and needs would require a very different set of special rights to the ones we propose. In advancing this overall critique, Lenard also picks up on an argument we make in relation to the life plans of migrants engaged in temporary migration projects, namely that they are “worthy” of accommodation, and draws on this to argue against the claim that the plans of migrants who are forced to move are “unworthy”, a conclusion she seems to think is implied by our argument.

In answer to Lenard’s thoughtful commentary, we want to make a number of substantive points and also to offer some clarifications. First of all, we do not at all wish to deny that there is great diversity in migrants’ experiences, intentions, needs and vulnerabilities. To the contrary, a recognition of the diversity of migratory projects and experiences, and therefore also needs, is the starting point of our discussion. In fact, our initial motivation in pursuing this line of research was precisely the belief that theorists of migration tended to work with a homogenous view of the experiences of migrants, which often included the idea that migration is always a permanent move between two polities. It was our frustration with the questions and concerns that these unwarranted assumptions about the phenomenology of migration hid from view in normative theorizing that motivated us to write this work.

We are, therefore, in full agreement with Lenard that there are many migrants for whom migration in general, or temporary migration in particular, is not a voluntary choice. Rather, for many, temporary migration is the forced result of specific adverse circumstances, including a lack of options for successful permanent migration, be these a lack of entry options or the many obstacles to successful integration that still exist in all receiving countries; systemic racism and economic exploitation being two very obvious examples of the latter. Therefore, we make no claim that the special rights framework we propose in our work ought to be extended and universalized to all temporary migrants. To the contrary, one of our claims is precisely that rights frameworks ought to be a good “fit” for specific migratory projects and circumstances, temporary migration projects being a case in point, and hopefully, as we argue in our work, an effective illustration of the dangers and difficulties engendered by failing to provide such a fit.

In fact, in our analysis, we concentrate particularly on labor migrants because, in their case, the need to institute a regime of special rights to protect return and provide exit options is more urgent and obvious. This is for two main reasons: (1) their contribution to the host country’s economy

and system of social cooperation that further grounds the duty of states to accommodate their life plans, for which we argue; but also (2) their condition of vulnerability, which exposes them to various risks, as we detail. This condition is no less troubling for being in part the result of voluntary choices. Their situation, in this regard, is very and obviously different to that of other temporary “guests” of the state, such as retirees or diplomats, who are not usually exposed to the same risks of exploitation and marginalization and who, therefore, are not in urgent need of protection from the state.

Thus, it is precisely in recognition of the diversity of migrants’ experiences that we argue that there cannot be a “one size fits all” framework for accommodating migrants’ life plans, irrespective of their specific migratory projects. But suggesting that access to permanent migration and citizenship is the appropriate, and only, solution for all migrants’ needs and vulnerabilities, as happens in much of the normative literature, represents exactly a one-size-fits-all approach and fails to take into account the diversity of migrants’ experiences, as we argue in our work.

This point is further clarified by considering the role that the notion of voluntariness plays in our work. We argue that migrants engaged in temporary migration projects are entitled to have their life plans accommodated by the liberal democratic state where they reside precisely because they choose them voluntarily. Voluntariness, therefore, plays a fundamental role in our argument, as it gives us the theoretical tools to determine that moving temporarily is, for some migrants—namely those engaged in temporary migration projects—a voluntarily chosen first option over permanent migration—again, for some migrants, not all migrants. Our account aims precisely to distinguish between these cases and to determine when exactly temporary migration is a voluntary choice. In these cases, as detailed by the conditions we set out in our work to define voluntariness, temporary migration is not a second-best choice, motivated by a lack of opportunity for permanent migration, nor a reaction to desperate conditions in the home country, such as the lack of a means of subsistence. In the case of these migrants, as they themselves explain in their own voice as documented in qualitative studies, the aim of migration was always to return after the achievement of specific goals, and the migratory project is inscribed within a life plan. We should therefore avoid the mistake of assuming that the conditions that we set out in our work to determine voluntariness, such as the sufficiency condition, are not met simply on the basis of a migrant’s country of origin. This is why, to reiterate, in their case, but not all cases, offering permanent migration and access to

citizenship as the *only* institutional option means misrecognizing their intentions and, therefore, denying their agency. What is needed, instead, as we argue, is a special set of rights aimed at protecting and facilitating return. This is not to say, though, that migration experiences that are not voluntary are in any sense “unworthy”, but rather that they do not represent plans in the sense relevant to grounding accommodation, as is instead the case for voluntary temporary migration projects.

The recognition of migrants’ agency is at the center of Uchenna Okeja’s comments. Okeja acknowledges that our account constitutes an attempt to call attention to agency as a fundamental dimension of migration, but finds that we stop short of this ambitious task, because of our allegiance to the biased and oppressive framework of the liberal state. In our account, he argues, temporary migration represents a parenthesis in the context of lives that are shaped by the sedentary and exclusionary logic of liberal institutions. This implies conceiving of migration only as a means to further ends in life, and the period spent by migrants abroad as a form of suspended or diminished agency, while waiting for the time, after return, when these migrants will finally achieve their ends in life. To this understanding of temporary migration, Okeja opposes the powerful narrative of Afropolitanism, which radically challenges the sedentarist and nationalistic framework of mainstream liberalism, thus vindicating temporariness itself as an essential constituent of people’s life plans.

We fully recognize that our discussion focuses on those temporary migrants’ plans that are aimed at returning, and at the achievement of goals that are pursued at home. We also acknowledge that this form of migration does not pose as radical a challenge to mainstream liberal institutions as the Afropolitan paradigm does. However, it is important to highlight that our account of temporary migration is not meant to provide a normative model or an ideal-typical description of a mode of being that radically challenges liberal institutions. Instead, it is meant to describe a reality, namely the existence of large numbers of labor migrants, usually occupying low-skill positions in the job market of receiving countries, who are oriented to return and see their permanence abroad as only temporary and instrumental to goals they pursue at home. We try to substantiate the existence of this category of migrants by referring to an extensive sociological, anthropological and ethnographic literature that studies the intentions, behavior, and experiences of those who engage in these plans. This is not to deny the existence of the lifestyles and life plans described by those who have written on Afropolitanism,¹ because different migratory

¹ We refer especially to Tayie Selasi’s “Bye-Bye Babar” (2005), in which she portrays the lifestyle and life paths of the young professionals who inspired her reading of Afropolitanism.

experiences and life plans can certainly coexist side by side. Indeed, as we just specified in our response to Lenard's comments, there is a wide range of migrants' trajectories and conditions, each requiring a specific treatment. Migrants' agency manifests itself in different forms and through different life plans.

More specifically, as we will shortly explain in more detail in relation to Olsaretti's comments, migrants' plans are no less voluntary, and no less the expression of migrants' agency, if migration is aimed at collecting resources to be employed at home and at goals to be achieved after returning. In this respect, we cannot say that in our account the agency of temporary migrants is "suspended" while they are abroad. What may be suspended, if anything, is the engagement in tight relations with the society where migrants reside and the full enjoyment of the fruits of their work, which is postponed to a later time. However, this postponement does not represent a suspension of agency; rather, it is the specific way in which temporary migrants, as agents, carry out their plans.

If we acknowledge the existence of migratory plans that are oriented to returning, and we recognize that they can be considered to be expressions of migrants' agency, then we need to ask how to address them from the normative point of view. Our main claim is that to the extent that these plans can be recognized as voluntary, they should be addressed and accommodated for what they are, that is, as life plans that people have made for themselves and define the meaning and purpose of their existence. Accommodating these life plans is the way in which political institutions recognize and respond to migrants' agency. The most troubling part, in the application of this principle, consists in coming to terms with the fact that if we are really committed to the accommodation of people's life plans and to treating people as agents, then we cannot rely on impossibly demanding, moralizing or idealizing standards of what counts as a genuine or legitimate life plan. Thus, in our book, we defend the notion that those life plans that are conceived in conditions of injustice also deserve to be accommodated as expressions of people's agency. In the same vein, we must acknowledge that life plans often rely on traditions, ideologies, conceptions of the world, and social pre-conditions that individuals simply take for granted, or endorse without further scrutiny.

The life plans of those migrants who engage in a temporary migration project can be seen as grounded at least in part in cultural, social and political preconditions that one might want to challenge from the point of view of justice, or of enlightened political ideals. Notably, their very rationale is based on the opportunity, in terms of economic gains and social mobility at home, which is offered by a sharp separation between

the social space of the society of origin and that of the destination country where migrants are employed as foreign workers. Moreover, they are premised on migrants' goal to improve their conditions and chances in their home country, which is identified as the place where their fundamental interests are, and where very often remain children, partners, and family.

From the Afropolitan point of view, these cultural and political premises will probably be seen as unduly influenced by a political and social order that must be superseded.² However, we need to ask whether we should aim for a world in which these plans would be utterly impossible, and, even if that were what justice requires, how we should address these life plans under present, non-ideal, conditions. We suggest that no matter what we believe about what an ideally just world would look like, the life plans of those who engage in these forms of migration should be supported and accommodated, for two reasons: because this is how migrants, here and now, are recognized as purposeful agents who are bearers of life plans, and because accommodation is the only way to avoid having migrants pay for the costs and risks deriving from the mismatch between their life decisions and current institutional arrangements.

Okeja points out that if we want to fully vindicate the agency of migrants, then we should not worry that they might upset the liberal order by creating a second-class status within receiving societies. We agree with this claim, to the extent that it expresses the view that it is institutions that should adapt to people's lives rather than the other way around, especially when institutions, by not adapting, put people in a vulnerable and subaltern position. This is why we insist that the way in which liberal egalitarianism typically seeks to achieve social equality, that is, through universal inclusion in citizenship, should be rejected in the case of those who engage in temporary migration projects; demanding full inclusion as a condition for equality means putting temporary migrants in a vulnerable position and misrecognizing their life plans. However, social equality, *per se*, is an important goal. Moreover, the existence of a class of highly vulnerable and subaltern subjects is a problem not only for the liberal order, but also and especially for those who occupy those disadvantaged positions. Our proposal to establish special rights for those who engage in temporary migration projects is meant to remedy vulnerability and subalternity, and to establish equality, without demanding inclusion.

² The appeal to overcome the present political order and the conception of citizenship is implied in Okeja's reading of Afropolitanism. Afropolitanism was born as a challenge to the nativist understanding of African identity (Afolayan 2016), but its import is universal and can be read as implying a project of political emancipation that represents a "prospective good for everyone".

2. THE PRINCIPLE OF ACCOMMODATION AND ITS IMPLICATIONS

Serena Olsaretti points out that from our account it is not clear whether temporary migration has instrumental or non-instrumental value. In either case, she remarks, our analysis fails to justify the claim that the choices of the low-skilled temporary migrant workers we are focusing on deserve a special, not purely remedial, accommodation by receiving states. If we depict temporary migration as having non-instrumental value, then our argument does not apply to the migrants who are at the center of our analysis, because we describe their migratory plans as instrumental to collecting resources to be employed at home. If we claim instead that temporary migration has instrumental value, then our analysis does apply to these migrants, but we cannot claim that their choice to migrate deserves to be accommodated. This is because what is owed to people is the accommodation of their goals, rather than whatever means they choose for reaching them. If setting up programs to help would-be migrants reach their goals at home proved to be less costly than but equally effective as accommodating their temporary migration plans, then setting up those programs would be the right thing to do.

Olsaretti also suggests that we might have wrongly assumed that low-skilled migrants' choice to migrate must have non-instrumental value, because we claim that many of them migrate voluntarily, and she conjectures that we unduly infer that if a choice is voluntary, then it must serve non-instrumental interests. Before we address the main issue that concerns us, then, it may be useful to clarify this point, by stressing that in our account voluntary choices may concern *both* the goals of our actions and the means to achieve them. Therefore, we could not possibly infer the non-instrumental character of a choice from the mere fact that it is voluntary. Indeed, we believe that the choice to migrate of the low-skilled migrants we are considering in our discussion is voluntary, although they migrate in order to pursue further goals.

This said, we still claim that temporary migration, even when it serves important goals in migrants' lives, does not just have instrumental value. This does not imply that it has intrinsic value in the (Moorean) sense that it is valued for its intrinsic properties or unconditionally, which would make it valuable in every possible world. Rather, it means that while having instrumental value, it is also valued for its own sake. Christine Korsgaard (1983: 185) talks of "mixed values" to indicate those goods that "human beings might choose partly for their own sakes under the condition of their instrumentality: that is, given the role such things play in our lives". There

are plenty of examples of such goods. Many kinds of physical exercise, for instance, are valued instrumentally because of their beneficial effects on our health, or because they help us win in competitive sports, but are also valued for their own sake because we value the process through which we achieve those outcomes, and we especially value the fact that they establish us as the makers of such outcomes. This does not mean that those activities are only valued non-instrumentally, or for their own sake. In fact, their value is conditional on their serving as instruments to reach certain further ends, which is constitutive of their very point and purpose. However, they are also valued for their own sake, and reaching the end without going through the process would diminish the overall value of those endeavors in our lives.

To these considerations we should add that speaking of “interests”, or even of “choices”, risks obfuscating a relevant dimension of migrants’ agency and the meaning of the principle of accommodation. In our understanding, the principle of accommodation is not meant to recognize and accommodate specific interests, or specific choices that people make about alternative states of the world, but rather people’s life plans, where the language of life plans is specifically meant to convey the agency dimension in people’s lives. Life plans are not collections of ends or goods that people want to see realized; rather, they are plans of action, which comprise not only the final realization of some specific goals, but also the complex architecture of the intermediate goals that are needed to achieve them, and the strategies and endeavors that people need to engage in when pursuing them. If there were a device that were capable of costlessly generating for each individual the state of the world that would correspond to their “final” goals, that is, the achievements that they aspire to reach by the end of their lives, most of us would perceive that possibility as a radical alternative to being agents and pursuing a life plan, although from the point of view of preference-satisfaction it would be the best that one could hope for.³

We can find an instantiation of these circumstances in the sense of empowerment and self-determination that is reported by female migrants who support their children and families through their work abroad. Although their migration is explicitly meant to serve goals at home, women often gain in social status, power within the family, and self-confidence

³ As Amartya Sen rightly points out, we do not wish to exercise direct control over the means for all our goals or preferences in life. It is perfectly fine with many of us, for example, if the government or someone else takes care of what needs to be done to keep our environment as healthy and pest-free as possible (Sen 1992: 58ff.). However, there are other dimensions in our life, such as those that concern our personal relations and our career, in which being in control of the process is as important as being in control of the outcomes.

through the process by which they make the decision to leave and become a source of support and long-distance care for those they leave at home. If seen under this light, migration appears valuable for its own sake, even if it clearly has instrumental value, and its very point, indeed, is constituted by migrants' desire to pursue further ends in life.

Being an agent means not only choosing states of affairs that one desires to see realized, but also being actively involved in the first person in achieving them, by playing an active role in producing the desired outcomes. The liberal principle of accommodation, accordingly, respects agency by requiring the creation of the institutional conditions in which people can carry out their life plans, rather than the provision of ready-made outcomes that match people's wishes. This implies, in the specific case of migrants, that to respect their agency what needs to be accommodated is not their final goals in life, but the migratory plans that they devise to achieve them, and whose execution should remain under their control.

The principle of accommodation is also the target of David Miller's critique of our work. Miller advances a number of critical points; some concern directly what he claims are some of our misunderstandings of the scope of the duty of states to accommodate life plans; and another set, which we may call pragmatic concerns, refer to the possible consequences of the policies we argue for in our work. We will detail them in order and offer some remarks in response.

Miller broadly agrees that states do indeed have a duty to accommodate life plans, but he points out that in absolving that duty the state cannot take on full responsibility for ensuring that people's life plans succeed; rather, there must exist an equitable share of responsibility between migrants and the state in ensuring that life plans are successful, and it simply cannot be true that people are free to choose any plan they wish to embrace, including the most risky ones, while expecting the state to then take full responsibility to ensure their success. Moreover, we understand Miller to also be arguing that people, including migrants, ought to be held fully responsible for the foreseeable consequences of their life choices.

To this critique of our principle of accommodation, Miller adds two key points in relation to the possible unappealing consequences of the system of special rights that we argue for. He argues that the regime of special rights we suggest may provide negative incentives to both the migrants themselves and the host state, because it includes an entitlement to access permanent residence for those migrants whose project of temporary migration changes. For the migrants, the option to remain represents an incentive to undermine their own life plans, in the certainty that a change

of heart will be accommodated by the institutions of the receiving state. For the states, on the other hand, having to provide access to permanent residence and eventually citizenship, may render these migrants less attractive, thereby reducing the state's incentive to allow them in in the first place. This is a concern based on the well-known "rights vs numbers" dilemma, which claims that as the number of rights that migrants are entitled to grows, and therefore their perceived costliness also grows, correspondingly the willingness of states to allow migrants in declines.

Having summarized Miller's key concerns with our argument, we offer now our response. On the first points, what we wish to clarify is that the principle of accommodation, as we conceive of it, does not entail that the state must *ensure* the success of any one specific life plan. We agree with Miller here that that understanding of the duty is implausible. The point we are making, rather, is that the state has an obligation to arrange its institutions in a way that does not reflect, and therefore accommodate, only *some* life plans while leaving other existing plans open to extreme risks and vulnerability, where the latter is understood as a loss of fundamental rights and a lack of recognition of the migrants' equal status. One of the central claims we make in our work is that this is precisely what happens to migrants in general, and to migrants engaged in temporary migration projects in particular, and arguably more acutely. In fact, the idea that the principle of accommodation applies to all life plans is not simply an affirmation of principle, but it is actually the recognition of the fact that mainstream life plans actually *are* accommodated by institutions, because the institutions themselves are shaped on the basis of these plans. Thus, the sustaining of the option to return and the provision of exit options for migrants are not meant to guarantee that the state ensures the success of the migrants' life plans instead of the migrants themselves, but are rather meant to protect migrants from the loss of their most fundamental rights and to recognize migrants engaged in temporary migration projects appropriately.

In relation to the pragmatic claims, we want to make two points. Regarding the first concern, namely, that providing temporary migrants with the option to remain may act as an incentive for them to abandon their life plans as first conceived around temporary migration, we recognize that this is indeed possible, but if true, it is an effect that does not concern us. This is because from our perspective, guaranteeing to individuals the opportunity to conceive and pursue their life plans entails also guaranteeing them the possibility of changing their mind, and revising and redirecting their life plans without paying too heavy a price, such as the loss of fundamental rights. Regarding Miller's second point, that is, the

concern that guaranteeing access to permanent residence may discourage states from allowing temporary immigrants to come in at all, we also want to say that if this were true, it would not trouble us as a consequence of our argument. The reason for this is that we are not attempting to maximize the number of temporary migrants allowed to come. Rather, our aim is to establish the conditions under which those migrants ought to be admitted if justice is to be guaranteed.

The question we wish to ask therefore is: what are the fair conditions of admittance for temporary migrants? The answer we give is that to establish what are fair conditions of admittance, we cannot consider what the receiving state would be able to achieve agreement on in the course of hard-nosed negotiations. This is problematic given the power asymmetry in such a negotiation and the incredibly high stakes for migrants. Rather, we should settle on what each party could agree to in a situation of contractual equity, such as the conditions of Rawls' original position, where what is guaranteed is that each party concerned (including the citizens of the host state) is ensured of the conditions to pursue their life plan. This principle of fairness, and not the alternative principle that each person ought to assume upon themselves the consequences of their choices as long as those consequences were foreseeable, is what it makes sense to apply to permanent residents and citizens, and it is unclear why the same principle should not also apply to migrants. Think here, for example, of the reasoning we apply to the consequences of procreation. When parents decide to have children, they can foresee that if they return to work, a care void will be created that needs to be filled, but in this case, we do not say to parents who are also workers that since they could foresee this need arising as a consequence of their choices, they are now fully responsible for providing that alternative care. To the contrary, in most cases, we believe that the state has a responsibility to cooperate at least with parents in the provision of such care and in bearing its costs, and indeed, most liberal democratic states do so.

Finally, Christine Straehle also raises some concerns about our formulation of the principle of accommodation. She suggests that there is a contradiction between the grounds of the principle and its implications once instituted. What Straehle considers to be the problem here is that we claim to identify the marginality experienced by migrants engaged in temporary migration projects as problematic, but also want to protect them from this condition with a regime of special rights that, she argues, has the effect of actually perpetuating precisely the marginality that we claim to be concerned about. She proposes, therefore, that access to permanent residence and citizenship and successful integration are a

better solution to the condition the migrants find themselves in, because they directly address migrants' marginality. Her conclusion, she argues, is further strengthened by noting that the condition of migrants engaged in temporary migration projects, which we described as being still centered in the social space of their home country—a condition that we want our rights to help support—is psychologically unsustainable. As such, it is questionable whether a framework aimed at maintaining and facilitating such a condition is desirable. Integration in the host society could instead resolve this condition, which, the suggestion is, ought to be the aim.

To these thoughtful objections we want to answer again with some clarificatory points. First, in relation to our discussion of the principle of accommodation being contradictory or incoherent, we wish to note that, in our view, the contradiction is only apparent. We believe that marginality is not a problem in and of itself. Marginality is not a characteristic that only the migrants that we are concerned with possess; rather it is apparent in many other groups of temporary “guests” of the state who do not integrate into the host society to any real degree of depth—diplomats, as mentioned above, are a case in point. As we have already mentioned in this discussion, marginality is, however, a problem for the group of labor migrants mostly employed in low-skill occupations whom we center our discussion on. This is because in the case of this category of migrants, marginality translates into high levels of vulnerability and subordination. In other words, the problem we mean to address is not marginality in and of itself, but rather, vulnerability. This is also because attempting to correct and eliminate marginality actually contradicts the life plans of migrants themselves. Thus, to us, the solution to this is to find an institutional arrangement that accommodates marginality while at the same time neutralizing its consequences in terms of vulnerability. This is precisely the role that our regime of special rights is designed to play. We hold this despite the fact that we do agree with Straehle about the psychological toll of the situation that these migrants place themselves in, which is well documented in the empirical literature. That said, we must not forget that the psychological and social costs of integration can also be high and are equally well documented in the literature. We should not discount how difficult the permanent loss of home can be for migrants, too. The marginality that migrants experience, moreover, while difficult to sustain in some ways, does not translate into complete social isolation, but rather consists of relations with a small circle of friends and acquaintances in the host country and, of course, the continued relationships with friends and family back home, and is, therefore, a less extreme condition from a personal and psychological perspective than it may first appear.

3. EQUALITY AND POLITICAL RIGHTS

Rainer Bauböck argues that our account seems to suffer from a “migrantist bias”, by devoting exclusive attention to the needs and plans of migrants, while neglecting those of sending and receiving states, and more in general the institutional framework that should be put in place to ensure a just international migration order. More specifically, by only focusing on the rights of temporary migrants in the receiving countries, we do not provide an account of just admission policies, do not consider the responsibilities of source countries towards their emigrants and the role they must play in protecting migrants’ rights, and we fail to appreciate the effects of the special rights that we advocate for migrants on the principle of equal citizenship in receiving countries.

Bauböck is certainly right in stressing that the central focus of our attention is the life and plans of temporary migrants. Indeed, our account does not try to provide a complete theory of a just international migration order, but it should instead be understood as the attempt to enrich and revise the debate on justice in immigration, which concerns the duties that receiving countries have towards their immigrants. The specific way in which we mean to contribute to such a debate is by asking what receiving states owe to those immigrants who plan to return home and therefore cannot be adequately protected by citizenship rights and the other institutional devices that are meant for permanent members or those who aim at full inclusion.

We separate the issue of admissions from the issue of how receiving states should treat their temporary immigrants, because we believe that there are special duties of domestic and democratic justice that states have towards those who reside on their territory, participate in their local economy and cooperate with the central institutions of their basic structure. Among them, we count permanent and temporary migrants. Bauböck rightly points out that in some cases, such as that of circular migrants, the special obligations thus established also include a duty of readmission. However, by their very nature the principles of first admissions cannot be generated by the logic of the special relations and obligations generated by residence and work on the state’s territory, but must proceed instead from a complex normative architecture that encompasses the duties and interests of sending countries, receiving countries, and the migrants themselves. We agree with Bauböck that the principle of such a just global migration order should be produced and negotiated through decision processes in which all the parties are

represented.⁴ The avowedly limited way in which our discussion contributes to reflection on such principles consists in the claim that these principles should not be negotiated on the basis of the assumption that the best and fairest treatment that receiving states can offer to those who are admitted consists in giving them full citizenship rights in due course, because the resulting arrangements impose unfair costs on those who aim to return, exposing them to severe forms of vulnerability.

Such vulnerability can be remedied, we argue, by establishing special rights that accommodate the life plans of those who aim to return. In this respect, contrary to what Bauböck suggests, the principle of accommodation we argue for can be seen as falling within the category of those measures that aim at “achieving more substantive equality through deviating from a standard of equal treatment”. Its chief aim is not to provide special privileges for temporary migrants or any other groups in society, but to avoid the severe forms of disadvantage and inequality in treatment that ensue when the basic institutions and rights of a political community are tailored to the lifestyle and plans of the majority. In these cases, those in the minority are left before the tragic choice between giving up their otherwise legitimate life plans, or failing to have the fundamental dimensions of their existence protected by the basic institutions of the society they live in. Thus conceived, the principle of accommodation does not open the door to unlimited requests for exceptions and privileged treatment. Still, we do not see it as an ad hoc principle that only holds for temporary migrants, because the very same principle of accommodation can certainly be appealed to by other groups that can prove to suffer a diminished enjoyment of the basic protections that fundamental civic, social and political rights are meant to provide.

Parallel considerations can also guide us in addressing the qualm that accommodating the life plans of temporary migrants may disrupt equality in the host society by allowing exemptions from work regulations and terms of employment. A challenging example Bauböck offers is the Austrian decision to provide lower cash benefits for the children of migrant workers who left their families at home, given the presumably lower cost of living in the sending countries. This case seems to provide a striking illustration of how adapting rights to the actual needs of temporary migrants can disrupt equality to the detriment of migrants themselves and eventually every other worker. However, we deem that what the example illustrates instead is how the principle of accommodation requires a careful appreciation of the circumstances and of the object of rights. How the needs of children

⁴ For a discussion of this requirement, whose aim to provide voice and representation for all the parties involved we certainly endorse, see Bauböck and Ruhs (2022).

and other dependents are addressed is very system-specific. In our treatment of the matter, we assume that receiving states should provide for the care of the children of temporary workers by directly subsidizing welfare institutions in the sending countries. In a system where benefits are provided in cash, in principle there would not be any significant harm if they were brought in line with their actual cost in the country where they are provided. However, if we take the principle of accommodation seriously, then a mere reduction of the benefits in proportion with the difference in the cost of living would be inappropriate, because what the calculus should consider is not just the cost of the same services or provisions in the sending and receiving countries, but also the fact that the care of children who are separated from their parents for extended periods of time requires different—and presumably more skilled and more expensive—services and provisions than the care of those who live with their parents.⁵ The Austrian example strikes us as unfair, we submit, not because it departs from a requirement of formal equality in the calculation of allowances and benefits, but because it does so in a suspicious way, by only considering differences in the cost of living while neglecting the extra costs generated by the special needs of those workers who are engaged in long-distance care.⁶ What really counts, in the end, is whether social rights effectively protect the needs they are meant to protect, and our point is that the way in which equality is achieved is by ensuring that rights do fulfil this substantive standard for everyone, rather than sticking to the same formal standards.

This is not to deny that there is reason to be concerned about the possible social dumping effects—that is, the lowering of standards for everyone⁷—of introducing differences in how workers are treated. However, these concerns must be guided by a substantive criterion, rather than by the assumption that strict formal equality is the only solution. As

⁵ Consider, for example, the children who are left to the care of their grandparents, who in some countries are the vast majority of those whose parents work abroad. Even when they are not neglected, due to the age of their care providers they are likely to receive inadequate support in their educational activities and socialization, such as homework or the sharing of recreational time with other families. To fill that gap, they need stronger institutional support than those children who can count on the hands-on care of their parents outside work hours. For an insightful analysis of the issue, see Gheaus (2013).

⁶ The European Court of Justice has recently ruled against the Austrian decision (*Judgment of the Court in Case C-328/20*). According to the Court, the decision is maliciously discriminatory against migrants, as revealed by the fact that the reduction of benefits involved only applies to foreign workers, while it does not apply to Austrian workers whose children reside in countries where the cost of living is lower than in Austria. We want to suggest that the measure is also maliciously discriminatory because it claims to reflect a careful consideration of the differences in the cost of children's care for different groups of workers, while in fact completely neglecting the specific needs of foreign workers.

⁷ See our summary of the book.

we point out in our book, building a regime of rights that takes into account the specific needs and interests of temporary migrants may create incentives for migrants to actively contribute to the enforcement of regulations.

This brings us to the issue of how to make sure that temporary migrants have a say in the designing of the institutions that should regulate and protect their rights. Rainer Bauböck seems to agree with us that voting rights in general elections are not the right answer, but points out that voting rights at the local level even for non-permanent residents are a reality in many countries and are in line with the rationale of local citizenship. We will come back to this important remark after discussing Chris Bertram's comments, which specifically concern our treatment of temporary migrants' political rights.

Bertram objects to our dismissal of voting rights in national elections as a promising venue for the political empowerment and voice of temporary migrants. He points out, importantly, that this issue concerns not only the democratic rights of temporary migrants, but also those of the citizens of receiving societies. More specifically, the latter have the right to preserve the democratic institutions of their countries, which are seriously damaged by the presence of large numbers of foreign workers who are deprived of voting rights. Moreover, workers in the receiving countries may gain from the enfranchisement of temporary migrants, because their vote might boost the electoral representation of the interests of labor. This is especially true in light of the fact that voting rights can have a protective function even when they are not exercised. Bertram argues that we seem to assume instead that rights can function only if supported by heroic and highly demanding levels of civic and political engagement, which indeed even most citizens of existing democracies fail to display. Finally, he suggests that as a path to secure temporary migrant's rights we should also look at the establishment of legal standards through international treaties and conventions.

In response to Bertram's challenging comments, we can only start by restating the factual basis on which our argument rests. Temporary migrants occupy a very special position in relation to electoral politics because they are voters who might have already left by the next time elections are held. This means that in the case of temporary migrants the protective function that Bertram indicates as a default implication of enfranchisement, even for those who tend to be politically inactive, is unlikely to actualize. Politicians can certainly have reason to worry about the potential vote of politically inactive immigrants, but they will naturally look at those who are prospective permanent members of the community,

while the specific interests and needs of those who intend to return to their home countries will tend not to have any political traction. This fundamental fact, together with the well-known high negative correlation of the intention to leave with turnout at the elections,⁸ places temporary migrants in a different position than those who are politically inactive but still constitute a potential reserve of votes for political parties.

Those who engage in temporary migration projects are also special in another respect. Although it is certainly true that many citizens do not make use of their voting rights, or do not seek the proper preconditions for their exercise, it is reasonable to expect them to do so, or, if they do not exercise these rights even when the adequate institutional support is in place, it is reasonable to assume that they should bear the consequences of their political self-incapacitation. In the case of temporary migrants, by contrast, the building of the preconditions for the effective exercise of voting rights is exceedingly costly, because it conflicts with their life plans and the limited engagement with the host society that such plans entail.

These considerations explain why the citizens of receiving societies should not count on the enfranchisement of those migrants who intend to return home as a source of political empowerment or as a guarantee of the democratic character of the institutions under which they live. If it is true that temporary migrants are not in a position to adequately exercise their voting rights, or can do it only at much higher costs than permanent members of the host society, then their enfranchisement constitutes a purely formal tribute to the principles of democratic government, which cannot satisfy whatever substantive interest in democracy citizens may have. Moreover, for the same reasons, it would be unrealistic and unfair for citizens to count on the electoral engagement of temporary migrants to enhance the electoral power of their preferred parties. We may add that these remarks also count as a response to Bauböck's important observation about the rationale of voting rights at the local level.⁹ Although we agree that local voting rights are and should be distributed according to residence, and therefore temporary migrants should be among those entitled to receive them, on the exercise side they can be as costly and ineffective for those who plan to leave as voting rights at the national level.

Trade unions, to our eyes, represent a better venue for the political empowerment of temporary migrants because of their higher potential—as compared to parties that compete in national elections—to acquire a

⁸ See e.g. Ramakrishnan and Espenshade (2001), Jones-Correa (2001), Ruedin (2018), Bevelander Hutcheson (2022).

⁹ For a discussion of voting rights at the local level, which was not originally included in the book manuscript, see also *The Right to Stay*, pp. 159-61.

transnational dimension, and to mobilize migrants through means that are in line with their life plans, beyond the confining time frame and logic of electoral competitions at the national level.

Bertram asks how the institutional changes that would be necessary to make trade unions more effective in representing the interests of temporary migrants can take place if migrants are not politically represented through voting rights. However, this question could be asked regarding voting rights as well. As Bertram rightly notes, this is a chicken-and-egg problem, and we add that it is shared by all processes of political empowerment that require institutional changes. Trade unions, indeed, through their history, have proven to be highly effective in transforming spontaneous political mobilization into formal and institutional recognition, and we can legitimately hope that the same can happen with the institutional changes that are consequent to the mobilization of temporary migrants. The relevant question, then, is not how political mobilization can produce institutional changes, but which institutional changes should be sought. We believe that the efforts should be directed towards trade unions rather than electoral institutions.

As a closing consideration, let us say that we agree with Bertram on the relevance of international conventions as a possible source of institutionalization and defense of temporary migrants' rights.¹⁰ However, as Bertram acknowledges, so far, such instruments have not proven to be very effective. Moreover, we should note that the existing conventions are chiefly (and, of course, rightly) preoccupied with the violation of the fundamental human rights of migrants, and the harsher forms of mistreatment that temporary migrants are subject to. However, they fall short of the more ambitious goal we advocate, namely the establishment of a governance regime that accommodates the life plans and specific needs of temporary migrants and recognizes their right to plan their return home—in other words, what we have called a “right not to stay”.

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¹⁰ The printed version of our book now includes a review of the most important conventions that are relevant for the treatment of migrant workers (see *The Right Not to Stay*, pp. 130-32).

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