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Temporary Migration Projects and the Context of Justice

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Abstract

This commentary focuses on the methodological issue of the relevant context of justice for the discussion of Temporary Migration Projects and on drawing out the implications of this issue for the arguments of The Right Not To Stay. It contends that the methodologically nationalist approach to specifying duties of justice to persons engaged in TMPs that Ottonelli and Torresi adopt leaves their argument exposed to a number of challenges that a methodologically transnationalist approach would not confront.

Keywords: Methodological nationalism, transnationalism, justice, temporary migration, migration projects, liberalism.

Introduction

Valeria Ottonelli and Tiziana Torresi have written an important book for the political philosophy of migration, one that draws attention to conceptual and substantive issues that have been overlooked or neglected in much of the existing literature but whose importance they cogently draw out. Their contribution includes demonstrating the normative significance and specificity of temporary migration projects (TMPs), highlighting the salience of migration for ideal theory against the tendency to treat it as a matter of non-ideal theory, offering an account of the concept of the voluntary (and non-voluntary) and its

significance for a liberal theory of justice in migration, and developing a substantive account of special rights for individuals engaged in temporary migration projects. My appreciation of, and respect for, their work does not, however, prevent me from having significant disagreements with the argument that they advance. This disagreement ranges across methodological, conceptual and substantive issues but the most fundamental one concerns – as my title indicates – concerns the methodological issue of the *context* of justice in terms of which TMPs are addressed. I will begin by sketching out the concept of TMPs for the sake of clarification before addressing the character of my methodological concern and then proceed to address some substantive issues raised by this excellent book.

I. The Concept of a Temporary Migration Project

TMPs are defined thus:

> Temporary migration projects consist in migrating to a foreign country for a variable but limited span of time or in repeated engagement in short migrations, such as what we see in circular migration patterns. The migratory project is undertaken with the purpose of sending money home, accumulating capital, and acquiring knowledge and expertise needed to advance specific aims once back in one's country (2022, 23).

Notice that to be a migrant engaged in a TMP has no necessary relationship to the length of time that they are present in the state, the individual may intend to stay for a long period, returning only at the end of their working life. Rather a TMP is constituted only by the structure of intentions described when conceived as a part of an individual life-plan. This will eventually lead Ottonelli and Torresi to argue that any migrant should have the option of choosing between two different types of migration status – one that is geared to the permanent migration projects and another that is oriented to TMPs – with very different implications for their rights and duties. In this respect, TMPs have no relationship to temporary migration programmes except to deny that any such programmes that do not allow migrants "after living for some time in the host society" (2022, 118) to choose, and change their choice, between these two general statuses are just[1].

[1] At times Ottonelli and Torresi seem to suggest a stronger thesis, namely, that temporary

The key point for us is not to confuse TMPs with temporary migration programmes not least since a permanent residency visa may be the best way of – or even necessary to – pursuing a medium or long term TMP.

II. A Methodological Concern: The Transnational Context of Justice

People engaged in TMPs are, as Ottonelli and Torresi acknowledge, engaged in transnational lives (e.g., 2022, 119) and at various points in the book they acknowledge the importance of mechanisms such as bilateral agreements with the sending state for addressing issues such a welfare measures (2022, 126). But they do not explicitly address the question of the *context* of justice for persons engaged in TMPs by which I refer to the relevant frame (national, transnational or global) within which the schedule of rights and duties are appropriately specified, rather they operate throughout in methodologically nationalist terms. Should we accept this framing of the normative issues? How do we identify the relevant context in relationship to temporary migration projects?

To identify the context of justice requires appeal to a principle that identifies the relevant basic structure as the subject of justice in relation to persons engaged in TMPs. There are three main candidates:

1) The context of justice is specified by the domain of social cooperation for persons whose life-plans involve the pursuit of TMPs.

2) The context of justice is specified by the institutional domain that pervasively and profoundly shapes the life-chances of individuals whose life-plans involve the pursuit of TMPs.

3) The context of justice is specified by the institutional domain that subjects persons whose life-plans involve TMPs to coercion.

To keep the discussion tractable, it will be helpful to consider a case in which the individual pursuing a TMP as part of their life-plan is a national of home state A and is working in state of residence B. The salient point that emerges from consideration of any of the three specifications is that the relevant context of justice is the transnational context 'A-and-B' and the relevant duty-bearer to the individual pursuing a TMP as a part of their life-plan is 'A-and-B'. The duty

migration programs that have fixed time limits are, in the absence of the option to stay, necessarily non-voluntary (2022, 84) but since such a view would not cohere with their own methodological approach to, and substantive account of, voluntariness so I will take it that they are not committed to such a thesis.

of justice towards this individual is a joint duty that is shared by A and B.

Why does this point matter in relation to Ottonelli and Torresi's argument? After all, they acknowledge that their account is one of the ethics of immigration relevant to individuals engaged in TMPs that could be extended by taking up the ethics of emigration in relation to these same individuals. Further, they argue both that receiving states have a duty to set up bilateral treaties with sending states "which implies correlative duties on the part of sending states to participate in the establishment of such agreements" and that "there are many other duties and obligations of sending states that mainly or exclusively fall within their own jurisdiction" (2022, 172) Is my objection then simply that their book only gives us a one part of what a full account of justice-in-migration relative to TMPs would require? Although it might be read in this way, the point that I am concerned to highlight is more conceptually challenging to their approach than this interpretation would suggest. Let me explain.

If it is the case that the duty of justice towards individuals pursuing TMPs across states A and B is a joint duty shared by A and B, then it follows that A and B have an obligation to cooperate in realizing this duty where, given that they are states with distinct territorial jurisdictions, this entails that they engage in joint action (e.g., a bilateral treaty) which establishes a fair division of duty-bearing labour between them. Put thus this may seem at least practically consonant with the position sketched by Ottonelli and Torresi, but conceiving of the duty of justice as a joint duty shared by A and B has the implication that since the primary context of justice is the whole transnational scheme regulating TMPs across A-and-B, it is necessary to specify the conditions of transnational justice prior to specifying what justice in A and justice in B require. Put another way, the duties of A cannot be specified independently of the duties of B. It is, I think, a methodological error to suppose that one can deal first the duties of B and then go on separately to specify the duties of A and then think about what cooperation achieving this may require. This is however precisely how Ottonelli and Torresi proceed albeit that they only seek to specify fully the duties of B.

Consider the case of emigrant voting rights. If we approach this question from the national standpoint of state A in the contemporary global context, then we have good reason to think that such rights are permissible, neither forbidden nor required by justice, at least for 1st and 2nd generation emigrants. However, if we approach the same question from the transnational context of A-and-B relative to individuals engaged in TMPs, then there is strong reason to see them as required precisely because the individuals in state B engaged in TMPs are oriented towards to home state rather than the state of residence, the home state is the primary locus of the social bases of their self-respect and they identify

themselves are members of its political community. They are thus more akin to diplomats or soldiers stationed abroad than to permanent emigrants who are looking to make another state their home[2].

There is a further issue that also arises from the fact the duty of justice is a joint duty shared by A and B. If the duty of A could be specified independently of the duty of B, then in a scenario in which A was not fulfilling its duty whereas B was, B could legitimately claim that it bears no moral responsibility for the fact that the condition of individuals pursuing TMPs across A and B is unjust. Whereas if we conceive of the duty of justice as a joint duty shared by A and B, then under the same scenario B cannot claim that it bears no responsibility for the fact that the condition of individuals pursuing TMPs across A and B is unjust. On the contrary, B would have obligations to attempt to bring A into compliance with the duty-bearing requirements that compose its fair share or to take up the slack (at least to some degree). Thus, if we suppose that it is part of A's share of the joint duty to enact and implement emigrant voting rights and it fails to do so without good reason, then B is obligated to try to persuade A to introduce emigrant voting rights or to take up the slack by provide individuals engaged in TMPs with other means for fulfilling the relevant ends.

III. Transnationalism and the Rights and Duties of TMP Migrants

Recognizing that people engaged in TMPs are living transnational lives that contribute to a transnational scheme of social cooperation across states A and B, that these lives are profoundly and pervasively impacted by the institutional context of A-and-B, and are subject to coercion by this institutional context, entails that the relevant specification of equal treatment must be attuned to this transnational context. That these migrants live transnational lives leads Ottonelli and Torresi to argue, albeit in their methodologically *nationalist* framing of the normative issues, that individuals engaged in TMPs resident in state B require a set of special rights that acknowledge the transnational-specific needs and risks that are bound up with their life-plan. We might reasonably note though that the same logic applies to state A. How does this impact Ottonelli and Torresi's argument? It might be thought that this simply entails that state A

[2] Note, however, that if there are compelling prudential reasons for A not to enact and implement emigrant voting rights that outweigh the reasons to adopt this practice, then the duty-bearing agent A-and-B would have a duty to adopt or invent alternative measures for ensuring that the ends that are otherwise served by enfranchisement in the home state are met.

has a set of special rights for those engaged in TMPs which apply only in territory of state A. This seems to be the presumption that Ottonelli and Torresi make when they talk about bilateral treaties for welfare provisions that allow, for example, pension pots built up by the migrant in state B to be transferred to for their use in state A. But the implications goes further than this and we can illustrate the point by considering the discussion of work rights.

Ottonelli and Torresi make a compelling case for the claim that work and employment rights may be justifiably different in some respects for workers engaged in TMPs compared to other workers in ways that are responsive to the transnational character of their lives – for example, when not constrained by safety considerations, TMP workers should be entitled to work more than 35 hours a week and, by doing so, should be able build additional holiday time that they can take in ways that support their transnational family lives. Particularly important though is their argument that TMP workers should have more than the usual associational rights to "defend and enhance their bargaining power in the labour market" precisely because "these associational rights come to play a different and more extensive role than they do for citizens since they must function as substitutes for the right to vote in elections, which is of little use to temporary migrants" (2022, 123). Thus they propose that for TMP workers:

associational rights, and the right to join trade unions must entail new forms of mobilization such as the enhancement of transnational workers' organizations, bilateral agreements among unions based in different countries, a closer interaction with worker centres and migrant networks, the creation of specific sub-branches of existing national unions, or partnerships with self-organised migration movements (Ibid.).

This is all very pertinent but why should the question of work rights be limited to this context? TMP workers are citizens of state A working in state B, and we may reasonably suppose that as part of the special rights due to them is an extension of their right to diplomatic protection to the field of labour relations such that state A works to ensure that their TMP citizens are not exploited. This could be done by having specialist staff at the embassy focused on the needs of the TMP citizens. Furthermore, if we consider institutional examples tied to other groups of persons who lack national voting rights in state B – such as children and future generations – then we can see that this oversight and monitoring by state A could be combined with an Ombudsman in state B whose role is to represent the interests of TMP migrants. The special rights of TMP citizens of state A may then be integral to realizing the political representation of their interests in state B.

I have two further questions to raise in this context, both of which concern the

issue of time. The first concerns whether there are TMP workers who should not be able to transfer to a permanent migration project (PMP) status. The second concerns whether, as Ottonelli and Torresi's argument supposes, the duration of a TMP project has no normative implications (beyond acquiring the option to switch to a PMP status) for the rights and duties of those engaged in TMP projects.

To pose the first question, we can consider the case of critical medical personnel from states with weak health systems migrating to states with strong health systems. There are good reasons why such personnel might wish to engage in short-term (or circular) TMPs to improve their knowledge and skills, and why their home states might support them in this endeavour. But there are also good reasons why these states may be opposed to the loss of these personnel to long-term TMPs or PMPs. Can the life-plans of these individuals be legitimately circumscribed? My own view here is that the answer to this question is conditional on whether states A and B can jointly realise circumstances that ensure that the human right to health of the citizens of A is not threatened by the norms governing the migration of medical personnel between state A to state B. But given the normative weight that Ottonelli and Torresi put on individual life-plans in their liberal framework, it is not clear to me that they would accept this constraint on individual freedom.

The second question concerns whether the duration of a TMP has any implications for their rights and duties. We can put this starkly by asking whether a TMP individual who has been present in a municipality of state B for 1 year and another who has been present for 40 years are in the same position as far as their rights and duties go. My general intuition here is that time does matter because even if both remain oriented to the home state in the way that Ottonelli and Torresi's argument stipulates, presence does still, I think, have implications for social membership and relational obligations. Of course, it may be that the kind of social membership acquired by the long-term TMP worker is distinct from that of individuals engaged in PMP projects, but it is implausible to imagine that this hypothesised TMP migrant has not, simply as a product of the ordinary conduct of everyday life, formed social relations outside of other TMP workers. This may lead to the view that, given the service delivery focus on municipal government, that the TMP migrant should acquire a right to local voting rights (regardless of whether they wish to have it or to exercise it) after a period of time – or to the view that whereas the short-term TMP migrant might be excused from jury duty that the long-term TMP migrant should not be. I simply raise this issue here – and note that it might also matter for rights and duties in the home state – because it is not one that Ottonelli and Torresi address, but it is significant for the kind of proposals that they advance.

Conclusion

My primary purpose in this commentary has been to raise an objection to what we may call 'the normative methodological nationalism' of Ottonelli and Torresi's argument and to argue that the appropriate context of justice is transnational and that this has non-trivial implications for the kind of argument that they want to make. Following from this argument, I have suggested that their framing of work rights – although insightful and important in a number of respects – limits itself precisely because it does not consider the duties of the home state towards TMP workers within the state of residence. I have concluded by raising to questions where I am not clear about the implications of the argument advanced in this original and provocative book.

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